THE FINANCIAL SERVICES COMMISSION OF ONTARIO

PENSION BULLETIN

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Ontario

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The Financial Services Commission of Ontario Act, 1997, S.O. 1997, c. 28 as amended, the Pension Benefits Act, R.S.O. 1990, c. P.8 as amended, R.R.O. 1990, Reg. 909 as amended, the terms of the pension plan and trust, if any, and the policies, procedures and practices of FSCO should be considered in determining specific legal requirements, and professional advice should be sought.

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General Announcements

Update on the proposed merger of FSCO and the OSC

On Friday, April 6, 2001 the Honourable James Flaherty, Minister of Finance, announced that the Government would hold a second consultation on the proposed merger of the Ontario Securities Commission (OSC) and the Financial Services Commission of Ontario (FSCO) into a single financial services regulator. On Thursday, April 12, 2001 the Minister released a consultation draft.

The consultation draft incorporates the comments received on the discussion paper, "Improving Ontario's Financial Services Regulation: Establishing A Single Financial Services Regulator," that was released for public comment last fall. While the majority of stakeholders endorsed the plan to merge the OSC and FSCO, many expressed a desire to see further details.

The consultation draft would establish a new commission to be known as the Ontario Financial Services Commission. It would have a Chair, a Commission with 18 members, a separate Pension Tribunal, and would be self-funding and have rule-making authority.

A two-month consultation is being led by John O'Toole, Parliamentary Assistant to the Minister of Finance. The deadline for submissions on the consultation draft is June 29, 2001. A copy of the consultation draft and more information on the consultation process is available on FSCO's web site at *www.fsco.gov.on.ca*

Over the past several months, FSCO has continued to meet with stakeholders to discuss specific concerns relating to representation and governance, accountability, and the extent of the rule-making under certain statutes administered by FSCO. These meetings have been very productive and informative.

Your views are important. We urge you to participate in the consultation process.

Letter to the President of the Canadian Institute of Actuaries

January 11, 2001

David J. Oakden

President

Canadian Institute of Actuaries

360 Albert Street, Suite 820

Ottawa ON K1R 7X7

Dear Mr. Oakden,

Re: FSCO's Concerns with Actuarial Reports

At the last CIA/FSCO Annual Forum on December 14th, 2000, we shared with you and your colleagues some of FSCO's concerns with the actuarial reports filed for purposes of funding pension plans (referred to hereinafter as "reports"). Your colleagues suggested that it would be useful to disseminate this information to actuaries in the pension practice. In this regard, I am writing to outline the concerns discussed.

For the purposes of supervising the funding of defined benefit pension plans, FSCO has adopted a risk-based approach whereby certain risk assessment criteria are used to identify reports for in-depth compliance review. Over 600 reports have been selected for review since June 1999. Our review indicated that the majority of the reports were prepared in accordance with your Institute's standard of practice, and were in compliance with the *Pension Benefits Act* and the regulations made thereunder. However, a small proportion (about 10%) of the reports reviewed did contain some material compliance deficiencies.

The principal concerns can be attributed to two categories as set out below:

1. Regulatory Compliance

- The employer failed to make the required contributions within the time frame prescribed in the regulations. This was revealed in some cases by the large amount of contribution receivables indicated in the report.
- The employer failed to remit the required amount of contributions as recommended in the previous report.
- A contribution holiday was taken by the employer with amounts exceeding the amount of available surplus indicated in the previous report.
- The administrator failed to keep the filing of plan amendments up to date. This was revealed from the discrepancies between the plan provisions summarized in the report and the plan documents on FSCO's files.

- The report was filed at a date well after the prescribed time frame (with some more than a year late). Untimely filing of reports could result in improper funding of a pension plan which might impair the security of members' benefits.
- The actuary failed to observe the requirement for annual actuarial reviews where the report indicated solvency concerns.

While preparing funding valuation reports, actuaries are in a position to identify many of the compliance concerns as exemplified above. They should work with the administrators or employers to rectify any identified deficiencies prior to the filing of reports with FSCO. This would improve the overall compliance of pension plans with the *Act* and regulations, and provide better protection for the plan beneficiaries.

2. Actuarial Compliance

- The interest assumption used in the going concern valuation was rather aggressive and did not appear to be supportable by the past fund performance nor the long term investment return expectations. In some instances, the pension fund asset mix did not appear to be appropriate for the liability structure of the plan.
- A small number of reports still used outdated mortality tables, such as GAM 71 and GA51.
- Some plans provide benefit increases that would come into effect after the valuation date of the report. There was no provision in the actuary's funding recommendations for the cost of benefit increases.
- Disclosure or explanation of the actuarial basis used in the report did not appear to be adequate. As an example, actuarial assumptions weaker than those used in the previous valuation were used in the report but no supporting reasons for the changes were given.

To ensure compliance with actuarial standards, actuaries should, in their preparation of a report, always review the actuarial assumptions used with due regard to the plan's experience and changing circumstances. Particular attention should be given to the appropriateness of going concern economic assumptions in relation to the plan's investment policy and long term expectations, as well as to the adequacy of margin in the funding basis. Any change in the actuarial basis should be fully justified and accompanied by adequate explanation in the report. Additional information that may be helpful to users other than the plan sponsor (e.g., regulators, plan beneficiaries) in understanding the report is also desirable.

These are the main concerns we would like to bring to your attention at this time. If you would like to discuss the concerns further, please feel free to contact George Ma, Chief Actuary, at (416) 226-7785.

Yours very truly,

Dina Palozzi
Chief Executive Officer
and Superintendent of Financial Services

Pension Investments Affected by Ontario Regulation 144/00

On March 3, 2000, the regulations under the *Pension Benefits Act* (PBA) were amended by Ontario Regulation 144/00 to require that plans registered in Ontario comply with the federal investment regulations (sections 6, 7, 7.1 and 7.2 and Schedule III of the Pension Benefits Standards Regulations, 1985, as they read on December 31, 1999) by no later than January 1, 2001.

Therefore, by January 1, 2001, all plans registered in Ontario must have established a Statement of Investment Policies and Procedures (SIP&P), the contents of which must be in accordance with the federal investment regulations. For guidance in the preparation of a SIP&P, plan administrators may wish to refer to the document entitled "Guideline for the Development of Investment Policies and Procedures for Federally Regulated Pension Plans", prepared by the Office of the Superintendent of Financial Institutions and available on their website at *www.osfi-bsif.gc.ca*

The SIP&P replaces the Ontario Statement of Investment Policies and Goals (SIP&G). The requirement to establish SIP&Ps now also applies to plans fully funded by fully-insured and/or deposit administration general funds contracts which were previously exempt from the requirement to prepare a SIP&G.

As stated in FSCO's November, 2000, Pension Bulletin, the SIP&P is not required to be filed with FSCO, although it is required to be reviewed by the administrator at least once a year. The SIP&P plus any amendments must be submitted to the pension plan's advisory committee, if one exists, and to the plan's actuary, if the plan is a defined benefit plan. It must also be available for inspection by the persons listed in section 29 of the PBA and made available to FSCO if required.

Since SIP&Ps are not required to be filed, the Pooled Fund Central Registry maintained by FSCO has been terminated effective January 1, 2001. Pooled fund documents should no longer be filed with FSCO, and policies P400-300 and P400-500 are no longer in effect.

Any new investment activity after December 31, 2000, must comply with the federal investment regulations. However, section 80 of the regulations under the PBA, as recently amended by Ontario Regulation 680/00, requires that investments held on December 31, 2000, that were not compliant with the federal investment regulations be brought into compliance by no later than December 31, 2004, or disposed of by January 1, 2005. In addition, FSCO has published policy I400-801 which addresses allowable activities by these non-compliant investments and by pension plans in relation to these investments.

Policy I400-801, a description of Ontario Regulation 680/00 and a question and answer update on SIP&Ps for pension plans fully funded by fully-insured and/or deposit administration general funds contracts are published (see below) in this Pension Bulletin and are also available on FSCO's website at *www.fsco.gov.on.ca*

Statement of Investment Policies and Procedures for Pension Plans Fully Funded by Fully-insured and/or Deposit Administration General Funds Contracts

Question

Were all pension plans registered in Ontario, including those fully funded by fully-insured and/or deposit administration general funds contracts, required to establish a written Statement of Investment Policies and Procedures (SIP&P) by January 1, 2001?

Answer

Yes. All pension plans registered in Ontario, including plans fully funded by fully-insured and/or deposit administration general funds contracts, were required to establish a SIP&P by January 1, 2001.

For guidance in the preparation of a SIP&P, plan administrators may wish to refer to the document entitled "Guideline for the Development of Investment Policies and Procedures for Federally Regulated Pension Plans" prepared by the Office of the Superintendent of Financial Institutions (OSFI) and available on their website at *www.osfi-bsif.gc.ca*

Explanation

- On March 3, 2000, sections 66 to 75 and 77 to 82 of Regulation 909 under the *Pension Benefits Act* were revoked and replaced by new sections 66 and 77 to 80.

- Among the revoked sections was the former section 80 which exempted plans fully funded by fully-insured and or/deposit administration general funds contracts from sections 66 to 82, including section 67 which dealt with the establishment of a Statement of Investment Policies and Goals (SIP&G)

- New section 78 requires that a SIP&P be established for all plans. The SIP&P must comply with the federal investment regulations (sections 6, 7, 7.1 and 7.2 and Schedule III of the Pension Benefits Standards Regulations, 1985, as they read on December 31, 1999).

Reminder: Summary of Contributions/Revised Summary of Contributions (Form 7)

Effective March 3, 2000, the *Pension Benefits Act* (PBA) and Regulation 909 were amended by the *Pension Benefits Statute Law Amendment Act, 1999* and O. Reg. 144/00.

Among other changes, these amendments resulted in the addition of section 56.1 of the PBA and section 6.2 of the Regulation. These provisions require plan administrators to provide trustees of the pension fund with a Summary of Contributions / Revised Summary of Contributions (Form 7) in respect of each fiscal year of the plan that commences on or after July 1, 2000. The new Summary of Contributions / Revised Summary of Contributions (Form 7) was made available to plan administrators, trustees of pension funds and other pension stakeholders in June 2000 and copies were posted on the website of the Financial Services Commission of Ontario at *www.fsco.gov.on.ca*

The completed Summary of Contributions / Revised Summary of Contributions (Form 7) is required to be provided by the plan administrator to the trustee(s) of the pension fund (i) within 90 days after the plan is established for the first fiscal year, and (ii) within 60 days after the beginning of the second fiscal year of the plan and each subsequent fiscal year of the plan. If the completed Summary of Contributions / Revised Summary of Contributions (Form 7) is not provided to the trustee(s) of the pension fund within 30 days after the prescribed time, the Superintendent of Financial Services must be notified.

Because most pension plan fiscal years correspond to the calendar year, most plan administrators should already have provided the trustees of their pension funds with completed copies of the Summary of Contributions / Revised Summary of Contributions (Form 7). Trustees of pension funds who do not receive copies of the completed form within the prescribed time limit must notify the Superintendent so appropriate action can be taken.

The Summary of Contributions / Revised Summary of Contributions (Form 7) is intended to ensure that trustees of pension funds have the information they require to effectively monitor required contributions. The summary of contributions provisions in the PBA and Regulation do not apply to multi-employer pension plans described in section 49.1 of the Regulation.

Pension Plans Branch – staff changes

Larry Martello has retired and his allocation has been taken over by Gino Marandola. Chantal Laurin has assumed Clifford Amilcar's allocation and is also PPB's Designated Bilingual Pension Officer.

Tom Golfetto has been appointed Sr. Manager, Operations, in place of Nardeo Sham who has assumed other responsibilities with FSCO.

Contacts for Plan Specific Enquiries

Pension Plan Allocations

Name	Title	Telephone #	Allocation Alpha Range
Jaan Pringi	Senior Pension Officer	416-226-7826	
Gulnar Chandani	Pension Officer	416-226-7770	#'s–Asc
Penny McIlraith	Pension Officer	416-226-7822	Asd–Bt
Tim Thomson	Pension Officer	416-226-7829	Bu–Cd
Irene Mook-Sang	Pension Officer	416-226-7824	Ce–Cz
Lynda Ellis	Senior Pension Officer	416-226-7809	
Vacant	Pension Officer	See Note 1	En–Gkn
Calvin Andrews	Pension Officer	416-226-7768	Gko–H
Stanley Chan	Pension Officer	416-226-7806	I–King
Vacant	Pension Officer	See Note 1	Kinh-Mark
Gino Marandola	Senior Pension Officer	416-226-7820	
Jeff Chuchman	Pension Officer	416-226-7807	D–Em
John Graham	Pension Officer	416-226-7774	Marl–Nes
David Allan	Pension Officer	416-226-7803	Net–Pep
Vacant	Pension Officer	See Note 1	Peq–Rob
Rosemin Jiwa-Jutha	Senior Pension Officer	416-226-7816	
Todd Hellstrom	Pension Officer	416-226-7814	Roc–Sons
Kent Wootton	Pension Officer	416-226-7812	Sont–The Drop
Kathy Carmosino	Pension Officer	416-226-7823	The Droq–Unicorp
Chantal Laurin	Pension Officer	416-226-7808	Unicorq–Z

Note 1: Please contact the Senior Pension Officer of this team for information on plans that fall under this Allocation.

Hearings/Court Matters

1. ENFORCEMENT MATTERS

Charges laid under the *Pension Benefits Act*

i . Denning Bros. Funeral Home Limited

Denning Bros. Funeral Home Limited was charged under the *Pension Benefits Act* with failing to file a financial statement in respect of the Pension Plan for Employees of Denning Bros. Funeral Home Limited.

On July 25, 2000, the company pleaded guilty to this charge. The Crown asked for a fine of $500, citing the facts that: it was a first offence; it was a small pension plan with one member (the owner); other filings were up-to-date; and the financial statement in question had been filed by the time of trial. The Ontario Court of Justice sentenced the company to a fine of $600 plus a victim surcharge. The Ontario Court of Justice emphasized that it was very important to file a financial statement, and such omissions could not be blamed on oversight. The company was given 15 days to pay the fine.

ii. Dominion Beauty Supplies Limited

Dominion Beauty Supplies Limited was charged under the *Pension Benefits Act* with failing to file a financial statement for two separate years and failing to file an annual information return in respect of the Retirement Benefit Plan for the Employees of Dominion Beauty Supplies Limited.

On September 12, 2000, the company pleaded guilty to all of the charges and the Ontario Court of Justice sentenced the company to a fine of $100 for failing to file the financial statement for the fiscal year ending December 31, 1997 plus a victim surcharge; $200 for failing to file the financial statement for the fiscal year ending December 31, 1998 plus a victim surcharge; and $100 for failing to file the annual information return plus a victim surcharge. The company was given 60 days to pay the fines.

iii. Can-Rad Beauty Limited

Can-Rad Beauty Limited was charged under the *Pension Benefits Act* with failing to file a financial statement for two separate years and for failing to file an annual information return for two separate years in respect of the Supplemental Pension Plan for Employees of Can-Rad Beauty Limited.

On September 12, 2000, the company pleaded guilty to all of the charges and the Ontario Court of Justice sentenced the company to a fine of $100 for failing to file a financial statement for the fiscal year ending June 30, 1998 plus a victim surcharge; $200 for failing to file a financial statement for the fiscal year ending June 30, 1999 plus a victim surcharge; $100 for failing to file the annual information return for the fiscal year ending June 30, 1998 plus a victim surcharge; and $200 for failing to file the annual information return for the fiscal year ending June 30, 1999 plus a victim surcharge. The company was given 60 days to pay the fines.

iv. Kelsey-Hayes Canada Ltd.

Kelsey-Hayes was charged under the *Pension Benefits Act* with failing to file financial statements and annual information returns in respect of its Non-Contributory Pension Plan for Employees of the Windsor Division of Kelsey Hayes Canada Ltd. (the “Hourly Plan”) and the Retirement Income Plan for Salaried Employees (the “Salaried Plan”).

On November 7, 2000, the company pleaded guilty to a charge of failing to file a financial statement in respect of the salaried plan. It also pleaded guilty to two charges of failing to file annual information returns in respect of the Hourly Plan. The Ontario Court of Justice sentenced the company to a fine of $1000 for failing to file a financial statement in respect of the Salaried Plan plus a victim surcharge. The Ontario Court of Justice sentenced the company to a fine of $5000 for each charge of failure to file an

annual information return in respect of the Hourly Plan plus a victim surcharge.

v. Pillsbury Canada Inc.

Pillsbury Canada Limited was charged under the *Pension Benefits Act* with failing to file a financial statement for two separate years and failing to file an actuarial valuation in respect of The Pension Plan of Pillsbury Canada Inc., Midland Union Employees.

On November 7, 2000, the company pleaded guilty to two charges – one charge for failure to file a financial statement and one charge for failure to file an actuarial valuation. The Ontario Court of Justice sentenced the company to a fine of $1000 for failing to file a financial statement and $5000 for failing to file an actuarial valuation plus a victim surcharge for each offence.

vi. Dots & Pixels Inc.

Dots & Pixels Inc. was charged under the *Pension Benefits Act* with failing to file various documents including annual information returns and financial statements in respect of the Dots & Pixels Inc. Employee Retirement Plan.

Due to a technicality the charges were stayed. An appeal was filed and heard on January 29, 2001. The appeal was rejected and FSCO has decided not to take any further action.

vii. 1085090 Ontario Limited

108590 Ontario Limited was charged under the *Pension Benefits Act* with failing to file an annual information return and an actuarial valuation.

Due to a technicality the charges were stayed. An appeal was filed and heard on January 29, 2001. The appeal was rejected and FSCO has decided not to take any further action.

viii. Smithers-Oasis Canada Ltd.

Smithers-Oasis Canada Ltd. was charged under the *Pension Benefits Act* with failing to file an annual information return for two separate years and for failing to file a financial statement in respect of The Pension Plan for Employees of Smithers-Oasis Canada Ltd.

Due to a technicality the charges were stayed. An appeal was filed and heard on January 29, 2001. The appeal was rejected and FSCO has decided not take any further action.

ix. Microcolor Dispersions Ltd.

Microcolor Dispersions Ltd. and its owner, in his personal capacity, were charged under the *Pension Benefits Act* with non-remittance of employer and employee contributions to the Retirement Plan for the Employees of Microcolor Dispersions Ltd.

On February 23, 2001, the company and the owner pleaded guilty to the charges. The Ontario Court of Justice imposed a probation order against the owner personally. He is required to pay the full amount outstanding, plus interest, into the plan, over a two-year period. The Ontario Court of Justice sentenced the company to a fine of $500 plus a victim surcharge.

x. Carlo Gavazzi (Canada) Inc.

Carlo Gavazzi (Canada) Inc. was charged under the *Pension Benefits Act* with failing to file a financial statement for four separate years and for failing to file an annual information return in respect of the Pension Plan for Employees of Carlo Gavazzi (Canada) Inc.

On February 28, 2001, the company pleaded guilty to all five charges and the Ontario Court of Justice sentenced the company to a fine of $500 plus a victim surcharge for each offence.

xi. The Raxlen Clinic

The Raxlen Clinic was charged under the *Pension Benefits Act* with failing to file a financial statement for three separate years and for failing to file actuarial valuations for three separate three-year periods in respect of the Supplemental Pension Plan for Employees of The Raxlen Clinic.

On September 26, 2000, the company entered a

plea of not guilty. A trial was scheduled for March 21, 2001.

On February 28, 2001, three of the partners of Raxlen Clinic were charged under the *Pension Benefits Act* with failing to file a financial statement for three separate years in respect of the Supplemental Pension Plan for Employees of The Raxlen Clinic. The first court appearance for each of the defendants was scheduled for March 21, 2001.

On March 21, 2001, the defendants requested and the Ontario Court of Justice granted an adjournment of the trial of the Raxlen Clinic.

On April 3, 2001, the trial was scheduled for March 14, 2002.

xii. George Cluthe Manufacturing Ltd. and its officers/directors

George Cluthe Manufacturing Ltd. and the officers of the company in their personal capacity were charged with failure to remit employer and employee contributions to the Pension Plan of the George Cluthe Manufacturing Ltd.

On April 5, 2001, four officers of the company pleaded guilty. Two of the officers were ordered to pay restitution of part of the outstanding amount and did so immediately. One of the officers was placed on probation for two years with a condition that he make restitution. The fourth officer was sentenced on May 8, 2001. He was ordered to pay restitution of part of the outstanding amount.

2. COURT MATTERS

i. Retirement Income Plan for Salaried Employees of Weavexx Corp. Registration No. 264663

On November 29, 1999, the Superior Court of Justice – Ontario Divisional Court heard a judicial review application brought by a group of former members of the Retirement Income Plan for Salaried Employees of Weavexx Corp. (the "Weavexx Plan"), who wanted to set aside the Superintendent's August 1997 consent to a transfer of assets from the Weavexx Plan to the BTR Pension Plan for Canadian Employees (the "BTR Plan"). The Court granted the application on May 30, 2000, setting aside the consent on the grounds that the Superintendent of Pensions had exceeded his jurisdiction in failing to consider the issues of surplus, trust, and a requested partial wind up of the Weavexx Plan.

On November 16, 2000, the Court issued an Addendum finding that the return of assets to the Weavexx Plan was not to be the subject of a Financial Services Tribunal hearing. The Court also found that any decision made by the Superintendent of Financial Services with respect to the requested partial wind up was to be referred to the tribunal for a hearing. Finally, the Court awarded the applicants costs in the sum of $54,294.06.

Both the Superintendent of Financial Services and BTR Inc. sought leave to appeal these decisions. On February 26, 2001, the Ontario Court of Appeal granted leave, ordering that this appeal be heard together with the appeal in Colgate-Palmolive. No date has been set yet.

ii. Colgate-Palmolive Canada Inc. Pension Plan for Salaried and Non-Union Hourly Employees

On November 17, 2000, the Superior Court of Justice – Ontario Divisional Court heard a judicial review application brought by a group of former members of the Colgate-Palmolive Canada Inc. Pension Plan for Salaried and Non-Union Hourly Employees (the "Colgate Plan"), who wanted to set aside the Superintendent of Pensions' December 1995 consent to a transfer of assets from the Bristol-Myers Canada Inc. Retirement Income Plan (the "Bristol-Myers Plan") to the Colgate Plan. The applicants also wanted the Superintendent's August 1994 approval of a partial wind up report filed by the Colgate Plan set aside.

On November 29, 2000, the Court released its decision, finding that the applicants as members of the importing pension plan had no right to object to the transfer; any right to object would have happened when the amendment to the Colgate Plan respecting the transfer was filed. The Court also found that there was no evidence to support a partial wind up involving additional former members of the Colgate Plan.

The applicants applied for leave to appeal. On February 26, 2001, the Ontario Court of Appeal granted leave, ordering that this appeal be heard together with the Weavexx appeal. No date has been set yet.

Legislative Changes/Regulatory Policies

Ontario Regulation 680/00

Effective December 21, 2000, Ontario Regulation 680/00 amended Regulation 909 made under the *Pension Benefits Act* to:

- extend the application of the "surplus sharing" provisions in section 8 of Regulation 909 until December 31, 2001;

- amend subsection 80(2) of Regulation 909 to require that any investment of a pension fund that does not meet the requirements of the federal investment regulations before January 1, 2005, be disposed of by that date; and

- correct a typographical error in subsection 89(1) of Regulation 909.

The amendment to subsection 8(3) of Regulation 909 was necessary because the existing provisions regarding withdrawal of surplus on plan wind up were scheduled to expire on December 31, 2000. In conjunction with this amendment, the Minister of Finance announced that in early 2001 the Government will hold a public consultation on new surplus sharing rules.

The amendment to subsection 80(2) of Regulation 909 stems from Ontario's adoption of the federal investment regulations on March 3, 2000. The amendment is intended to help plans implement a smooth transition to full compliance with the federal investment regulations by January 1, 2005.

The amendment to subsection 89(1) of Regulation 909 ensures that the provisions relating to financial hardship unlocking are accurate and complete.

A copy of Ontario Regulation 680/00 is available on FSCO's website at *www.fsco.gov.on.ca*

Financial Services Commission of Ontario
Commission des services financiers de l'Ontario

SECTION: Annuities

INDEX NO.: A600-951

TITLE: Mortality Tables and Sex Discrimination
- PBA s. 52
- Regulation 909 s. 21(3)

APPROVED BY: Superintendent of Financial Services

PUBLISHED: January 1, 2001 (FSCO website)

EFFECTIVE DATE: January 1, 2001

REPLACES: A600-950

This policy replaces A600-950 ("Mortality Tables and Sex Discrimination, O. Reg. 708/87, ss. 18(3)") as of the effective date of this policy.

Note: Where this policy conflicts with the Financial Services Commission of Ontario Act, 1997, S.O. 1997, c. 28 ("FSCO Act"), Pension Benefits Act, R.S.O. 1990, c. P.8 ("PBA") or Regulation 909, R.R.O. 1990 ("Regulation"), the FSCO Act, PBA or Regulation govern.

When funds are transferred from a locked-in retirement account, life income fund or locked-in retirement income fund for the purchase of a life annuity, can sex differentiated mortality tables be used in the calculation of the annuity?

Subsection 21(3) of the Regulation specifically states that "an immediate or deferred life annuity that is purchased with funds from a life income fund, locked-in retirement income fund or locked-in retirement account shall not differentiate on the basis of the sex of the beneficiary if the commuted value of the pension benefit that was transferred into the life income fund, locked-in retirement income fund or locked-in retirement account was determined in a manner that did not differentiate on the basis of sex."

Under section 52 of the PBA, discrimination on the basis of sex is prohibited in the determination of benefits and eligibility conditions for those benefits in relation to employment after December 31, 1986. As a result, only annuity factors that do not differentiate on the basis of sex of the member may be used in relation to employment after that date.

For employment up to December 31, 1986, however, benefits and eligibility conditions for those benefits may be determined on a sex-distinct basis. If the commuted value of benefits related to employment up to December 31, 1986 have been determined on a sex-distinct basis, the annuity factors may also differentiate on the basis of sex.

Financial Services Commission of Ontario
Commission des services financiers de l'Ontario

SECTION: Investment of Pension Funds

INDEX NO.: I400-800

TITLE: Compliance with Federal Investment Regulations or Ontario Investment Rules - Regulation 909, ss. 77(4) and 77(5), as amended

APPROVED BY: Superintendent of Financial Services

PUBLISHED: November 2000

EFFECTIVE DATE: March 3, 2000

EXPIRY DATE: December 31, 2000

During the period March 3, 2000 to December 31, 2000, subsections 77(4) and 77(5) of Regulation 909 as amended by Ontario Regulation 144/00 (the "Regulation") allow the assets of pension plans to be invested in accordance with either the federal investment regulations (sections 6, 7, 7.1 and 7.2 and Schedule III of the Pension Benefits Standards Regulations, 1985 made under the *Pension Benefits Standards Act, 1985* (Canada) as of December 31, 1999) or the Ontario investment rules (sections 66 to 82 of Regulation 909 made under the *Pension Benefits Act*, R.S.O. 1990, c. P.8 as of December 30, 1999).

If a plan decides that its investments should be subject to the federal investment regulations prior to January 1, 2001, it must establish an effective date for the changeover to the federal investment rules. Prior to this date, **all** investments must comply with the Ontario investment rules; after that date, except as permitted by section 80 of the Regulation and policy I400-801 respecting non-compliant investments, **all** investments must comply with the federal investment regulations.

Financial Services Commission of Ontario
Commission des services financiers de l'Ontario

SECTION: Investment of Pension Funds

INDEX NO.: I400-801

TITLE: Transitional Investment Rules
- Regulation 909, s.79 and 80, as amended

APPROVED BY: Superintendent of Financial Services

PUBLISHED: November 2000

EFFECTIVE DATE: March 3, 2000

EXPIRY DATE: January 2, 2005

Background

The general principle for pension fund investments during the transition from the Ontario investment rules (sections 66 to 82 of Regulation 909 made under the *Pension Benefits Act*, R.S.O. 1990, c. P.8 as of December 30, 1999) to the federal investment regulations (sections 6, 7, 7.1 and 7.2 and Schedule III of the Pension Benefits Standards Regulations, 1985 made under the *Pension Benefits Standards Act, 1985* (Canada) as of December 31, 1999) through the period from January 1, 2001 to January 1, 2005 (the "transition period") is that "beginning on January 1, 2001, the assets of every pension plan shall be invested in accordance with the federal investment regulations" (section 79 of Regulation 909, as amended).

However, section 80 of Regulation 909 acknowledges that investments held on January 1, 2001 that complied with the Ontario investment rules but are not compliant with the federal investment regulations may exist during the transition period. Investments that meet this description shall be referred to in the remainder of this policy as "non-compliant investments".

FSCO Policy Respecting Non-compliant Investments

All existing activities as of January 1, 2001* and activities made in accordance with binding commitments made prior to January 1, 2001* either by pension plans with non-compliant investments or by the non-compliant investments may continue until January 1, 2005. Any new activities after December 31, 2000** with or by non-compliant investments must be in compliance with the federal investment regulations.

Examples

1. Investing in non-compliant investments

(a) Only additional investments and loans, or transfers of existing funds to a non-compliant investment, for which a binding commitment was made prior to January 1, 2001* are permitted.

(b) Self-directed transfers after January 1, 2001* by a defined contribution pension plan member to a non-compliant vehicle, other than those satisfying a binding commitment made prior to January 1, 2001*, are not allowed.

*2. Non-compliant activities undertaken by subsidiaries****

During the transition period, subsidiaries may continue non-compliant activities arising from binding commitments made prior to January 1, 2001* in accordance with the Ontario investment regulations. All new activities after December 31, 2000** must comply with the federal investment regulations.

*3. Non-compliant subsidiaries****

A non-compliant subsidiary (such as a third or lower tier subsidiary as described in clauses 12(1)(h), 13(1)(i) and 14(1)(g) of Schedule III of the federal investment regulations, or an investment corporation not in compliance with any of clauses 14(c) to 14(f) of Schedule III) may continue with activities associated with binding commitments entered into prior to January 1, 2001*, but cannot subsequently undertake any new activities.

These examples are not intended to address all transitional issues that may arise. If there is an investment issue relating to the transitional period for which this policy does not provide guidance, please contact FSCO.

*January 1, 2001 means either January 1, 2001 or the date that a pension plan adopts the federal investment regulations if prior to January 1, 2001.

**December 31, 2000 means either December 31, 2000 or the date one day prior to the date that a pension plan adopts the federal investment regulations, if prior to December 30, 2000.

***Subsidiaries are real estate, resource or investment corporations (as defined in clause 1 of Schedule III) in which the plan owns securities to which are attached more than 30% of the votes that may be cast to elect the directors of the corporation.

Financial Services Commission of Ontario
Commission des services financiers de l'Ontario

SECTION: Life Income Fund/Locked-In Retirement Account

INDEX NO.: L050-657

TITLE: 2001 LIF Maximum Withdrawal Amount Table

APPROVED BY: Superintendent of Financial Services

PUBLISHED: December 2000

EFFECTIVE DATE: January 1, 2001

The attached table has been prepared by the Financial Services Commission of Ontario (FSCO). Additional copies of this table and copies of articles published by FSCO about the Ontario LIF are available on FSCO's website at *www.fsco.gov.on.ca*, or may be picked up in person on the 4th floor, 5160 Yonge Street, North York, Ontario.

Interest assumptions used in table below:

(1) 6.00%, which represents the *greater* of the CANSIM B14013 rate for November 2000 (5.63%) and 6.00% for the first 15 years, and

(2) 6.00% for the years remaining to the end of the year in which the planholder attains 90 years of age. (Assumption to age 90 is for the purpose of maximum withdrawal calculation only. The balance of a LIF must be used to purchase a life annuity by the end of the year in which the planholder attains 80 years of age.)

Percentages shown must be prorated for the initial fiscal year if less than twelve months. Part of a month is treated as a full month.

2001 Maximum Annual Withdrawal Amount Table for an Ontario Life Income Fund (LIF)

Age at January 1, 2001	New Age During 2001	Years to End of Year Age 90 is Attained	Maximum Withdrawal as a Percentage of the LIF Balance as at January 1, 2001*
48	49	42	6.19655%
49	50	41	6.23197%
50	51	40	6.26996%
51	52	39	6.31073%
52	53	38	6.35454%
53	54	37	6.40164%
54	55	36	6.45234%
55	56	35	6.50697%
56	57	34	6.56589%
57	58	33	6.62952%
58	59	32	6.69833%
59	60	31	6.77285%
60	61	30	6.85367%
61	62	29	6.94147%
62	63	28	7.03703%
63	64	27	7.14124%
64	65	26	7.25513%
65	66	25	7.37988%
66	67	24	7.51689%
67	68	23	7.66778%
68	69	22	7.83449%
69	70	21	8.01930%
70	71	20	8.22496%
71	72	19	8.45480%
72	73	18	8.71288%
73	74	17	9.00423%
74	75	16	9.33511%
75	76	15	9.71347%
76	77	14	10.14952%
77	78	13	10.65661%
78	79	12	11.25255%
79	80	11	11.96160%

*The maximum annual withdrawal amount percentage is calculated on the basis of a twelve-month fiscal year to December 31, 2001, using the interest assumptions on above.

CORRECTION TO SURPLUS POLICY S900-509

Schedule II, appended to the revised surplus application policy S900-509 and published in the English-language version of the November 2000 issue of the FSCO Pension Bulletin, contained an error. A corrected version of the "Certification of Compliance with Surplus Requirements of Other Jurisdictions" is reproduced on the following page. This corrected Schedule II, to be signed by the Applicant, the Applicant's Agent or an Authorized Signing Officer, should accompany any application in English by an employer for payment of surplus from a wound up plan made on or after April 1, 2001.

SCHEDULE II

Certification of Compliance with Surplus Requirements of Other Jurisdictions

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.)*

I Certify to the Superintendent of Financial Services that:

(a) I, the individual making this certification, am the applicant or the agent or authorized officer of the applicant;

(b) The application affects members, former members or other persons with employment in a jurisdiction other than Ontario (the "Affected Members");

(c) I am aware of, or have consulted with professionals who have advised me of, the requirements of the laws applicable to surplus distribution of the jurisdictions of the Affected Members, and I have reviewed the application in order to determine whether it complies with such laws;

(d) I certify that, to the best of my knowledge and belief, based on the information and advice provided me, including that referred to herein, this application complies with the requirements for surplus distribution of those jurisdictions outside of Ontario with respect to Affected Members.

DATED this_____day of_____,_____.
(day) *(month)* *(year)*

_____
Signature of Applicant or Applicant's Agent or Authorized Signing Officer

_____
Name of Applicant or Applicant's Agent or Authorized Signing Officer (printed)

_____

_____

_____
Address of Applicant or Applicant's Agent or Authorized Signing Officer (printed)

It is an offence under the Criminal Code, R.S.C. 1985, c. C-46, as amended, for anyone to knowingly make a false document with the intent that it be acted on as genuine.

Superintendent of Financial Services

Appointment of Administrators – Section 71 of the PBA

1. The Standard Life Assurance Company, as the Administrator of the Pension Plan for William H. Kaufman Inc. (Registration No. 0999631) effective immediately.

DATED at Toronto, Ontario, this 9th day of November, 2000.

2. The Standard Life Assurance Company, as the Administrator of the Pension Plan for the employees of Kaufman Footwear, a Division of William H. Kaufman Inc. (Registration No. 0340349), effective immediately.

DATED at Toronto, Ontario, this 9th day of November, 2000.

3. The Standard Life Assurance Company, as the Administrator of the Pension Plan for the employees of Kaufman of Collingwood, The Furniture Division of William H. Kaufman Inc. (Registration No. 0340091), effective immediately.

DATED at Toronto, Ontario, this 9th day of November, 2000.

4. Arthur Andersen Inc., as the Administrator of the Retirement Plan for the Employees of Alloy Wheels International (Canada) Ltd. (Registration No. 1036029), effective immediately.

DATED at Toronto, Ontario, this 2nd day of February, 2001.

5. The Manufacturers Life Insurance Company, as the Administrator of the Pension Plan for Wylie Press, a Division of The Johnstone Group Inc. (Registration No. 0324335), effective immediately.

DATED at Toronto, Ontario, this 11th day of January, 2001.

6. The Manufacturers Life Insurance Company, as Administrator of the Pension Plan for Employees of Auto-Administrator Int'l Inc. (Registration No. 1035138), effective immediately.

DATED at Toronto, Ontario, this 4th day of October, 2000.

7. Buck Consultants Limited, as the Administrator of the Mutual/Hadwen Imaging Technologies Inc. Pension Plan (Registration No. 286401), effective immediately.

DATED at North York, Ontario, this 10th day of August, 2000.

8. London Life Insurance Company, as the Administrator of the Retirement Plan for the Employees of Murphy Distributing Ltd. (Registration No. 512137), effective immediately.

DATED at Toronto, Ontario, this 23rd day of May, 2000.

Notices of Proposal to Make an Order

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

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order pursuant to sections 87 and 89 of the *Act*, respecting the **Pension Plan for Hourly Employees of Penberthy Canada Products, Inc., St. Catharines, Ontario, Registration No. C-15244** (the "Plan");

TO: Penberthy Canada
Products, Inc.
P.O. Box 1129
Fonthill, ON
L0S 1E0

Attention: Leonard Wright
General Manager
Administrator

NOTICE OF PROPOSAL

I PROPOSE TO MAKE AN ORDER in respect of the Plan under sections 87 and 89 of the *Act*.

PROPOSED ORDER

I PROPOSE TO ORDER Penberthy Canada Products, Inc. (the "Administrator") to pay to Mrs. Lillian Hambling the survivor pension benefits to which she is entitled as a consequence of her deceased husband, Mr. Alfred Hambling, having elected survivor pension benefits. The Administrator is to pay to Mrs. Lillian Hambling the survivor benefits to which she is entitled in the following manner:

1. within thirty (30) days from the date of my Order, make a lump sum payment to Mrs. Lillian Hambling equal to the total amount of survivor pension benefits owing to her for the period between the date of Mr. Alfred Hambling's death to the date of this Notice, with interest at the "prejudgment interest rate" as defined in section 127 of the Courts of Justice Act, R.S.O. 1990, c. C.43 calculated from the date of Mr. Alfred Hambling's death; and
2. ensure that the survivor pension benefits to which Mrs. Lillian Hambling is entitled are paid to her on an ongoing basis from the date of this Notice until her death.

I ALSO PROPOSE TO REFUSE TO APPROVE the wind up report dated October 1993 on the wind up of the Plan as at September 30, 1993 (the "Report").

I PROPOSE TO MAKE THIS ORDER AND THIS REFUSAL FOR THE FOLLOWING REASONS:

1. Mr. Alfred Hambling was married to Mrs. Lillian Hambling. Mr. Alfred Hambling was entitled to pension benefits in respect of the Plan.
2. In or about 1973, Mr. Alfred Hambling retired and began receiving monthly pension payments.
3. Mr. Alfred Hambling elected a survivor pension benefit. The survivor pension benefit was to be 55% of the monthly pension paid to the member, in this case, Mr. Alfred Hambling, at the time of the member's death and was to be paid on a monthly basis during the continued lifetime of the member's surviving spouse after the death of the member.
4. A notice from John Wood Mfg. Ltd. to Montreal Trust Company confirms that Mr. Alfred Hambling elected a survivor pension benefit. This notice indicates that effective February 1, 1979 a monthly pension of $155.64 and a survivor pension benefit of $85.60 were payable in respect of Mr. Alfred Hambling's pension benefit.

5. Mr. Alfred Hambling died in or about 1994. At the time of his death, he was married to Mrs. Lillian Hambling.
6. A document entitled "Penberthy Canada Products, Inc. Statement of Benefit Payments and Other Disbursements for the Period January 1, 1993 to December 31, 1993" in respect of the Plan indicates that monthly pension payments of $168.62 were being made to Mr. Alfred Hambling. Therefore, after Mr. Alfred Hambling's death, Mrs. Lillian Hambling was entitled to receive a survivor pension benefit of $92.74 a month for the rest of her life.
7. The Administrator has not made any payments to Mrs. Lillian Hambling in respect of her entitlement to survivor pension benefits.
8. Subsection 19(3)(a) of the *Act* provides that the pension plan administrator is to ensure that the pension plan and pension fund are administered in accordance with the filed documents in respect of which the Superintendent has issued an acknowledgement of application for registration or a certificate of registration, whichever is issued later.
9. Subsection 87(2)(a) of the *Act* provides that the Superintendent may make an order under section 87 of the *Act* if the Superintendent is of the opinion, upon reasonable and probable grounds, that the pension plan or pension fund is not being administered in accordance with the *Act*, the regulations or the pension plan. Subsection 87(1) of the *Act* provides that the Superintendent may, by written order, require an administrator or any other person to take or refrain from taking any action in respect of a pension plan or pension fund in the circumstances mentioned in subsection 87(2) of the *Act* and subject to section 89 of the *Act*.
10. Subsection 70(1)(a) of the *Act* requires the administrator of a pension plan that is to be wound up to file a wind up report that sets out the assets and liabilities of the Plan. Subsection 70(1)(b) of the *Act* requires the administrator of a pension plan that is to be wound up to file a wind up report that sets out the benefits to be provided under the pension plan to members, former members and other persons.
11. Subsection 70(5) of the *Act* provides that the Superintendent may refuse to approve a wind up report that does not meet the requirements of the *Act* and the regulations or that does not protect the interests of the members and former members of the pension plan.
12. In July 1994, the Superintendent approved the Report on the condition that the employer fund the deficit identified in the Report by way of an immediate lump sum payment.
13. However, contrary to ss.70(1)(a) and 70(1)(b) of the *Act*, the Report contains an error in respect of Mr. Alfred Hambling's pension entitlement as it indicates that he had a 'life only' pension rather than indicating that he had elected a survivor pension benefit. The Superintendent relied upon this error in approving the Report. The approval is, therefore, a nullity.
14. Subsection 89(4) of the *Act* provides that where the Superintendent proposes to refuse to give an approval, the Superintendent is to serve notice of the proposal, together with written reasons on the applicant for the approval.

15. Such further and other reasons that may come to my attention.

YOU are entitled to a hearing before the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the *Act*, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal written notice that you require a hearing[1]. Any notice requesting a hearing shall be delivered to:

Financial Services Tribunal
5160 Yonge Street, 14th Floor
Toronto, ON
M2N 6L9
Attention: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED IN THIS NOTICE OF PROPOSAL TO MAKE AN ORDER.

DATED at Toronto, Ontario this 22nd day of June, 2000.

Dina Palozzi
Superintendent of Financial Services

[1]NOTE – PURSUANT to section 112 of the *Act* any notice, order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.

IN THE MATTER OF The *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c.28 (the "*Act*");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to make an Order under subsection 78(1) of the *Act* consenting to a payment out of the Retirement Plan for the Employees of Calcomp (Canada) Inc. Registration No. 0427260

TO: Calcomp (Canada) Inc.

Attention: Mr. Ron Gellatly
c/o Pyshon Digital Inc.
5484 Tomken Road, Unit 30
Mississauga ON L4W 2Z6
Applicant and Employer

NOTICE OF PROPOSAL

I PROPOSE TO MAKE AN ORDER under s. 78(1) of the *Act*, consenting to the payment, out of the Retirement Plan for the Employees of Calcomp (Canada) Inc., Registration No. 0427260 (the "Plan"), to the Applicant in the amount of $155,565 as at December 31, 1994 adjusted for investment earnings and losses thereon and expenses to the date of payment.

I PROPOSE TO MAKE THE ORDER effective only after the Applicant satisfies me that all benefits and other payments, including any enhancements arising from the surplus sharing agreement, to which members, former members and any other persons are entitled on the termination of the Plan.

I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:

1. Calcomp (Canada) Inc. is the employer as defined in the Plan (the "Employer")
2. The Plan was wound up, effective December 31, 1994.
3. As at December 31, 1994 the surplus in the Plan was estimated at $345,700.
4. The Plan provides for payment of surplus to the Employer on the wind up of the Plan.
5. The application discloses that by written agreement made by the Employer, and 100% of the active members and other members (as defined in the application) and 66.7% of the former members and other persons entitled to payments, the surplus in the Plan at the date of payment, after deduction of wind up expenses is to be distributed:

   a) 45% to the Employer; and

   b) 55% to the beneficiaries of the Plan as defined in the Surplus Distribution Agreement.
6. The Employer has applied, pursuant to section 78 of the *Act*, and clause 8(1)(b) of the Regulation, for consent of the Superintendent of Financial Services to the payment of 45% of the surplus in the Plan (after adding 45% of investment earnings and deducting 45% of the expenses related to the wind up of the Plan.)
7. The application appears to comply with section 78 and subsection 79(3)(a) & (b) of the *Act* and with clause 8(1)(b) and subsections 28(5), 28(5.1) and 28(6) of the Regulation.
8. Such further and other reasons as come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the *Act* if, within thirty (30) days after this Notice of Proposal is served[1] on you, you deliver to the Tribunal a written notice that you require a hearing.

Your written notice requiring a hearing must be delivered to:

Financial Services Tribunal
5160 Yonge Street, 14th Floor
North York, ON M2N 6L9
Attention: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

DATED at Toronto, Ontario this 12th day of July, 1999.

Dina Palozzi
Superintendent of Financial Services

c.c. Ms. Michelle Rival, Watson Wyatt

[1]NOTE – PURSUANT TO section 112 of the *Act*, any notice, order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any documents sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the day of mailing.

IN THE MATTER OF *The Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c.28 (the "*Act*");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to make an Order under subsection 78(1) of the *Act* consenting to a payment out of the Employees' Pension Plan for the Canadian Bank Note Company, Limited Registration No. 0232124

TO: Canadian Bank Note Company, Limited
145 Richmond Road,
Ottawa, Ontario
K1Z 1A1

Attention: George Donovan
General Counsel
Applicant and Employer

NOTICE OF PROPOSAL

I PROPOSE TO MAKE AN ORDER under s. 78(1) of the *Act*, consenting to the payment, out of the Employees' Pension Plan for the Canadian Bank Note Company, Limited, Registration No.0232124 (the "Plan"), to **Canadian Bank Note Company, Limited** in the amount of $7,941,500 as at April 30, 1999, adjusted for investment earnings and losses thereon and expenses to the date of payment.

I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:

1. The Canadian Bank Note Company, Limited is the employer as defined in the Plan (the "Employer")
2. As at April 30, 1999 the surplus available for withdrawal in the Plan was estimated at $15,883,000.
3. The Plan provides for payment of surplus to the Employer.
4. The application discloses that by written agreement made by the Employer, and 100% of the active members and other members (as defined in the application) and 100% of the former members and other persons entitled to payments, the surplus in the Plan available for distribution at the date of payment, after deduction of expenses is to be distributed:

   a) 50% to the Employer; and

   b) 50% to the beneficiaries of the Plan as defined in the Surplus Distribution Agreement.
5. The Employer has applied, pursuant to section 78 of the *Act*, and section 10 of the Regulation, for consent of the Superintendent of Financial Services to the payment of 50% of the surplus in the Plan (after adding 50% of investment earnings.)
6. The application appears to comply with section 78 and 79(1) of the *Act* and with section 10 and subsections 25(1) and 25(2) of the Regulation.
7. Such further and other reasons as come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the *Act* if, within thirty (30) days after this Notice of Proposal is served[1] on you, you deliver to the Tribunal a written notice that you require a hearing. Your written notice requiring a hearing must be delivered to:

Financial Services Tribunal
5160 Yonge Street, 14th Floor
North York, ON M2N 6L9
Attention: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

DATED at Toronto, Ontario this 31st day of July, 1999.

Dina Palozzi
Superintendent of Financial Services
c.c. J. David Vincent, Fasken Campbell Godfrey
Michael Mazzuca, Koskie Minsky
Peter Peng, Morneau Sobeco
Paul Saunders, Buck Consultants

[1]NOTE – PURSUANT TO section 112 of the *Act*, any notice, order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the day of mailing.

IN THE MATTER OF *The Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c.28 (the "*Act*");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to make an Order Under subsection 78(1) of the *Act* consenting to a payment out of the Retirement Income Plan for Employees of PPL Marketing. Registration No. 0697466

TO: PPL Marketing Services Inc.
c/o Andrew Harrison
Borden and Elliot
4400 – 40 King Street West
Toronto ON M5H 3Y4
Applicant

NOTICE OF PROPOSAL

I PROPOSE TO MAKE AN ORDER under s. 78(1) of the *Act*, consenting to the payment, out of the Retirement Income Plan for Employees of PPL Marketing, Registration No.0697466 (the "Plan"), to **PPL Marketing Services Inc.** in the amount of 96.3% of the surplus as at September 30, 1998, estimated to be $116,238.80, plus interest earnings thereon to the date of payment, less expenses properly payable out of the pension fund for the plan.

I PROPOSE TO MAKE THE ORDER effective only after the Applicant satisfies me that the surplus entitlements of the members, former members, and any other person entitled to payment from the fund have been paid.

I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:

1. PPL Marketing Services Inc. is the employer as defined in the Plan (the "Employer").
2. The Plan was wound up, effective September 30, 1998.
3. As at September 30, 1998 the surplus in the Plan was estimated at $116,238.80
4. The Plan provides for payment of surplus to the Employer on the wind up of the Plan.
5. The application discloses that by written agreement made by the Employer, and 66.7% of the active members and other members (as defined in the application) and 50% of the former members and other persons entitled to payments, the surplus in the Plan at the date of payment, after deduction of wind up expenses is to be distributed:
   a) 96.3% to the Employer; and
   b) 3.7% to the beneficiaries of the Plan as defined in the Surplus Distribution Agreement.
6. The Employer has applied, pursuant to section 78 of the *Act*, and clause 8(1)(b) of the Regulation, for consent of the Superintendent of Financial Services to the payment of 96.3% of the surplus in the Plan.
7. The application appears to comply with section 78 and subsection 79(3) of the *Act* and with clause 8(1)(b) and subsections 28(5), 28(5.1), and 28(6) of the Regulation.
8. Such further and other reasons as come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the *Act* if, within thirty (30) days after this Notice of Proposal is served[1] on you, you deliver to the Tribunal a written notice that you require a hearing.

Your written notice requiring a hearing must be delivered to:

Financial Services Tribunal
5160 Yonge Street, 14th Floor
North York, ON M2N 6L9
Attention: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

DATED at Toronto, Ontario this 21st day of August, 2000.

Dina Palozzi
Superintendent of Financial Services

c.c. Scott Grey, PPL Marketing Services Inc.
Richard W. Murray
David B. Portener

[1] NOTE – PURSUANT TO section 112 of the *Act*, any notice, order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the day of mailing.

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

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order pursuant to section 69 of the *Pension Benefits Act*, R.S.O. 1990, c.P.8, as amended, respecting **The Pension Plan for Employees of Moyer Vico Corp., Registration No. 465070;**

TO: Arthur Andersen Inc.
4 King Street West, Suite 1050
Toronto, ON
M5H 1B6

Attention: Lawrence Contant
Senior Consultant
Administrator of The Pension Plan for Employees of Moyer Vico Corp.

AND TO: Moyer Vico Corporation
25 Milvan Drive
Weston, ON
M9L 1Z1

Attention: Adam Okhai
President and CEO
Employer

NOTICE OF PROPOSAL TO MAKE AN ORDER

I PROPOSE TO ORDER that **The Pension Plan for Employees of Moyer Vico Corp., Registration No. 465070,** be wound up in whole effective November 13, 1997.

I propose to make this order pursuant to subsection 69(1) of the *Pension Benefits Act*, R.S.O. 1990, c.P.8, as amended (the "*Act*").

I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:

1. There was a cessation or suspension of employer contributions to the pension fund.
2. The employer failed to make contributions to the pension fund as required by the *Act* or regulations.
3. The employer is bankrupt within the meaning of the *Bankruptcy and Insolvency Act (Canada)*.
4. A significant number of members of the plan ceased to be employed by the employer as a result of the discontinuance of all or part of the business of the employer or as a result of the reorganization of the business of the employer.

YOU are entitled to a hearing by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the *Act* if, within thirty (30) days after this Notice of Proposal is served[1] on you, you deliver to the Tribunal a written notice that you require a hearing.

Your written notice requiring a hearing must be delivered to:

Financial Services Tribunal
160 Yonge Street, 14th Floor
North York, ON M2N 6L9
Attention: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

THE ADMINISTRATOR IS REQUIRED pursuant to subsection 89(5) of the *Act*, to transmit a copy of this Notice of Proposal to Make an Order to the following persons:

Industrial Wood & Allied
Workers of Canada, Local 1-700
2088 Weston Road
Toronto, ON
M9N 1X4

Attention: Ron Diotte
President, Local 1-700
Union

Coopers & Lybrand Limited (now PricewaterhouseCoopers Inc.)
145 King Street West
Toronto, ON
M5H 1V8

Attention: Michael Sheehan
Receiver

Mintz & Partners Limited
1446 Don Mills Road, Suite 100
Don Mills, ON
M3B 3N6

Attention: Daniel R. Weisz, CA
Senior Vice-President
Trustee in Bankruptcy

DATED at Toronto, Ontario this 25th day of August, 2000.

Dina Palozzi
Superintendent of Financial Services

[1]NOTE – PURSUANT TO section 112 of the *Act*, any notice, order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any documents sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the day of mailing.

IN THE MATTER OF *The Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c.28 (the "*Act*");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to make an Order under subsection 78(1) of the *Act* consenting to a payment out of the Revised Employees' Pension Plan for Employees of Atwell Fleming/Young Limited Registration No. 0218743

TO: Frank S. Kisluk Limited
c/o Fasken Martineau DuMoulin
Toronto Dominion Bank Tower
P.O. Box 20, Suite 4200
Toronto-Dominion Centre
Toronto ON M5K 1A6

Attention: Ms. Peggy McCallum
Applicant

NOTICE OF PROPOSAL

I PROPOSE TO MAKE AN ORDER under s. 78(1) of the *Act*, consenting to the payment, out of the Revised Employees' Pension Plan for Employees of Atwell Fleming/Young Limited, Registration No. #0218743 (the "Plan"), to **Frank S. Kisluk Limited, Trustee in Bankruptcy of the Estate of Atwell Fleming/Young Ltd.** in the amount of $375,000.

I PROPOSE TO MAKE THE ORDER effective only after the Applicant satisfies me that the payment of $2,000. has been made to each member and former member of the Plan as at August 17, 1989.

I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:

1. The Applicant is the Trustee in Bankruptcy of Atwell Fleming/Young Limited (the employer as defined in the Plan.)
2. The Plan was wound up, effective August 17, 1989.
3. As at December 31, 1999 the surplus in the Plan was estimated at $425,000.
4. The Plan provides for payment of surplus to the Employer on the wind up of the Plan.
5. The application discloses that by written agreement made by the Applicant, and 72.7% of the active members and 85.7% of the former members, the surplus in the Plan is to be distributed as follows:

   a) $375,000 as at December 31, 1999, plus investment earnings thereon to the date of payment and adjusted for expenses incurred in connection with the wind up, to the Employer; and

   b) $2,000 to each member and former member of the Plan as at August 17, 1989.
6. The Applicant has applied, pursuant to section 78 of the *Act*, and clause 8(1)(b) of the Regulation, for consent of the Superintendent of Financial Services to the payment of $375,000 of the surplus in the Plan as at December 31, 1999 plus investment earnings thereon to the date of payment and adjusted for expenses incurred in connection with the wind up of the Plan.
7. The application appears to comply with section 78 and subsection 79(3) of the *Act* and with clause 8(1)(b) and subsections 28(5), 28(5.1) and 28(6) of the Regulation.
8. Such further and other reasons as come to my attention.

YOU are entitled to a hearing by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the *Act* if, within thirty (30) days after this Notice of Proposal is served[1] on you, you deliver to the Tribunal a written notice that you require a hearing.

Your written notice requiring a hearing must be delivered to:

Financial Services Tribunal
5160 Yonge Street, 14th Floor
North York, ON M2N 6L9
Attention: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

DATED at Toronto, Ontario this 6th day of September, 2000.

Dina Palozzi
Superintendent of Financial Services

cc: KPMG Inc.

[1]NOTE – PURSUANT TO section 112 of the *Act*, any notice, order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the day of mailing.

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

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order pursuant to section 69 of the *Pension Benefits Act*, R.S.O. 1990, c.P.8, as amended, respecting **the Retirement Plan for the Employees of Recreational Services International (RSI) Inc., Registration No. 1002682.**

TO: London Life Insurance Company
255 Dufferin Avenue
London, Ontario, N6A 4K1

Attention: Ms. Janice Henderson
Customer Service Representative
Administrator of the Retirement Plan for the Employees of Recreational Services International (RSI) Inc.

AND TO: Recreational Services International (RSI) Inc.
6 Antares Drive, Suite 102
Ottawa, Ontario, K2E 8A9

Attention: Ms. Nancy Fletcher
Employer

NOTICE OF PROPOSAL TO MAKE AN ORDER

I PROPOSE TO ORDER that **the Retirement Plan for the Employees of Recreational Services International (RSI) Inc., Registration No. 1002682** ("the Plan") be wound up in whole for those members of the Plan whose contributions ceased to be remitted to the Plan effective between November 1, 1996 and March 24, 1997.

I propose to make this order pursuant to subsection 69(1) of the *Pension Benefits Act*, R.S.O. 1990, c.P.8, as amended (the "*Act*").

I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:

1. There was a cessation or suspension of employer contributions to the pension fund, and
2. The employer is bankrupt within the meaning of the *Bankruptcy and Insolvency Act*, R.S. 1985, c. B-3, as amended.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the *Act* if, within thirty (30) days after this Notice of Proposal is served[1] on you, you deliver to the Tribunal a written notice that you require a hearing. Any written notice requiring a hearing must be delivered to:

Financial Services Tribunal
5160 Yonge Street, 14th Floor
North York, ON M2N 6L9
Attention: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

THE ADMINISTRATOR IS REQUIRED pursuant to subsection 89(5) of the *Act*, to transmit a copy of this Notice of Proposal to Make an Order to the following persons:

Deloitte & Touche Inc.
1000 Royal Bank Centre
60 Sparks Street
Ottawa, Ontario, K1P 5T8

Attention: Mr. David J. Boddy
Trustee in Bankruptcy

DATED at Toronto, Ontario this 11th day of October, 2000.

Dina Palozzi
Superintendent of Financial Services

[1] NOTE – PURSUANT to section 112 of the *Act* any notice, order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P. 8, as amended by the *Financial Services Commission of Ontario Act*, 1997, R.S.O. 1997, c. 28;

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to make a Declaration under Section 83 of the *Pension Benefits Act*, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c.28, respecting the **Pension Plan for Salaried Employees of Frink Environmental Inc. and Hamilton Gear Inc., (the "Pension Plan") Registration Number 337691;**

TO: PricewaterhouseCoopers Inc.
Suite 1100
One Robert Speck Parkway
Mississauga ON
L4Z 3M3

Attention: Paul Macphail
Administrator of the Pension Plan for Salaried Employees of Frink Environmental Inc. and Hamilton Gear Inc.

AND TO: Hamilton Gear Inc.
c/o 66 Wellington Street West,
Suite 2901
Toronto Dominion Bank Tower,
TD Centre, Toronto ON
M5K 1G8

Attention: Mr. David Lowry

AND TO: Frink Environmental Inc.
c/o 66 Wellington Street West,
Suite 2901
Toronto Dominion Bank Tower,
TD Centre, Toronto ON
M5K 1G8

Attention: Mr. David Lowry
Employer

Notice of Proposal to Make a Declaration

WHEREAS:

1. The Pension Plan for Salaried Employees of Frink Environmental Inc. and Hamilton Gear
   Inc., Registration No. 337691 (the "Pension Plan") is registered under the *Pension Benefits Act*, R.S.O. 1990, c. P. 8 as amended by the Financial Services Commission of Ontario *Act*, 1997, c. 28, (the "*Act*"); and
2. The Pension Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "Guarantee Fund") by the *Act* or the regulations made thereunder; and
3. The Pension Plan was wound up effective September 20, 1994; and
4. The Superintendent of Pensions appointed PricewaterhouseCoopers as the administrator (the "Administrator") of the Pension Plan on October 20, 1994.

NOW THEREFORE TAKE NOTICE I propose to consider to make a declaration pursuant to section 83 of the *Act* that the Guarantee Fund applies to the Pension Plan for the following reasons:

1. The Supplement to the Wind Up Report filed by the Administrator indicates an estimated funding deficiency of $797,878.00 as at June 30, 2000.
2. On September 20, 1994, Frink Environmental Inc. and Hamilton Gear Inc. were adjudged-bankrupt.
3. The trustee in bankruptcy of Frink Environemntal Inc. and Hamilton Gear Inc. has advised the Administrator that there are no assets available from the estate of Frink Environmental Inc. and Hamilton Gear Inc. for the Pension Plan.

YOU are entitled to a hearing by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the *Act*, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing[1]. Any notice requiring a hearing shall be delivered to:

Financial Services Tribunal
5160 Yonge Street, 14th Floor
North York ON
M2N 6L9
Attention: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE DECLARATION PROPOSED HEREIN.

DATED at Toronto, Ontario this 30th day of October, 2000.

Dina Palozzi
Superintendent of Financial Services

[1]NOTE – PURSUANT TO section 112 of the *Act*, any notice, order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the day of mailing.

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P. 8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S. O. 1997, c. 28;

AND IN THE MATTER OF a Proposal by The Superintendent of Financial Services to Make a Declaration under Section 83 of the *Pension Benefits Act*, as amended by the *Financial Services Commission of Ontario Act*, 1997, S. O. 1997, c. 28, respecting the **Pension Plan for Union Employees of Exothermic Company of Canada Ltd., Covered under the United Steelworkers of America, on behalf of Local 8762, Registration Number 0985770** (previously C-104305)

TO: The Imperial Life Assurance Company
1 Complex Dejardins
Montreal PQ
H5B 1E2

Attention: Elaine Desloges, F.S.A., F.C.I.A.
Actuarial Consultant
Administrator

Exothermic Company of Canada
4962 Union Road, Unit #2
Beamsville ON
L0R 1B4

Attention: Pieree Vayda
President
Employer

NOTICE OF PROPOSAL TO MAKE A DECLARATION

WHEREAS:

13. The Pension Plan for Union Employees of Exothermic Company of Canada Ltd., covered under the United Steelworkers of America, on behalf of Local 8762, Registration Number 0985770 (previously C-104305) (the "Union Employees Plan") is registered under the *Pension Benefits Act*, R.S.O. 1990, c. P. 8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S. O. 1997, c. 28 (the "*Act*"); and

14. The Union Employees' Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "Guarantee Fund") by the *Act* or the regulations made thereunder; and

15. The Pension Plan was wound up effective March 31, 1993; and

16. The Superintendent of Pensions appointed The Imperial Life Assurance Company as the administrator (the "Administrator") of the Union Employee's Pension Plan on December 13,1996;

NOW THEREFORE TAKE NOTICE that I propose to consider to make a declaration pursuant to section 83 of the *Act* that the Guarantee Fund applies to the Plan for the following reasons:

1. The Wind Up Report filed by the Administrator indicates an estimated funding deficiency of $30,000 as at March 31, 1993.

2. On March 31, 1993, Exothermic Company of Canada ceased its operations and was placed in receivership.

3. The receiver of Exothermic Company of Canada has advised the Administrator that there are no assets available for the Pension Plan.

YOU are entitled to a hearing by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the *Act*, if, within thirty (30) days after the Notice of Proposal is served on you, you deliver to the Tribunal a written

notice that you require a hearing[1]. Any notice requiring a hearing shall be delivered to:

Financial Services Tribunal
5160 Yonge Street, 14th Floor
North York, Ontario
M2N 6L9
Attention: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE DECLARATION PROPOSED HEREIN.

DATED at Toronto, Ontario, this 30th day of October, 2000.

Dina Palozzi
Superintendent of Financial Services

[1]NOTE – PURSUANT TO section 112 of the *Act*, any notice, order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the day of mailing.

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

AND IN THE MATTER OF a proposal by the Superintendent of Financial Services to make an Order under section 69 of the *Act* respecting the **Pension Plan for Employees of Proctor & Redfern Limited 0289579**

TO: Proctor & Redfern Limited
45 Green Belt Drive
Toronto, Ontario
M3C 3K3

Attention: Stewart Angus
President and Chief
Executive Officer
Employer and Administrator

NOTICE OF PROPOSAL TO MAKE AN ORDER

I PROPOSE TO ORDER that the Pension Plan for Employees of Proctor & Redfern Limited, Registration Number 0289579 (the "Plan"), be wound up in part in respect of those members and former members of the Plan who were employed by Proctor & Redfern Limited (the "Employer") and who ceased to be employed by the Employer effective between June 9, 1995 and August 1, 1996 as a result of the discontinuance of all or a significant portion of the business carried on by the Employer at its Kingston, Sault Ste. Marie and Thunder Bay locations.

I propose to make this order pursuant to subsection 69(1) of the *Act*.

I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:

1. Proctor & Redfern Limited is the employer and administrator of the Plan.
2. All or a significant portion of the business carried on by the Employer at one or more specific locations was discontinued between June 9, 1995 and August 1, 1996, within the meaning of ss.69(1)(e) of the *Act*.
3. Such further and other reasons that may come to my attention.

YOU are entitled to a hearing by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the *Act*, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing[1]. Any notice requiring a hearing shall be delivered to:

Financial Services Tribunal
5160 Yonge Street, 14th Floor
North York, Ontario
M2N 6L9

Attention: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

THE ADMINISTRATOR IS REQUIRED pursuant to subsection 89(5) of the *Act*, to transmit a copy of this Notice of Proposal to Make an Order to the following persons: all members and former members of the Plan who were employed by the Employer and who ceased to be employed by the Employer at the Kingston, Sault Ste. Marie or Thunder Bay locations effective between June 9, 1996 and August 1, 1996.

DATED at Toronto, Ontario this 30th day of October , 2000.

Dina Palozzi
Superintendent of Financial Services

[1]NOTE – PURSUANT TO section 112 of the *Act*, any notice, order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the day of mailing.

IN THE MATTER OF the *Pension Benefits Act* R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act,1997*, S.O. 1997, c.28;

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order pursuant to section 69 of the *Pension Benefits Act*, R.S.O. 1990, c.P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c.28, respecting the **Employee Retirement Plan for the employees of Regal International Tool & Mould Inc., Registration No. 1010198;**

TO: London Life Insurance Company
255 Dufferin Avenue
London ON, N6A 4K1

Attention: Ms. Janice Henderson
Customer Service Specialist
Administrator of the Employee Retirement Plan for the employees of Regal International Tool & Mould Inc.

AND TO: Regal International Tool & Mould Inc.
P.O. Box 820, 5000 Regal Drive,
Windsor ON,
N9A 6K7

Attention: Mrs. Lorna Briscoe,
Human Resources Manager

AND TO: Regal International Models, Fixtures& Prototypes Inc.,
5110 Halford Road,
Windsor ON,
N9A 6J3

Attention: Ms. Penny Milicia

AND TO: RPT Plastics Inc.
4165 Walker Road,
Windsor ON,
N8W 3T6

Attention: Mr. Lawrence Jeun
Employer

NOTICE OF PROPOSAL TO MAKE AN ORDER

I PROPOSE TO ORDER that the Employee Retirement Plan for the employees of Regal International Tool & Mould Inc., Registration No. 1010198, be wound up effective May 1, 1999.

I propose to make this order pursuant to subsection 69(1) of the *Pension Benefits Act*, R.S.O. 1990, c.P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c.28 (the "*Act*").

I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASON:

There has been a cessation or suspension of employer contributions to the pension fund.

YOU are entitled to a hearing by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the *Act*, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing[1]. Any notice requiring a hearing shall be delivered to:

Financial Services Tribunal
5160 Yonge Street, 14th Floor
Toronto, Ontario
M2N 6L9

Attention: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

THE ADMINISTRATOR IS REQUIRED pursuant to subsection 89(5) of the *Act*, to transmit a copy of this Notice of Proposal to

Make an Order to the following persons:

To: KPMG Inc., P.O. Box 31
Commerce Court West, Suite 3300
Toronto ON
M5L 1B2

Attention: Geoff Publow

Receivers for Regal International Tool & Mould Inc. and RPT Plastics Inc.
Trustee in Bankruptcy for Regal International Models, Fixtures & Prototypes Inc.

And To: Zwaig Associates Inc.
Suite 1560, The Exchange Tower,
P.O. Box 17, 130 King St W.,
Toronto ON
M5X 1J5

Attention: Sean Hinkson
Trustee In Bankruptcy for Regal International Tool & Mould Inc. and RPT Plastics Inc.

DATED at Toronto, Ontario this 13th day of November, 2000.

Dina Palozzi
Superintendent of Financial Services

[1]NOTE – PURSUANT TO section 112 of the *Act*, any notice, order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the day of mailing.

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c.28 (the "*Act*");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order pursuant to section 69 of the *Pension Benefits Act*, R.S.O. 1990, c.P.8, as amended, respecting the **Pension Plan for Hourly Employees of Alumiprime Windows Limited, Registration No. 1021005;**

TO: Arthur Andersen Inc.
4 King Street West, Suite 1050
Toronto, ON
M5H 1B6

Attention: Lawrence Contant
Administrator

AND TO: Alumiprime Windows Limited
40 St. Regis Crescent North
Downsview, ON
M3J 1Z2

Attention: Martin Cash
Employer

NOTICE OF PROPOSAL TO MAKE AN ORDER

I PROPOSE TO ORDER that the **Pension Plan for Hourly Employees of Alumiprime Windows Limited, Registration No. 1021005,** be wound up in whole effective November 24, 1998.

I propose to make this order pursuant to subsection 69(1) of the *Pension Benefits Act*, R.S.O. 1990, c.P.8, as amended (the "*Act*").

I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:

1. There was a cessation or suspension of employer contributions to the pension fund.
2. The employer failed to make contributions to the pension fund as required by the *Act* or the regulations.
3. The employer is bankrupt within the meaning of the *Bankruptcy and Insolvency Act (Canada).*
4. A significant number of members of the pension plan ceased to be employed by the employer as a result of the discontinuance of all or part of the business of the employer or as a result of the reorganization of the business of the employer.
5. All or a significant portion of the business carried on by the employer at a specific location was discontinued.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the *Act* if, within thirty (30) days after this Notice of Proposal is served[1] on you, you deliver to the Tribunal a written notice that you require a hearing. Your written notice requiring a hearing must be delivered to:

Financial Services Tribunal
5160 Yonge Street, 14th Floor
North York, ON M2N 6L9
Attention: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

THE ADMINISTRATOR IS REQUIRED pursuant to subsection 89(5) of the *Act*, to transmit a copy of this Notice of Proposal to Make an Order to the following persons:

United Steelworkers of America
25 Cecil Street
Toronto, ON
M5T 1N1

Attention: Mr. Mohamed Baksh
Union

Shiner & Associates Inc.
30 Wertheim Court, Suite 22
Richmond Hill, ON
L4B 1B9

Attention: Ms. Debi Geller
Trustee in Bankruptcy

DATED at Toronto, Ontario this 14th day of November, 2000.

Dina Palozzi
Superintendent of Financial Services

[1]NOTE – PURSUANT TO section 112 of the *Act*, any notice, order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the day of mailing.

IN THE MATTER OF The *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c.28 (the "*Act*");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to make an Order under subsection 78(1) of the *Act* consenting to a payment out of the Retirement Plan for Rene Malette of Malette Inc. Registration No. 967752

TO: Malette Inc.
C.P./P.O. Box 1100
Timmins, Ontario, P4N 7H9

Attention: Mr. Fern E. Boileau
Group Pension Administration
Applicant and Employer

NOTICE OF PROPOSAL

I PROPOSE TO MAKE AN ORDER under s. 78(1) of the *Act*, consenting to the payment, out of the Retirement Plan for Rene Malette of Malette Inc., Registration No. 967752 (the "Plan"), to **Malette Inc.** in the amount of $74,715 as at May 31, 1999 plus investment income and net of fees and expenses.

I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:

1. Malette Inc. is the employer as defined in the Plan (the "Employer")
2. The Plan was wound up, effective May 31, 1999
3. As at May 31, 1999 the surplus in the Plan was estimated at $74,715
4. The Plan provides for payment of surplus to the Employer on the wind up of the Plan
5. The Plan is a designated pension plan
6. The application discloses that by written agreement of the sole pension plan member, the surplus in the Plan at the date of payment, after deduction of wind up expenses is to be distributed 100% to the Employer.
7. The Employer has applied, pursuant to section 78 of the *Act*, and clause 8(1)(b) of the Regulation, for consent of the Superintendent of Financial Services to the payment of 100% of the surplus in the Plan (after adding investment earnings and deducting the fees and expenses related to the wind up of the Plan and the distribution of the surplus assets.)
8. The application appears to comply with section 78 and subsection 79(3) of the *Act* and with clause 8(1)(b) and subsections 28(5), 28(5.1) and 28(6) of the Regulation.
9. Such further and other reasons as come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the *Act* if, within thirty (30) days after this Notice of Proposal is served[1] on you, you deliver to the Tribunal a written notice that you require a hearing. Your written notice requiring a hearing must be delivered to:

Financial Services Tribunal
14th Floor, 5160 Yonge Street
North York, ON, M2N 6L9
Attention: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

DATED at Toronto, Ontario this 20th day of November, 2000.

Dina Palozzi
Superintendent of Financial Services
c.c. Farida Samji, William M. Mercer Limited

[1]NOTE – PURSUANT to section 112 of the *Act* any notice, order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.

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

AND IN THE MATTER OF a Partial Wind Up Report submitted by Marshall Steel Limited to the Superintendent of Financial Services respecting the **Retirement Plan for Salaried Employees of Marshall Steel Limited and Associated Companies Registration Number 0968081** (the "Plan")

TO: MARSHALL-BARWICK INC.
100 Sheppard Avenue East
Suite 930
Toronto, Ontario
M2N 6N5

Attention: Maynard Young

NOTICE OF PROPOSAL TO REFUSE TO APPROVE A PARTIAL WIND UP REPORT

I PROPOSE TO REFUSE TO APPROVE the Partial Windup Report as at August 28, 1992 (the "Report") for the Plan in relation to employees who ceased to be employed by Marshall Steel Limited (now known as Marshall-Barwick Inc.) as a result of the closure of its plant in Milton, Ontario.

I PROPOSE TO MAKE THIS REFUSAL FOR THE FOLLOWING REASONS:

Pursuant to subsection 70(5) of the *Act*, the Report does not meet the requirements of the *Act* and the regulations, and does not protect the interests of the members and former members of the Plan for the following reasons:

1. Marshall Steel Limited (the "Company") is the employer and administrator of the Plan.
2. The Company closed its plant in Milton, Ontario, on August 28, 1992.
3. The Report indicates that the plant shutdown was preceded and followed by a series of layoffs and terminations of salaried employees that occurred between January 1, 1992 and September 22, 1993 (the "wind up period"). The Report indicates that a total of 34 employees have been included in the partial wind up and are therefore eligible for benefits referred to in subsection 70(6) of the *Act*. They are "(a)ll active or transferred members who terminated either voluntarily or involuntarily (except for just cause) between January 1, 1992 and September 22, 1993 in Ontario or the U.S."
4. Subsection 70(6) of the *Act* states that "(o)n the partial wind up of a pension plan, members, former members and other persons entitled to benefits under the pension plan shall have rights and benefits that are not less than the rights and benefits they would have on a full wind up of the pension plan on the effective date of the partial wind up."
5. Subsection 70(5) of the *Act* states that "(t)he Superintendent may refuse to approve a wind up report that does not meet the requirements of th(e) *Act* and the regulations or that does not protect the interests of the members and former members of the pension plan."
6. One member, Mr. Jeffrey G. Marshall, who worked at the Company's plant in Milton, Ontario, was not included in the partial wind up. The Company claims that even though Mr. Marshall's employment was terminated during the wind up period, he is not eligible for benefits referred to in subsection 70(6) of the *Act* because his employment was not terminated as a result of the closure of the Company's plant in Milton, Ontario. It claims that Mr. Marshall was terminated for cause "for not acting in the best interests of the corporation."

7. Given that Mr. Marshall's employment was terminated during the wind up period and given that the Company has not demonstrated that the termination of Mr. Marshall's employment was not a result of the closure of its plant in Milton, Ontario, the Superintendent considers that it would be contrary to the requirements of subsection 70(5) of the *Act* to exclude Mr. Marshall from the partial wind up. The Report excludes Mr. Marshall from the partial wind up, therefore, it does not meet the requirements of subsection 70(5) of the *Act* and does not protect the interests of all those affected by the partial wind up. Specifically, it does not protect the interests of Mr. Marshall.
8. Such further and other reasons as may come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the *Act* if, within thirty (30) days after this Notice of Proposal is served[1] on you, you deliver to the Tribunal a written notice that you require a hearing. Your written notice requiring a hearing must be delivered to:

Financial Services Tribunal
5160 Yonge Street, 14th Floor
North York, ON M2N 6L9
Attention: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

DATED at Toronto, Ontario this 12th day of December, 2000.

Dina Palozzi
Superintendent of Financial Services

[1] NOTE – PURSUANT to section 112 of the *Act* any notice, order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after the date of mailing.

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

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order pursuant to section 69 of the *Pension Benefits Act*, R.S.O. 1990, c.P.8, as amended, respecting the **Pension Plan for the Employees of Diversified International Products Limited, Registration No. 0494278;**

TO: The Standard Life Assurance Company
245 Sherbrooke Street West
Montreal, PQ, H3G 1G3

Attention: Dominic Muro
Analyst
Administrator

AND TO: Diversified International Products Limited
66 West Wilmot Street
Richmond Hill, ON, L4B 1H8

Attention: Bruce McLarty
President
Employer

NOTICE OF PROPOSAL TO MAKE AN ORDER

I PROPOSE TO ORDER that the **Pension Plan for the Employees of Diversified International Products Limited, Registration No. 0494278,** be wound up in whole effective February 19, 1999.

I propose to make this order pursuant to subsection 69(1) of the *Pension Benefits Act*, R.S.O. 1990, c.P.8, as amended (the "*Act*").

I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:

1. There was a cessation or suspension of employer contributions to the pension fund.
2. The employer is bankrupt within the meaning of the *Bankruptcy and Insolvency Act* (Canada).
3. A significant number of members of the pension plan ceased to be employed by the employer as a result of the discontinuance of all or part of the business of the employer or as a result of the reorganization of the business of the employer.
4. All or a significant portion of the business carried on by the employer at a specific location is discontinued.

YOU are entitled to a hearing by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the *Act* if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing[1]. Any notice requiring a hearing must be delivered to:

Financial Services Tribunal
5160 Yonge Street, 14th Floor
North York, ON M2N 6L9
Attention: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

THE ADMINISTRATOR IS REQUIRED pursuant to subsection 89(5) of the *Act*, to transmit a copy of this Notice of Proposal to Make an Order to the following person:

BDO Dunwoody Limited
Royal Bank Plaza, P.O. Box 33
Toronto, ON, M5J 2J9

Attention: Les Fulton
Trustee in Bankruptcy

DATED at Toronto, Ontario this 14th day of December, 2000.

Dina Palozzi
Superintendent of Financial Services

[1] NOTE – PURSUANT to section 112 of the *Act* any notice, order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.

IN THE MATTER OF The *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c.28 (the "*Act*");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to make an Order under subsection 78(4) of the *Act* consenting to a payment out of the Pension Plan for Non-Union Salaried Employees of MAN Roland Canada, Inc. Registration No. 988808

TO: MAN Roland Canada Inc.
800 East Oak Hill Drive
Westmont IL 60559
U.S.A.

Attention: Barbara Palla
Director, Human Resources

NOTICE OF PROPOSAL

I PROPOSE TO MAKE AN ORDER under s. 78(4) of the *Act*, consenting to the payment, out of the Pension Plan for Non-Union Salaried Employees of MAN Roland Canada, Inc., Registration No. 988808 (the "Plan"), to **MAN Roland Canada Inc.** in the amount of $32,000.

I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:

6. MAN Roland Canada Inc. is the employer as defined in the Plan (the "Employer").
7. The Employer had made contributions to the fund of $8,000 per month for the months of January to April, 1999 inclusive, based on the actuarial report effective January 1, 1996, instead of the actuarial report effective January 1, 1999. The recommended monthly Employer contribution based on the actuarial report effective January 1, 1999 was $0.
8. The actuarial reports effective January 1, 1996 and January 1, 1999 have been filed with the Financial Services Commission of Ontario.
9. Evidence of the monthly overpayments to the fund for the months January to April, 1999 have been submitted to the Financial Services Commission of Ontario.
10. The Employer has distributed copies of the notice of application for the refund of employer overpayment to the pension fund to all members and former members of the plan.
11. There were no member submissions made about the repayment.
12. The application appears to comply with section 78(4) of the *Act*.
13. Such further and other reasons as come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the *Act* if, within thirty (30) days after this Notice of Proposal is served[1] on you, you deliver to the Tribunal a written notice that you require a hearing. Your written notice requiring a hearing must be delivered to:

Financial Services Tribunal
5160 Yonge Street, 14th Floor
North York, ON M2N 6L9
Attention: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

DATED at Toronto, Ontario this 21st day of December, 2000.

Dina Palozzi
Superintendent of Financial Services

[1] NOTE – PURSUANT to section 112 of the *Act* any notice, order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.

IN THE MATTER OF The *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c.28 (the "*Act*");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to make an Order under subsection 78(1) of the *Act* consenting to a payment out of the Pension Plan for Employees of The Coppley Noyes and Randall Limited. Registration No. 415752

TO: The Coppley Noyes and Randall Limited
56 York Blvd., P.O. Box 2024, LCD 1
Hamilton, ON, L8N 3S6

Attention: Sandy Gillies, C.A.
Controller
Applicant and Employer

NOTICE OF PROPOSAL

I PROPOSE TO MAKE AN ORDER under s. 78(1) of the *Act*, consenting to the payment, out of the Pension Plan for Employees of The Coppley Noyes and Randall Limited, Registration No.415752 (the "Plan"), to **The Coppley Noyes and Randall Limited** in the amount of $ 85,500 as at September 30, 1998 plus investment earnings thereon to the date of payment.

I PROPOSE TO MAKE THE ORDER effective only after the Applicant satisfies me that provision has been made for the payment of the basic benefits and surplus assets to the member.

I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:

1. The Coppley Noyes and Randall Limited is the employer as defined in the Plan (the "Employer").
2. The Plan was wound up, effective September 30, 1998.
3. As at September 30, 1998 the surplus in the Plan was estimated at $ 440,971.
4. The Plan provides for payment of surplus to the Employer on the wind up of the Plan.
5. The Plan is a designated significant shareholder pension plan.
6. The application discloses that by written agreement made by the Employer, and the sole pension plan member, the surplus in the Plan at the date of payment, after adding investment earnings, is to be distributed:
   a) 19.39% to the Employer; and
   b) 80.61% to the Sole Member of the Plan.
7. The Employer has applied, pursuant to section 78 of the *Act*, and clause 8(1)(b) of the Regulation, for consent of the Superintendent of Financial Services to the payment of 19.39% of the surplus in the Plan (after adding investment earnings to the Plan).
8. The application appears to comply with section 78 and subsection 79(3)(a) & (b) of the *Act* and with clause 8(1)(b) and subsections 28(5), 28(5.1) and 28(6) of the Regulation.
9. Such further and other reasons as come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the *Act* if, within thirty (30) days after this Notice of Proposal is served[1] on you, you deliver to the Tribunal a written notice that you require a hearing.

Your written notice requiring a hearing must be delivered to:

Financial Services Tribunal
5160 Yonge Street, 14th Floor
North York, ON M2N 6L9
Attention: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

DATED at Toronto, Ontario this 3rd day of January, 2001.

Dina Palozzi
Superintendent of Financial Services
c.c. T.D. Kidd, Cowan Wright Limited

[1]NOTE – PURSUANT to section 112 of the *Act* any notice, order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, S.O. 1997*, c. 28 (the "*Act*");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order Requiring the Wind Up in Part of the **Oshawa Group Limited Retirement Income Plan Registration Number 337675**

TO: Sobeys Capital Inc.,
Ontario Division
6355 Viscount Road,
Mississauga, Ontario,
L4V 1W2

Attention: Mr. W. E. Vickers
Director Pension Administration
Employer and Administrator of the Oshawa Group Limited
Retirement Income Plan

NOTICE OF PROPOSAL TO MAKE AN ORDER

I PROPOSE TO ORDER that The Oshawa Group Limited Retirement Income Plan, Registration Number 337675 (the "Plan") be wound up in part in relation to those members and former members of the Plan who were employed by SWO Distribution Centres ("Surelink") in its Malton, Queensway and London plants, and who ceased employment with Surelink effective March 5, 2000 as a result of the closure of these plants.

I propose to make this order pursuant to subsection 69(1) of the *Pension Benefits Act*, R.S.O. 1990, c. P.8 as amended (the "*Act*")

I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:

15. Sobeys Capital Inc. ("Sobeys"), formerly the Oshawa Group Limited (the "Oshawa Group"), is the employer and the administrator of the Plan.
16. Surelink purchased some of the distribution business of the Oshawa Group effective January 29, 1995. The Oshawa Group employees at the Malton, Queensway, and London plants, who accepted employment with Surelink (the "transferred employees") joined the Surelink pension plan effective January 29, 1995.
17. The pension benefits accrued by the transferred employees prior to the date of the sale remained in the Plan.
18. Surelink closed its Malton, Queensway, and London plants effective March 5, 2000. In connection with this closure, it terminated approximately 422 of the transferred employees, and notified the Pension Plans Branch of the Financial Services Commission of its intention to wind up its pension plan.
19. Under paragraph 69(1)(d) of the *Act* the Superintendent of Financial Services (the "Superintendent") may require the wind up of a pension plan as a result of the discontinuance of all or part of the business of the employer or as a result of the reorganization of the business of the employer.
20. Under paragraph 69(1)(e) of the *Act* the Superintendent may require the wind up of a pension plan where all or a significant portion of the business carried on by an employer at a specific location is discontinued.
21. For the purposes of the *Act*, the word "employer" as it is used in subsection 69, in respect of an employee with benefits in

more than one plan, refers to both the predecessor and successor employer, as held by Pension Commission of Ontario in *Gencorp Canada Inc.* and confirmed by Divisional Court and the Court of Appeal.[1]

22. Paragraph 80(1)(a) of the *Act* provides that when an employer who contributes to a pension plan sells, assigns or otherwise disposes of all or part of the assets of its business, a member of the pension plan who in conjunction with the sale, assignment or disposition becomes an employee of the successor employer and a member of the successor employer's pension plan, continues to be entitled, without further accrual, to the benefits provided under the predecessor employer's pension plan.
23. Subsection 80(3) of the *Act* provides that where a transaction as described in subsection 80(1) above takes place, the employment of the employee shall be deemed, for the purposes of the *Act*, not to be terminated by reason of the transaction.
24. As held in *Gencorp*, subsection 80(3) deems the non-termination for the purpose of ensuring continuity of membership for the transferred employees and to prevent them from losing their previous years of service in the calculation of future benefits.
25. The effect of subsection 80(3), for the transferred employees, is that Sobeys continues to be their employer for the purpose of the Plan.
26. Accordingly, Sobeys is an employer under section 69 of the *Act* due to the discontinuance of the business by Surelink at Surelink's London, Malton, and Queensway plants.
27. A significant number of the members of the plan ceased to be employed as a result of the discontinuance or reorganization of the business of Surelink at its London, Malton, and Queensway plants, within the meaning of paragraph 69(1)(d) of the *Act*.
28. All or a significant portion of the business carried on by Surelink at its London, Malton, and Queensway plants was discontinued, within the meaning of paragraph 69(1)(e) of the *Act*.
29. Such further and other reasons as may come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the *Act* if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing[2]. Your written notice requiring a hearing must be delivered to:

Financial Services Tribunal
5160 Yonge Street, 14th Floor
North York, ON M2N 6L9
Attention: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

DATED at Toronto, Ontario this 4th day of January, 2001.

Dina Palozzi
Superintendent of Financial Services

[1]Consolidated Gencorp Canada, P.C.O. Decision Aug. 31, 1994, confirmed Divisional Court, [1995 O.J. No. 3768] Dec. 7, 1995, confirmed Ontario Ct. of Appeal [1998 O.J. No. 961] March 11, 1998.

[2]NOTE – PURSUANT to section 112 of the *Act* any notice, order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.

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

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order pursuant to section 69 of the *Act*, respecting **the Revised Employees' Pension Plan of the Employer, Registration No. 389114**

TO: Canada Life Assurance Company
330 University Avenue
Toronto, Ontario
M5G 1R8

Attention: Milica Stojsin
Plan Wind-up Specialist
Administrator of the Revised Employees' Pension Plan of the Employer

AND TO: Listowel Transport Lines Limited
P.O. Box 390
Gore Bay, Ontario
P0P 1H0

AND TO: Canada-Jet Transportation, a division of Canada Transport Group Limited
200 Jamieson Bone Road
P.O. Box 1450
Belleville, Ontario
K8N 5J7
Employer

NOTICE OF PROPOSAL TO MAKE AN ORDER

I PROPOSE TO ORDER that **the Revised Employees' Pension Plan of the Employer, Registration No. 389114** (the "Plan") be wound up in whole effective the 28th day of March, 1992. I propose to make this order pursuant to subsection 69(1) of the *Act*.

I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASON:

There was a cessation or suspension of employer contributions to the pension fund.

YOU are entitled to a hearing by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the *Act*, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing[1]. Any notice requiring a hearing shall be delivered to:

Financial Services Tribunal
5160 Yonge Street, 14th Floor
Toronto, Ontario
M2N 6L9
Attention: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

DATED at Toronto, Ontario this 9th day of January, 2001.

Dina Palozzi
Superintendent of Financial Services

[1] NOTE – PURSUANT to section 112 of the *Act* any notice, order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after the day of mailing.a

IN THE MATTER OF The *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c.28 (the "*Act*");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to make an Order under subsection 78(1) of the *Act* consenting to a payment out of the Retirement Plan for Employees of D.C. Heath Canada, Ltd. Registration No. 0356444

TO: D.C. Heath Canada, Ltd.
c/o Houghton Mifflin Company
222 Berkeley Street
Boston, MA
U.S.A.
02116-3764

Attention: Elizabeth L. Hacking
President
Applicant and Employer

NOTICE OF PROPOSAL

I PROPOSE TO MAKE AN ORDER under s. 78(1) of the *Act*, consenting to the payment, out of the Retirement Plan for Employees of D.C. Heath Canada, Ltd., Registration No.0356444 (the "Plan"), to **D.C. Heath Canada, Ltd.** in an amount equal to 25% of the net surplus on the date of final distribution of the Plan assets; that is, the amount of surplus remaining in the Plan fund after taking into account the investment earnings realized on, and the expenses paid from, the fund since the effective date of wind-up. As at May 31, 1996, total surplus equalled $595,449.

I PROPOSE TO MAKE THE ORDER effective only after the Applicant satisfies me that all benefits, benefit enhancements (including benefits and benefit enhancements pursuant to the Surplus Distribution Agreement defined in paragraph 5 below) and any other payments to which the members, former members, and any other persons entitled to such payments have been paid, purchased, or otherwise provided for.

I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:

1. D.C. Heath Canada, Ltd. is the employer as defined in the Plan (the "Employer").
2. The Plan was wound up, effective May 22, 1996.
3. As at May 31, 1996 the surplus in the Plan was estimated at $595,449.
4. The Plan provides for payment of surplus to the Employer on the wind up of the Plan.
5. The application discloses that by written agreement made by the Employer, and 92% of the active members and other members (as defined in the application) and 100% of the former members and other persons entitled to payments, the surplus in the Plan at the date of payment, after deduction of wind up expenses is to be distributed:
   a) 25% to the Employer; and
   b) 75% to the beneficiaries of the Plan as defined in the Surplus Distribution Agreement.
6. The Employer has applied, pursuant to section 78 of the *Act*, and clause 8(1)(b) of the Regulation, for consent of the Superintendent of Financial Services to the payment of 25% of the surplus in the Plan (after adding 25% of investment earnings and deducting 25% of the expenses related to the wind up of the Plan.)
7. The application appears to comply with section 78 and subsection 79(3) (a) and (b) of the *Act* and with clause 8(1)(b) and subsections 28(5), 28(5.1) and 28(6) of the Regulation.

8. Such further and other reasons as come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the *Act*, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing[1]. Any notice requiring a hearing shall be delivered to:

Financial Services Tribunal
5160 Yonge Street, 14th Floor
Toronto, Ontario
M2N 6L9

Attention: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

DATED at Toronto, Ontario this 9th day of January, 2001.

Dina Palozzi
Superintendent of Financial Services
c.c. James Carter, William M. Mercer Limited

[1] NOTE – PURSUANT to section 112 of the *Act* any notice, order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.

Orders that Pension Plans be Wound Up

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

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order pursuant to section 69 of the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended. respecting **The Pension Plan for Employees of Moyer Vico Corp., Registration No. 465070,** dated the 25th day of August, 2000;

TO: Arthur Andersen Inc.
4 King Street West, Suite 1050
Toronto, ON
M5H 1B6

Attention: Lawrence Contant
Senior Consultant
Administrator

AND TO: Moyer Vico Corporation
25 Milvan Drive
Weston, ON
M9L 1Z1

Attention: Adam Okhai
President and CEO
Employer

ORDER

ON the 29th day of August, 2000, I issued a **Notice of Proposal to make an Order** dated the 25th day of August, 2000, pursuant to sub-section 69(1) of the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "*Act*"), to the Administrator and to the Employer to wind up in whole **The Pension Plan for Employees of Moyer Vico Corp., Registration No. 465070.**

NO notice requiring a hearing was delivered to the Financial Services Tribunal, (the"Tribunal"), by the Administrator and/or the Employer within the time prescribed by subsection 89(6) of the *Act*.

IT IS THEREFORE HEREBY ORDERED that The Pension Plan for Employees of Moyer Vico Corp., Registration No. 465070 be wound up in whole, effective November 13, 1997, for the following reasons:

1. There was a cessation or suspension of employer contributions to the pension fund.
2. The employer failed to make contributions to the pension fund as required by the *Act* or regulations.
3. The employer is bankrupt within the meaning of the *Bankruptcy and Insolvency Act* (Canada).
4. A significant number of members of the plan ceased to be employed by the employer as a result of the discontinuance of all or part of the business of the employer or as a result of the reorganization of the business of the employer.

PURSUANT TO subsection 69(2) of the *Act*, the Administrator is required to give notice of this Order to the following persons by transmitting a copy hereof:

Industrial Wood & Allied Workers
of Canada, Local 1-700
2088 Weston Road
Toronto, ON
M9N 1X4

Attention: Ron Diotte
President, Local 1-700
Union

Coopers & Lybrand Limited (now
PricewaterhouseCoopers Inc.)
145 King Street West
Toronto, ON
M5H 1V8

Attention: Michael Sheehan
Receiver

Mintz & Partners Limited
1446 Don Mills Road, Suite 100
Don Mills, ON
M3B 3N6

Attention: Daniel R. Weisz, CA
Senior Vice-President
Trustee in Bankruptcy

DATED at Toronto, Ontario this 26th day of October, 2000

K. David Gordon
Director, Pension Plans Branch
by Delegated Authority from

Dina Palozzi
Superintendent of Financial Services

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

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to make an Order pursuant to section 69 of the *Act* respecting the **Retirement Plan for the Employees of Recreational Services International (RSI) Inc., Registration No. 1002682**

TO: London Life Insurance Company
255 Dufferin Avenue
London, Ontario
N6A 4K1

Attention: Ms. Janice Henderson
Customer Service Representative
Administrator of the Retirement Plan for Employees of Recreational Services International (RSI) Inc.

AND TO: Recreational Services International (RSI) Inc.
6 Antares Drive, Suite 102
Ottawa, Ontario
K2E 8A9

Attention: Ms. Nancy Fletcher
Employer

ORDER

ON the 13th day of October, 2000, I issued a **Notice of Proposal to make an Order** dated the 11th day of October, 2000, pursuant to sub-section 69(1) of the *Act*, to the Administrator and to the Employer to wind up in whole the **Retirement Plan for the Employees of Recreational Services International (RSI) Inc., Registration No. 1002682** (the "Plan") for those members of the Plan whose contributions ceased to be remitted to the Plan effective between November 1, 1996 and March 24, 1997.

NO notice requiring a hearing was delivered to the Financial Services Tribunal, (the"Tribunal"), by the Administrator and/or the Employer within the time prescribed by subsection 89(6) of the *Act*.

IT IS THEREFORE HEREBY ORDERED that the **Retirement Plan for the Employees of Recreational Services International (RSI) Inc., Registration No. 1002682** be wound up in whole for those members of the Plan whose contributions ceased to be remitted to the Plan effective between November 1, 1996 and March 24, 1997, for the following reasons:

1. There was a cessation or suspension of employer contributions to the pension fund; and
2. The employer is bankrupt within the meaning of the *Bankruptcy and Insolvency Act*, R.S. 1985, c. B-3, as amended.

PURSUANT TO subsection 69(2) of the *Act*, the Administrator is required to give notice of this Order to the following person by transmitting a copy hereof:

Deloitte & Touche Inc.
1000 Royal Bank Centre
60 Sparks Street
Ottawa, Ontario
K1P 5T8

Attention: Mr. David J. Boddy
Trustee in Bankruptcy

DATED at Toronto, Ontario this 20th day of December, 2000.

K. David Gordon
Director, Pension Plans Branch by Delegated Authority from

Dina Palozzi
Superintendent of Financial Services

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

AND IN THE MATTER OF an Order of the Superintendent of Financial Services under s.26(4) of the *Act*, respecting the **Pension Plan for Non-Unionized Employees of Quebecor Printing Inc., Registration No. 320556** (the "Plan");

TO: Quebecor Printing Inc.
612 St. Jacques St.
Montreal, Quebec
H3C 4M8

Attention: Mr. Alain Robert Minot
Director, Compensation and Benefits Administrator

ORDER

1. In July 1999, Quebecor Printing Inc. ("Quebecor") applied to register the following amendment to the Plan:

   Resolution of the Pension Committee of the Board of Directors, effective July 24, 1996, dated January 14, 1998 (the "Amendment").

2. On September 27, 2000, I registered the Amendment and a Notice of Registration was issued in respect of the Amendment.

3. Subsection 26(3) of the *Act* provides,

   Within the prescribed period of time after an amendment to a pension plan is registered, the administrator shall transmit notice and a written explanation of the amendment to each member, former or other person entitled to payment from the fund who is affected by the amendment.

   Subsection 39(1) of R.R.O. 1990, Regulation 909, as amended (the "Regulation") provides,

   The administrator shall transmit notice and an explanation of the amendment required under subsection 26(3) of the *Act*, within sixty days after registration, to each member, former member or other person who is or will be affected by an amendment that is registered.

4. Subsection 26(4) of the *Act* provides, in part,

   The Superintendent need not require the transmittal of notices under subsection (1) or by order may dispense with the notice required by subsection (3), or both,

   (a) If the Superintendent is of the opinion that the amendment is of a technical nature or will not substantially affect the pension benefits, rights or obligations of a member or former member or will not adversely affect any person entitled to payments from the pension fund.

5. I am of the opinion that the Amendment is of a technical nature and will not substantially affect the pension benefits, rights or obligations of a member or former member of the Plan. Therefore, I make this order under subsection 26(4) of the *Act* to dispense with the written notice required by subsection 26(3) of the *Act*.

6. In accordance with subsection 39(2) of the Regulation, the administrator is to provide notice and an explanation of the Amendment to the members with the next statement required under section 27 of the *Act*. Subsection 39(2) of the Regulation provides that, where an amendment is registered and the Superintendent dispenses with the notice required under subsection 26(3) of the *Act*, the administrator shall provide notice and an explanation of the amendment to members with the next statement required under section 27 of the *Act*.

DATED at Toronto, Ontario this 3rd day of January, 2001.

Dina Palozzi
Superintendent of Financial Services

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

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order pursuant to section 69 of the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended, respecting the **Pension Plan for Hourly Employees of Alumiprime Windows Limited, Registration No. 1021005**, dated November 14, 2000;

TO: Arthur Andersen Inc.
4 King Street West, Suite 1050
Toronto, ON
M5H 1B6

Attention: Lawrence Contant
Administrator

AND TO: Alumiprime Windows Limited
40 St. Regis Crescent North
Downsview, ON
M3J 1Z2

Attention: Martin Cash
Employer

ORDER

ON or about November 21, 2000, I issued a **Notice of Proposal to make an Order** dated November 14, 2000, pursuant to subsection 69(1) of the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "*Act*"), to the Administrator and to the Employer to wind up in whole the **Pension Plan for Hourly Employees of Alumiprime Windows Limited, Registration No. 1021005.**

NO Notice requiring a hearing was delivered to the Financial Services Tribunal, (the "Tribunal"), by the Administrator and/or the Employer within the time prescribed by subsection 89(6) of the *Act*.

IT IS THEREFORE HEREBY ORDERED that the **Pension Plan for Hourly Employees of Alumiprime Windows Limited, Registration No. 1021005** be wound up in whole, effective November 24, 1998, for the following reasons:

1. There was a cessation or suspension of employer contributions to the pension fund.
2. The employer failed to make contributions to the pension fund as required by the *Act* or the regulations.
3. The employer is bankrupt within the meaning of the *Bankruptcy and Insolvency Act* (Canada).
4. A significant number of members of the pension plan ceased to be employed by the employer as a result of the discontinuance of all or part of the business of the employer or as a result of the reorganization of the business of the employer.
5. All or a significant portion of the business carried on by the employer at a specific location was discontinued.

PURSUANT TO subsection 69(2) of the *Act*, the Administrator is required to give notice of this Order to the following persons by transmitting a copy hereof:

United Steelworkers of America
25 Cecil Street
Toronto, ON
M5T 1N1

Attention: Mr. Mohamed Baksh
Union

Shiner & Associates Inc.
30 Wertheim Court, Suite 22
Richmond Hill, ON
L4B 1B9

Attention: Ms. Debi Geller
Trustee in Bankruptcy

DATED at Toronto, Ontario this 11th day of January, 2001.

K. David Gordon
Director, Pension Plans Branch

by Delegated Authority from
Dina Palozzi
Superintendent of Financial Services

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

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order pursuant to section 69 of the *Act* respecting the **Employee Retirement Plan for the employees of Regal International Tool & Mould Inc., Registration No. 1010198** (the "Plan");

TO: London Life Insurance Company
255 Dufferin Avenue,
London, ON,
N6A 4K1

Attention: Ms. Janice Henderson
Customer Service Specialist
Administrator of the Employee Retirement Plan for the employees of Regal International Tool & Mould Inc.

AND TO: Regal International Tool & Mould Inc.
P.O. Box 820, 5000 Regal Drive,
Windsor ON,
N9A 6K7

Attention: Mrs. Lorna Briscoe,
Human Resources Manager

AND TO: Regal International Models, Fixtures & Prototypes Inc.,
5110 Halford Road,
Windsor ON,
N9A 6J3

Attention: Ms. Penny Milicia

AND TO: RPT Plastics Inc.
4165 Walker Road,
Windsor ON,
N8W 3T6

Attention: Mr. Lawrence Jeun
Employers

ORDER

ON the 13th day of November 2000, the Superintendent of Financial Services (the "Superintendent") issued a Notice of Proposal to make an Order (the "Notice of Proposal"), to the Administrator of the Plan, pursuant to section 69 of the *Act*, to wholly wind up the plan effective May 1, 1999.

NO REQUEST for a hearing in this matter has been received by the Tribunal.

IT IS THEREFORE ORDERED that the Employee Retirement Plan for the employees of Regal International Tool & Mould Inc., Registration No. 1010198 be wholly wound up effective May 1, 1999.

THE REASON FOR THIS ORDER IS:

1. There was a cessation or suspension of employer contributions to the pension fund as at May 1, 1999.

PURSUANT TO subsection 69(2) of the *Act* the Administrator is required to give notice of this order to all the members and former members of the Plan.

AND TO: KPMG Inc.,
P.O. Box 31
Commerce Court West, Suite 3300
Toronto ON,
M5L 1B2

Attention: Geoff Publow
Receivers for Regal International Tool & Mould Inc. and RPT Plastics Inc. **Trustee in Bankruptcy** for Regal International Models, Fixtures & Prototypes Inc.

AND TO: Zwaig Associates Inc.
Suite 1560, The Exchange Tower,
P.O. Box 17, 130 King St W.,
Toronto ON,
M5X 1J5

Attention: Sean Hinkson
Trustee In Bankruptcy for Regal
International Tool & Mould Inc.
and RPT Plastics Inc.

DATED at Toronto, Ontario this 12th day of January, 2001.

Dina Palozzi
Superintendent and CEO
Financial Services Commission of Ontario

Consents to Payments of Surplus out of Wound Up Pension Plans

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997, S.O. 1997*, c.28 (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to make an Order under subsection 78(1) of the Act consenting to a payment out of **the Retirement Plan for the Employees of Calcomp(Canada) Inc., Registration No. 0427260**

TO: Calcomp (Canada) Inc

Attention: Mr. Ron Gellatly
c/o Pyshon Digital Inc.
5484 Tomken Road, Unit 30
Mississauga ON
L4W 2Z6
(the "Applicant")

CONSENT

ON or about July 14, 2000 the Superintendent of Financial Services caused to be served on the Applicant a Notice of Proposal dated July 12, 2000 to consent, pursuant to subsection 78(1) of the *Act*, to payment out of the Retirement Plan for the Employees of Calcomp (Canada) Inc., Registration No. 0427260 (the "Plan"), to the Applicant in the amount of $155,565 as at December 31, 1994 adjusted for investment earnings and losses thereon and expenses to the date of payment.

NO notice requiring a hearing was delivered to the Financial Services Tribunal by the Applicant or any other party within the time prescribed by subsection 89(6) of the *Act*.

THE SUPERINTENDENT OF FINANCIAL SERVICES THEREFORE CONSENTS to the payment out of the Plan, of $155,565 as at December 31, 1994 adjusted for investment earnings and losses thereon and expenses to the date of payment to **Calcomp (Canada) Inc.**

THIS CONSENT IS EFFECTIVE ONLY AFTER the Applicant satisfies me that all benefits and other payments, including any enhancements arising from the surplus sharing agreement, to which members, former members and any other persons are entitled on the termination of the Plan.

DATED at Toronto, Ontario, this 6th day of September, 2000

K. David Gordon
Director Pension plans Branch
by delegated authority from
Dina Palozzi
Superintendent of Financial Services
c.c. Ms. Michelle Rival, Watson Wyatt

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997, S.O. 1997*, c.28 (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to make an Order under subsection 78(1) of the Act consenting to a payment out of **the Employees' Pension Plan for Canadian Bank Note Company, Limited, Registration No. 0232124**

TO: Canadian Bank Note Company, Limited
145 Richmond Road,
Ottawa, Ontario
K1A 1A1

Attention: George Donovan
General Counsel
(the "Applicant")

CONSENT

ON or about August 9, 2000, the Superintendent of Financial Services caused to be served on the Applicant, a Notice of Proposal dated July 31, 2000 to consent, pursuant to subsection 78(1) of the *Act*, to payment out of the Employees' Pension Plan for **Canadian Bank Note Company, Limited**, Registration No.0232124 (the "Plan"), to Canadian Bank Note Company, Limited in the amount of $7,941,500, adjusted for investment earnings and losses thereon and expenses to the date of payment.

NO notice requiring a hearing was delivered to the Financial Services Tribunal by the Applicant or any other party within the time prescribed by subsection 89(6) of the *Act*.

THE SUPERINTENDENT OF FINANCIAL SERVICES THEREFORE CONSENTS to the payment out of the Employees' Pension Plan for **Canadian Bank Note Company, Limited**, Registration No.0232124 of $7,941,500, adjusted for investment earnings and losses thereon and expenses to the date of payment to the **Canadian Bank Note Company, Limited.**

DATED at Toronto, Ontario, this 21st day of September, 2000

K. David Gordon
Director Pension plans Branch
by delegated authority from
Dina Palozzi
Superintendent of Financial Services

c.c. J. David Vincent, Fasken Campbell Godfrey
Michael Mazzuca, Koskie Minsky
Peter Peng, Morneau Sobeco
Paul Saunders, Buck Consultants

Declaration that the Pension Benefits Guarantee Fund Applies to Pension Plans – Subsection 83(1) of the PBA

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P. 8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28;

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to make a Declaration under section 83 of the *Pension Benefits Act*, R.S.O. 1990, c. P. 8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28, respecting the Pension Plan for the Union Employees of Exothermic Company of Canada Ltd., covered under the United Steel Workers of America, on behalf of Local 8762, Registration Number 0985770 (previously C-10435)

TO: The Imperial Life Assurance Company
1 Complex Dejardins
Montreal PQ
H5B 1E2

Attention: Elaine Desloges, F.S.A., F.C.I.A.
Actuarial Consultant
Administrator of the Pension Plan for the Union Employees of Exothermic Company of Canada Ltd., covered under the United Steelworkers of America on behalf of Local 8762

And To: Exothermic Company of Canada
4962 Union Road, Unit #2
Beamsville ON
L0R 1B4

Attention: Pieree Vayda
President
Union

DECLARATION

WHEREAS:

31. The Pension Plan for the Union Employees of Exothermic Company of Canada Ltd., covered under the United Steelworkers of America, on behalf of Local 8762, Registration Number 0985770 (previously C-104305) (the "Union Employees' Plan") is registered under the *Pension Benefits Act*, R.S.O. 1990, c. P. 8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28 (the "*Act*"); and

32. The Union Employees' Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "Guarantee Fund") by the *Act* or the regulations made thereunder; and

33. The Pension Plan was wound up effective March 31, 1993; and

34. The Superintendent of Pensions appointed The Imperial Life Assurance Company as the administrator (the "Administrator") of the Union Employees' Pension Plan on December 13, 1996;

35. On October 30, 2000, I issued a Notice of Proposal to Make a Declaration that the Guarantee Fund applies to the Union Employee's Plan (the "Notice of Proposal"); and

36. No Notice requiring a hearing was delivered to the Financial Services Tribunal (the "Tribunal") within the time prescribed by subsection 89(6) of the *Act*.

NOW THEREFORE TAKE NOTICE that I declare pursuant to section 83 and 89 of the *Act* that the Guarantee Fund applies to the Union Employees Plan for the following reasons:

1. The Supplementary Wind Up Report filed by the Administrator indicates an estimated funding deficiency of $51,784.83 as at January 1, 2001.
2. The Union Employees' Pension Plan was wound up effective March 31, 1993.
3. On March 31, 1993, Exothermic Company of Canada Ltd. ceased its operations.
4. The Administrator has advised that there are no assets available from the estate of Exothermic Company of Canada Ltd.

DATED at Toronto, Ontario, the 3rd day of January, 2001.

Dina Palozzi
Superintendent of Financial Services

Allocations of Money from the Pension Benefits Guarantee Fund – Subsection 34(7) of Regulation 909

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P. 8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28;

AND IN THE MATTER OF a Declaration by the Superintendent of Financial Services under section 83 of the *Pension Benefits Act*, R.S.O. 1990, c. P. 8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28, respecting **The Canada Machinery Corporation Salaried Employees' Pension Plan, Registration Number 0910836 (previously C-14249);**

TO: Ernst & Young Inc.
Ernst & Young Tower
Toronto-Dominion Centre
P. O. Box 251, 222 Bay St.
Toronto ON
M5K 1J7

Attention: Brian Denega, Senior Vice-President
Administrator of The Canada Machinery Corporation Salaried
Employees' Pension Plan

ALLOCATION

WHEREAS on May 9, 2000, I declared, pursuant to section 83 and 89 of the *Pension Benefits Act*, R.S.O. 1990, c. P. 8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28 (the "*Act*"), that the Pension Benefits Guarantee Fund (the "Guarantee Fund") applies to **The Canada Machinery Corporation Salaried Employees' Pension Plan, Registration Number 910836** (previously C-14249) (the "Salaried Employees' Pension Plan");

AND WHEREAS on the 9th day of May, 2000, I allocated from the Guarantee Fund to pay to the Salaried Employees Pension Plan, an amount not to exceed $294,000.00 (the "First Allocation") as of June 30, 1999 plus interest of 7.5% per annum to the date of payment.

AND WHEREAS the Administrator of the Salaried Employees Pension Plan has advised that the actual cost to fund entitlements under the Salaried Employees Pension Plan will exceed the estimate of the cost to purchase those annuities which was used for the calculations made to determine the First Allocation and that a further allocation is required;

NOW THEREFORE I shall allocate from the Guarantee Fund and pay to the Salaried Pension Plan, pursuant to subsection 34(7) of R.R.O. 1990, Reg. 909, under the *Act* (the "Regulation"), an amount not to exceed $99,000.00 to provide, together with the first allocation and Ontario assets, for the benefits determined from the Guarantee Fund but not required to provide such benefits shall be returned to the Guarantee Fund.

DATED at Toronto, Ontario, this 13th day of September, 2000.

Dina Palozzi
Superintendent of Financial Services

Tribunal Activities

Appointments of Tribunal Members

Name and Order in Council	Effective Appointment Date	Expiry Date
Milczynski, Martha (Chair)		
O.C. 1665/99	October 6, 1999	July 7, 2001
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. (Vice-Chair)		
O.C. 1052/2000	May 31, 2000	May 30, 2002**
O.C. 1666/99	October 6, 1999	June 16, 2000
O.C. 1191/99	June 17, 1999	June 16, 2000
O.C. 904/97	May 14, 1997	June 16, 1999
Erlichman, Louis		
O.C. 2527/98	December 9, 1998	December 8, 2001
O.C. 1592/98	June 17, 1998	December 16, 1998
Forbes, William M.		
O.C. 520/98	March 25, 1998	March 24, 2001
Gavin, Heather		
O.C. 11/99	January 13, 1999	January 12, 2002
Greville, M. Elizabeth		
O.C. 222/99	January 27, 1999	January 26, 2002
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. 1051/2000	May 31, 2000	May 30, 2001
O.C. 905/97	May 14, 1997	May 13, 2000
Stephenson, Joyce Anne		
O.C. 2409/98	November 4, 1998	November 3, 2001
O.C. 1930/95	October 28, 1995	October 27, 1998
Wires, David E.		
O.C. 2166/99	February 26, 2000	February 25, 2003
O.C. 257/97	February 27, 1997	February 26, 2000

**Or on the day FSCO/OSC merges

Pension Hearings Before the Financial Services Tribunal

Pension Plan for Employees of Monsanto Canada Inc., Registration Number 341230, FST File P0013 – 1998

On November 30, 1998, the Superintendent issued a Notice of Proposal to Refuse to Approve a Partial Wind Up Report filed by Monsanto respecting a 1997 plant closure. The grounds for the refusal were: (a) the wind up report did not deal with the surplus distribution on partial wind up; (b) the payment of benefit enhancements on wind up to certain members constituted an inequitable distribution of surplus, and an indirect payment of surplus to the employer without following the statutory requirements for the payment of surplus to the employer; and (c) the wind up report provided that the funds relating to benefits of those in the partial wind up group were to remain in the pension plan's fund rather than being distributed by way of a purchase of annuities.

On December 31, 1998, Monsanto Canada Inc. ("Monsanto") requested a hearing before the Financial Services Tribunal in respect of the Notice of Proposal.

A motion to disqualify the Superintendent's expert witness was heard on January 10, 2000. Written reasons dated January 20, 2000 for the dismissal of the motion were published in Volume 9, Issue 2 of the Pension Bulletin.

The hearing was held on January 10 - 12 and February 7 - 11, 2000. The Tribunal issued majority and minority Reasons dated April 14, 2000, which were published in Volume 9, Issue 2 of the Pension Bulletin. In the result, the Tribunal directed the Superintendent to approve the Partial Wind Up Report.

The decision of the Tribunal was appealed to the Superior Court of Justice-Ontario Divisional Court. On March 19, 2001, the Court allowed the appeal on the basis of its conclusion that the first ground set out in the Notice of Proposal ((a) above) was a proper basis for the Superintendent to refuse to approve the Partial Wind Up Report and that the Superintendent was entitled to rely on that ground. In this respect, it adopted the minority Reasons of the Tribunal and directed the Superintendent to carry out the Notice of Proposal to Refuse to Approve.

The Court found that the Financial Services Tribunal majority's interpretation of subsection 70(6) of the *Pension Benefits Act* was unreasonable. The Court also found that the Financial Services Tribunal majority's finding on legitimate expectation misinterpreted the legislation and was an error in law.

Applications have been filed with the Court of Appeal for leave to appeal the decision of the Divisional Court.

Ontario Institute for Studies in Education Employee Pension Plan, Registration Number 353854, FST File P0054-1999

On June 1, 1999, the Governing Council of the University of Toronto requested a hearing regarding the Superintendent's Notice of Proposal dated April 30, 1999 to partially wind up the Plan. A pre-hearing conference was held on September 17, 1999. The Professional Staff Association of the Ontario Institute for Studies in Education, the United Steelworkers of America and the Ontario Public Service Employees Union were granted full party status. The request for Hearing was withdrawn on May 17, 2000.

The Retirement Plan for Salaried Employees (Consumer Foods) of General Mills Canada, Inc., Registration Number 342042, FST File P0058-1999

In June 1999, General Mills Canada Inc. requested a hearing regarding the Superintendent's Notice of Proposal dated May 19, 1999 refusing to approve a partial wind up report. The grounds for the refusal were: (a) the partial wind up report did not deal with the treatment of surplus on partial wind up; (b) the payment of benefit enhancements on wind up to certain members constituted an inequitable distribution of surplus, and an indirect payment of surplus to the employer without following the statutory requirements for the payment of surplus to the employer; and (c) proper notice of the partial wind up was not provided to the affected members, and the partial wind up report did not allow the affected members who were entitled to an immediate pension and who receive a "special pension upgrade" to commute their pension benefits.

The Tribunal adjourned the matter *sine die* on May 12, 2000 at the request of the parties.

Labourers' Pension Fund of Central and Eastern Canada, Registration Number 573188, FST File P0059-1999

On June 14, 1999, the Labourers' Pension Fund requested a hearing with respect to the Superintendent's Notice of Proposal dated May 18, 1999 proposing to order the Labourers' Pension Fund of Central and Eastern Canada to prepare and file two new actuarial valuation reports with valuation dates of December 31, 1996 and December 31, 1997, and to use certain assumptions and methods in the preparation of these reports. On May 19, 2000, the Superintendant withdrew the Notice of Proposal.

Ontario Teachers' Pension Plan, Registration Number 345785, FST File P0060-1999

On June 16, 1999, the Ontario Teachers' Pension Plan Board filed a request for hearing regarding the Superintendent's Notice of Proposal dated May 6, 1999 to order the Ontario Teachers' Pension Plan Board to comply with section 51 and subsection 48(13) of the *Pension Benefits Act* and pay to a deceased member's former spouse certain amounts or benefits under a domestic contract. A pre-hearing conference was held on July 21, 1999 and continued on August 31, 1999. The deceased member's former spouse was granted party status. The hearing was held on March 27, 2000. Reasons for Decision were released on June 9, 2000 and are published in this Pension Bulletin on page 79. The former spouse has appealed this decision to the Superior Court of Justice – Ontario Divisional Court. No date has been set for the appeal yet.

Consumers Packaging Pension Plan II, Registration Number 998682, FST File P0068-1999

Consumers Packaging Inc. filed a request for hearing on June 18, 1999 regarding the Superintendent's Notice of Proposal dated April 30, 1999 to refuse to approve a partial wind up report.

On March 1, 2000, the Request for hearing was withdrawn.

Reasons for Decision dated December 8, 2000 in the matter of an Application for an Award of Costs were released and are published in this Pension Bulletin on page 102.

Consumers' Gas Ltd., Registration Number 242016, FST File P0076-1999

On August 19, 1999, the Superintendent issued a Notice of Proposal to refuse to approve a partial wind up report filed by The Consumers' Gas Company Ltd. with respect to the sale of the Telesis Oil and Gas Division of Consumers' Gas. The grounds for the refusal were: (a) the report did not provide for the distribution of the surplus attributable to the partial wind up group; (b) the report did not provide "grow in" to indexation benefits for members who had achieved 55 points under subsection 74(1) of the *Pension Benefits Act* (rather, it provided these benefits only to members who were 55 years old); and (c) the report did not include certain bonuses paid to Telesis employees in the calculation of earnings in determining the commuted value of these employees' pensions.

A pre-hearing conference was held on November 15, 1999, December 2, 1999, and April 3, 2000. A Group of Former Employees of Telesis was added as a party. The pre-hearing reconvened on June 27, 2000 and the matter was adjourned *sine die*.

Schering-Plough Healthcare Products Canada Inc. Salaried Employees' Pension Plan, Registration Number 297903, FST File P0085-1999

On October 14, 1999, the Superintendent issued a Notice of Proposal ordering Schering-Plough Healthcare Products Canada Inc. to amend the partial wind up report with respect to its salaried pension plan as at August 31, 1996, so that the surplus attributable to the partial wind up group would be distributed.

On March 27, 2000 a number of affected plan members applied for standing in the hearing. The matter was adjourned *sine die* on May 10, 2000.

The Employees Pension Plan of BICC Phillips Inc., Registration Number 293761, FST File P0092-1999

On December 20, 1999, BICC Cables Canada Inc. requested a hearing with respect to the Superintendent's Notice of Proposal dated November 10, 1999 to refuse to approve a partial wind up of the Plan as at May 17, 1996 in connection with the decision of the employer to close its Brockville factory and terminate the employment of all employees at that location, and to reduce significantly staffing at its Head Office and other locations across Canada commencing in February 1996. The issue in this proceeding was whether those members of the plan affected by the partial wind up, whose age plus years of service exceeded 55, were entitled to special early retirement pensions under the plan.

A pre-hearing conference was held on April 17, 2000. Telephone conferences were held on September 19 and October 10, 2000 and the Hearing was held on October 12, 2000.

Reasons for Decision dated November 16, 2000 were released and are published in this Pension Bulletin on page 97.

A Notice of Appeal of the Decision of the Tribunal was filed by BICC Cables Inc. with the Superior Court of Justice Ontario Divisional Court on December 15, 2000.

The appeal was heard on April 20, 2001, and it was dismissed.

Pension Plan for the Employees of the United Jewish Welfare Fund of Toronto and its Affiliated Organizations, Registration Number 321398, FST File P0093-2000

On December 23, 1999, the United Jewish

Welfare Fund requested a hearing with respect to the Superintendent's Notice of Proposal dated November 10, 1999 proposing to order the Administrator of the Plan to file a number of amendments to the Plan and Trust Agreement within 30 days from the date of the Notice.

The hearing request was withdrawn on February 11, 2000.

Retirement Plan of Dustbane Enterprises Limited, Registration Number 229419, FST File P0095-2000

On January 26, 2000, Dustbane Enterprises Limited filed a request for hearing regarding the Superintendent's Notice of Proposal dated December 21, 1999 proposing to order Dustbane Enterprises Limited to pay into the pension fund for the Plan an amount equal to the total of all payments that, under the *Pension Benefits Act*, the regulations and the Plan, are due or that have accrued and have not been paid into the pension fund as at June 1, 1990, plus interest to the date of payment. Such payment was to be made within sixty (60) days from the date of this Proposed Order.

A request for hearing, filed on February 9, 2000 by F. J. Wadden & Sons, was withdrawn on April 4, 2000.

Pre-hearing conferences were held on April 14 and June 2, 2000. A settlement conference was held on July 10, 2000 and a telephone conference was held on July 13, 2000.

Robinson Sanitation filed an Application for Party Status on July 14, 2000 and was granted status.

On June 21, 2000, the Financial Services Tribunal held an oral hearing on a preliminary motion made by Dustbane Enterprises for an Order directing the Superintendent of Financial Services to respond to seven interrogatories. The Tribunal's Order dated July 18, 2000 is published in this Pension Bulletin on page 126.

The hearing was held on October 3 to 5 and October 16, 2000.

The Tribunal released its decision on February 15, 2001. The majority found that the plan was not a multi-employer pension plan and that Dustbane was therefore liable for the deficit. The dissent found that Dustbane was a multi-employer pension plan, that the distributors were therefore liable for the deficit, but that Dustbane should contribute to the deficit because it had kept the distributors in the dark and because much of the deficit was attributable to actuarial fees. The panel unanimously found that any delay could not excuse compliance with the *Act*.

On March 16, 2001, Dustbane appealed this decision to the Superior Court of Justice, Ontario Divisional Court.

Brewers Retail Pension Plan for Bargaining Unit Employees, Registration Number 336081, FST File P0099-2000

On February 24, 2000, Mr. Patrick J. Moore, President of the United Brewers' Warehousing Workers, Local 375W, requested a hearing seeking an Order directing "the Superintendent to order the administrator of the Plan (Brewers Retail Inc.) to cease administering the Plan with an improperly constituted advisory committee and to cause the creation of a properly constituted advisory committee pursuant to the *Act* and formulating documents." The hearing request arose as a result of a letter from the Superintendent dated January 26, 2000 in which the Superintendent stated that there were no grounds under the *Pension Benefits Act* and Plan to order the establishment of an advi-

sory committee. The letter also stated that any issue that Mr. Moore may have with the letter of understanding, which is part of the agreement between Brewers Retail Inc. and United Food and Commercial Worker's Provincial Board (the "UBWW/UFCW"), wherein Brewers Retail Inc. acknowledges that the UBWW/UFCW has a right to appoint a pension committee with membership, roles and responsibilities as set out in the *Pension Benefits Act*, would be a labour issue and not within the Superintendent's jurisdiction.

At a pre-hearing conference held on May 17, 2000, Brewers Retail Inc. and the UBWW/UFCW were granted full party status. At the pre-hearing conference the parties agreed that before the Financial Services Tribunal considered the matter on its merits, it was necessary for it to determine the preliminary issue of whether it had jurisdiction to grant the relief sought in Mr. Moore's Request for Hearing. At the pre-hearing conference, the Superintendent raised the issue of whether notice to former members of the Plan ought to be provided as it appeared that former members of the Plan were not represented.

In a telephone conference held on November 16, 2000, the hearing on the notice issue was scheduled for March 7, 2001. The hearing on the jurisdictional issue was scheduled for September 28, 2001.

Prior to the hearing on the notice issue, the UBWW/UFCW advised that it represented both active and non-active/former members of the Plan. As a result, at the hearing on March 7, the Superintendent, UBWW/UFCW and Brewers Retail Inc. took the position that no additional notice to former members was required in the circumstances. Mr. Moore, however, argued that notice of the proceeding was still required.

The Tribunal decided that former members had received adequate notice of the proceeding through the existing parties to the proceeding. Reasons for Decision, dated April 10, 2001, were released and will be published in the next Pension Bulletin.

London Life Insurance Company Staff Pension Plan, Registration Number 0343368, FST File P0100-2000

On March 6, 2000, London Life Insurance Company requested a hearing with respect to the Superintendent's Notice of Proposal dated February 17, 2000 proposing to order that the Plan be wound up in part in relation to those members and former members of the Plan who were employed by London Life and who ceased to be employed effective between January 1, 1996 and December 31, 1996 as a result of (i) the reorganization of the business of the London Life, or (ii) the discontinuance of all or a significant portion of the business carried on by London Life at one or more specific locations.

At the pre-hearing conference held on July 11, 2000, The Executive Members of the London Life Members' Committee were granted full party status. Upon a request made by London Life that all information produced by it in response to interrogatories and to a request for disclosure of documents from other parties be kept confidential, the Financial Services Tribunal issued an Order dated July 25, 2000 which is published in this Pension Bulletin on page 91.

The Executive Members of the London Life Members' Committee brought a motion before the Tribunal on August 29, 2000 requesting an order directing London Life to disclose certain

information to them and to the Superintendent. The Tribunal's Order on the motion and the Reasons for Order, both dated September 18, 2000, are published in this Pension Bulletin on page 92.

The hearing was held on December 11 - 15 and December 19 - 20, 2000. Reasons for Decision dated February 7, 2001 were released and are published in this Pension Bulletin on page 115.

The Superintendent and the Executive Members filed a Request for Review, asking the panel to deal with the issues of alleged voluntary terminations and certain office closures that London Life had conceded. On March 16, 2001, the panel issued a decision declining to review its decision, stating that it was more appropriate to deal with these issues once the Partial Wind Up Report had been filed.

Hudson Bay Diecasting Limited Hourly Employees Retirement Income Plan, Registration Number 362178, FST Number P0103-2000

On March 17, 2000, CAW-Canada and its Local 1285 requested a hearing in respect of the Superintendent's Notice of Proposal dated February 21, 2000 proposing to order that the Plan be wound up in whole effective September 7, 1995.

Pre-hearing conferences were held on May 5 and June 12, 2000. The pre-hearing conference scheduled for September 11, 2000 was adjourned *sine die* on the consent of all of the parties.

The request for hearing was withdrawn on September 14, 2000.

Ontario Public Service Pension Plan, Registration Number 208777, FST Number P0116-2000

On August 2, 2000, the Ontario Pension Board filed a request for hearing in respect of the Superintendent's Notice of Proposal dated July 12, 2000 ordering the Ontario Pension Board to pay Mr. Victor Burns his full pension benefits, with interest payable pursuant to subsection 24(11) of Regulation 909 made under the *Pension Benefits Act*, retroactive to the date of Mr. Burns' retirement from the Ontario Provincial Police ("OPP"), within 60 days from the date of the Order, and on an ongoing basis.

An Application for Party Status was filed by Victor Burns on November 9, 2000 and full party status was granted by the Financial Services Tribunal at a pre-hearing conference held on November 23, 2000.

Hearing dates scheduled for April 30 and May 1, 2001 have been adjourned.

Eaton Yale Limited Pension Plan for Salaried Employees of Cutler-Hammer Canada Operations, Registration Number 440396, FST Number P0117-2000

On August 4, 2000, Eaton Yale Ltd. filed a request for hearing with respect to the Superintendent's Notice of Proposal dated June 22, 2000 proposing to order that the Plan be wound up in part in relation to those members and former members of the Plan who ceased to be employed by Eaton Yale from February 23, 1994 to January 12, 1995 as a result of the closure of two manufacturing facilities, located at Mount Forest, Ontario and St.-Jean-sur-Richelieu, Quebec, on or about February 23, 1994.

At the request of the parties, this matter was adjourned *sine die* on November 9, 2000.

Dr. Louis Gliksman (Ontario Public Service Pension Plan, Registration Number 208777 and the Hospitals of Ontario Pension Plan, Registration Number 346007) FST File P0119-2000

On July 19, 2000, Dr. L. Gliksman requested a hearing regarding the Superintendent's Notice of Proposal dated July 7, 2000 proposing to refuse to make an order, under section 87 of the *Pension Benefits Act*, with respect to Dr. Gliksman's request that the two Plans take certain actions.

A Pre-hearing conference was held on October 2 and November 15, 2000. The Hospitals of Ontario Pension Plan (HOOPP) and the Ontario Pension Board filed Applications for Party Status and were granted full party status.

The request for hearing was withdrawn on January 9, 2001.

David Horgan (Ontario Public Service Pension Plan, Registration Number 208777) FST File P0120-2000

On August 11, 2000, David Horgan requested a hearing regarding the Superintendent's Notice of Proposal dated July 12, 2000 proposing to refuse to make an order, under section 87 of the *Pension Benefits Act*, with respect to Mr. Horgan's claim that he is entitled to receive pension benefits from the Plan.

The Ontario Pension Board filed an Application for Party Status on September 19, 2000 and was granted full party status at the pre-hearing conference held on November 23, 2000.

The hearing is scheduled for July 11 - 13, 2001.

Rupinder Anand and OPSEU Pension Trust:

On February 6, 2001 Rupinder Anand requested a hearing regarding the Superintendent's Notice Of Proposal dated January 4, 2001, proposing to refuse to make an order under section 87 of the *Pension Benefits Act*, with respect to Mr. Anand's claim that he is eligible to receive pension benefits from the Ontario Public Service Pension Plan.

The OPSEU Pension Trust ("OPT") filed an application for party status on February 14 2001. Counsel for Mr. Anand (who also is counsel for Mr. Horgan) requested that the hearing in this matter be joined with the hearing in Horgan, as the issues in both cases were virtually identical. None of the other parties objected to the joinder. An order granting OPT full party status and joining the hearings, in the Horgan and Anand matters, to be heard concurrently, was signed by the Financial Services Tribunal on March 7, 2001.

Penberthy Canada Products, Inc., St. Catharines, Ontario, Registration Number C-15244. FST File P0122-2000

Penberthy Canada Products Inc. filed a request for hearing regarding the Superintendent's Notice of Proposal dated June 22, 2000 proposing to order Penberthy Canada Products, Inc. to pay Mrs. L. Hambling the survivor pension benefits to which she is entitled as a consequence of her deceased husband having elected survivor pension benefits.

A pre-hearing conference was held on November 27, 2000 and January 4, 2001. A settlement conference was held on January 24, 2001, at which Penberthy Canada Products Inc. and the widow reached a tentative settlement.

Imperial Oil Ltd., FST P0130-2000

On October 31, 2000, Imperial Oil Limited requested a hearing with respect to the Superintendent's Notice of Proposal dated October 3, 2000 proposing to refuse to approve a Partial Wind Up Report in respect of two Plans of which Imperial Oil is the Administrator.

The stated reasons for the proposed refusal include the failure of each wind up report to do the following: (a) reflect the liabilities associated with all of the members of the Plan whose employment was terminated by Imperial Oil during the wind-up period; (b) apply the grow-in provisions of section 74 of the *Pension Benefits Act* in a proper manner; (c) provide benefits in accordance with elections made, as required under subsection 72(1) of the *Pension Benefits Act*, among various options including those available as a result of partial wind-up; and (d) provide for the distribution of assets related to the partial wind up group.

A pre-hearing has been scheduled for June 19, 2001.

FINANCIAL HARDSHIP

Application to the Superintendent of Financial Services for Consent to Withdraw Money from a Locked-in Retirement Account, Life Income Fund, or Locked-in Retirement Income Fund Based on Financial Hardship.

The following Requests for Hearing have been received.

FST File #	Superintendent of Financial Services' Notice of Proposal:	Comments
P0123-2000	To Refuse to Consent, dated August 14, 2000	The Request for Hearing was withdrawn on January 3, 2001.
P0124-2000	To Refuse to Consent, dated August 14, 2000	Reasons for Decision dated December 21, 2000, are published in this bulletin on page 104
P0126-2000	To Refuse to Consent, dated September 15, 2000	Reasons for Decision dated January 9, 2001, are published in this bulletin on page 106.
P0127-2000	To Consent, dated June 6, 2000	Applicant has requested a hearing on the basis that funds received were insufficient. The Request for Hearing was withdrawn on March 22, 2001.
P0132-2000	To Refuse to Consent, dated October 23, 2000	Reasons for Decision dated January 22, 2001, are published in this bulletin on page 108.
P0133-2000	To Refuse to Consent, dated November 6, 2000	Reasons for Decision dated January 26, 2001, are published in this bulletin on page 110.
P0135-2000	To Consent,	Applicant has requested a hearing dated August 25, 2000 on the basis that the funds received were insufficient.

P0136-2000	To Refuse to Consent, dated December 1, 2000	Ongoing
P0137-2000	To Refuse to Consent, dated November 27, 2000	Reasons for Decision dated January 29, 2001, are published in this bulletin on page 112.
P0139-2001	To Refuse to Consent, dated December 12, 2000	Reasons for Decision dated February 27, 2001, are published in this bulletin on page 142.
P0140-2001	To Refuse to Consent, dated December 10, 2000	Reasons for Decision dated January 30, 2001, are published in this bulletin on page 113.
P0141-2001	To Consent, dated December 21, 2000	Applicant has requested a hearing on the basis that the funds received were insufficient.
P0145-2001	To Refuse to Consent, dated December 11, 2000	Reasons for Decision dated February 21, 2001, are published in this bulletin on page 140.
P0148-2001	To Refuse to Consent, dated January 30, 2001	Ongoing

Financial Services Tribunal Decisions with Reasons

INDEX NO: FST Decision #12 (FST File No. P0060)

PLAN: Ontario Teachers' Pension Plan Board

DATE OF DECISION: May 31, 2000

PUBLISHED: FSCO Bulletin 10/1 and FSCO website

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*(**Note:** Only FST decisions pertaining to pensions are included in the section)*
***Note:** In this section, "Commission" refers to the Financial Services Commission of Ontario.)*

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c.P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c.28;

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order pursuant to section 87 of the *Pension Benefits Act*, R.S.O. 1990, c.P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c.28 (the "*Act*") respecting the Ontario Teachers' Pension Plan, Registration No. 0345785;

AND IN THE MATTER OF a Hearing in accordance with subsection 89(8) of the *Act*:

BETWEEN: **ONTARIO TEACHERS' PENSION PLAN BOARD**
Applicant
– and –
SUPERINTENDENT OF FINANCIAL SERVICES
– and –
ANNE STAIRS
Respondents

BEFORE:

Martha Milczynski
Chair of the Tribunal and of the Panel

Judith Robinson
Member of the Tribunal and of the Panel

William Forbes
Member of the Tribunal and of the Panel

APPEARANCES:

Freya J. Kristjanson and Markus F. Kremer for Ontario Teachers' Pension Plan Board

Deborah McPhail for the Superintendent of Financial Services

Arthur D.C. Ross for Anne Stairs

HEARING DATE:
March 27, 2000

REASONS

INTRODUCTION

This hearing relates to the application of subsection 48(13) of the *Pension Benefits Act*, and the pre-retirement death benefit payable upon the death of Mr. Roger Mowbray, a member of the Ontario Teachers' Pension Plan (the "Plan"). For reasons set out below, the Tribunal finds no amount of a pre-retirement death benefit is payable to Mr. Mowbray's former spouse, Ms. Anne Stairs and directs the Superintendent of Financial Services (the "Superintendent") not to issue the Proposed Order dated May 6, 1999.

FACTS

Agreed Facts

There was no evidence called at the hearing; the parties relied on an Agreed Statement of Facts which set out in part the following:

1. Anne Stairs and Roger Mowbray were married on May 6, 1961.
2. Roger Mowbray was a member of the Plan effective September 1, 1965.
3. Roger Mowbray and Anne Stairs commenced living separate and apart on July 1, 1988, entered into a Separation Agreement on August 10, 1990 (the "Separation Agreement") and divorced on March 7, 1991.
4. During the marriage of Mr. Mowbray and Ms. Stairs, Mr. Mowbray accumulated 22.995 years of credited service.
5. The terms of the Separation Agreement provided in part, as follows:

10. PENSIONS

(1) The parties agree that the wife has a substantial interest in the husband's pension with the Teachers' Superannuation Commission. The parties further acknowledge and agree that it is their intention that each of the parties should be liable for income tax on his or her share of the pension payments received. The wife's interest in the pension shall be calculated as follows:

One-half (1/2) times twenty five (25) years of married cohabitation during which pension contributions were made, divided by the total number of years (or portion thereof) during which the pension contributions were or will be made, times the pension benefits payable.

The husband shall pay to the wife her share of the pension as he receives payment or benefit under the pension.

(2) In the event that the husband is assessable for income tax based on the total amount of the pension payments paid by the Teachers' Superannuation Commission (and the wife is not required to include her share of her income) rather than only assessable for income tax on his share of each pension payment, calculated as aforesaid, then the foregoing payments to the wife shall be paid in an amount equal to the gross amount of each payment, before any deductions, times a fraction equal to:

One-half (1/2) times twenty-five (25) years of married cohabitation during which pension contributions were made, divided by the total number of months during which contributions were or will be made.

The husband shall pay to the wife the support aforesaid immediately upon receipt of any payment or benefit under the pension and the husband shall continue to be an express trustee for the wife's benefit of her share of each pension payment to the husband from the plan. The quantum of support payable pursuant to this provision shall not be subject to variation whether or not any material change in circumstances occurs for either of the parties and shall be paid to the wife for their joint lives.

(3) The parties agree to execute any further assurances, authorizations, directions or elections as may be required to permit them to carry out their mutual intention that each party should bear income tax liability in respect of their share of the pension payments.

(4) In the event a death benefit becomes payable under the pension and the wife is not the only surviving spouse of the husband then the wife will be entitled to an interest in the death benefits as follows:

twenty-five (25) years of married cohabitation during which pension contributions were made, divided by the total number of years (or portion thereof) during which contributions have been made to date of death, times the death benefit payable.

(5) The husband shall be trustee of the wife's share in his pension. The husband shall provide the wife with copies of all communication between himself and others respecting the pension within (10) days of such communication.

(6) The husband shall notify the Teachers' Superannuation Commission of the wife's interest and shall authorize the Teachers' Superannuation Commission to disclose all information concerning his pension to his wife.

6. On September 28, 1992 Mr. Mowbray married Catherine Mowbray.

7. Mr. Mowbray delivered a copy of the Separation Agreement to the administrator of the Plan, the Ontario Teachers' Pension Plan Board (the "Board") on July 14, 1994. There was no evidence in the Agreed Statement of Facts or otherwise that indicated whether or not the Board reviewed the terms of the Separation Agreement or communicated what the Board understood to be the Agreement's unenforceable provisions during the nine months the Board had the Separation Agreement in its files prior to Mr. Mowbray's death.

8. Mr. Mowbray died on April 17, 1995, before commencing his pension under the Plan, but while remaining a member of the Plan.

9. Catherine Mowbray was the legal spouse of Mr. Mowbray at the time of his death. She did not waive any entitlement to a pre-retirement death benefit under s. 48(14) of the *Pension Benefits Act* and did not sign the Spousal Waiver of Pre-Retirement Death Benefit form, which is prescribed as "Form 4" by the Regulations to the *Pension Benefits Act*.

Pension Plan

The pre-retirement spousal death benefit under the Plan is provided for in section 61 of the Plan, which states:

61. (1) If a member who is entitled to a deferred pension or a disability pension dies before the first day of the month in which the first installment of the pension is due, the person who is the spouse of the member on the date of death is entitled to receive,

(a) the benefit described in section 62 in respect of the member's employment, if any, before the 1st day of January, 1987; and

(b) the benefit described in section 63, in respect of the member's employment, if any, on or after the 1st day of January, 1987.

(2) Subsection (1) does not apply if the member and the spouse are living separate and apart on the date of death of the member.

10. The pre-retirement spousal death benefit under the Plan thus consists of two parts – one part relates to the Plan member's service before January 1, 1987 and the other part relates to the member's service on or after January 1, 1987.

11. Section 62 of the Plan provides the spouse of a member who dies before retirement with a monthly lifetime pension based upon the member's service for employment before January 1, 1987:

62. (1) This section applies with respect to that portion of the death benefit that relates to a member's employment before the 1st day of January, 1987.

(2) The spouse of a member with ten years or more qualifying service is entitled to the survivor pension described in section (3) for the lifetime of the spouse.

(3) The amount of the survivor pension, before adjustment for inflation, shall be based upon the member's credited service for employment before the 1st day of January, 1987 and shall be one half of the amount of the pension, before adjustment for inflation,

(a) that would have been paid to the member at the date of death, if the member was at least sixty-five years of age on the date of death; or

(b) that would have been paid to the member as of the first day of the month following the month in which he or she would have reached sixty-five years of age, if the member was less than sixty-five years of age on the date of death.

(4) The spouse of a member with less than ten years of qualifying service is entitled to a refund of the member's contributions for employment before the 1st day of January, 1987 together with interest thereon.

12. The amount of the death benefit payable as a survivor pension for pre-1987 service is equal to one half of the benefit the member earned for credit before 1987, after reduction for CPP benefits. At the time of his death, Roger Mowbray had more than ten years of qualifying service with 21.39705 years of pre-1987 credit, including 20.99705 years of CPP credit. The average salary used for this calculation was $68,686.95.

13. The annual death benefit payable as a spousal survivor pension for Roger Mowbray's pre-1987 service was calculated pursuant to the formulas set out in sections 62 and 42 of the Plan:

2% x Average Salary x Pre-1987 Credit - CPP Reduction x 50%

0.02 x $68.686.95 x 21.39705 - $5,031.59 x 50% = $12,181.18 annual base

14. The current version of Section 63 of the plan provides the spouse of a member who dies before retirement with a choice of either a lump sum payment equal to the commuted value of a pension for credited service after 1987 or an immediate or deferred pension in the amount which could be provided by the lump sum:

63. (1) This section applies with respect to that portion of the death benefit that relates to a member's employment on or after the 1st day of January, 1987.

(2) The spouse of a member with two years or more qualifying service is entitled to the benefit described in subsection (4).

(3) The spouse of a member with less than two years of qualifying service is entitled to a refund of the member's contributions for employment on or after the 1st day of January, 1987 together with interest thereon.

(4) The benefit referred to in subsection (2) is,

(a) a lump sum payment equal to the commuted value of the deferred pension to which the member was entitled for

credited service for employment on or after the 1st day of January, 1987; or

(b) an immediate or a deferred survivor pension for the lifetime of the spouse, the commuted value of which is at least equal to the commuted value of a pension for credited service for the member's employment on or after the 1st day of January, 1987, calculated as if the member had become entitled to a retirement pension on the date of death.

(5) The spouse may elect the form of benefit to be paid under subsection (4) and a spouse who does not do so within twelve months after the death of the member shall be deemed to have elected to receive an immediate survivor pension.

(6) A spouse who elects to receive a deferred survivour pension may elect to begin to receive the pension at any time up to the month after the month in which the spouse reaches seventy-one years of age.

The version of section 63 of the Plan that was in effect at the time of the Mr. Mowbray's death contained the same provisions, except that the phrase used was "qualifying service" rather than "credited service."

15. The commuted value for Roger Mowbray's post-86 service was calculated based on the following formula:

2% x Average Salary x Years of Credited Service

0.02 x $68,317.82 x 8.3116 = $11,356.61

16. The actual commuted value depends on the level of interest and inflation rates in effect at the date of death as well as the spouse's date of birth. In this case, the entire post-1986 commuted value was estimated at $146,961.17.

Anne Stairs

17. In correspondence dated April 24, 1995, Anne Stairs wrote to the Board to inquire about her eligibility for benefits.

18. In correspondence dated May 11, 1995, the Board replied:

My investigation has indicated that you were the former spouse of Mr. Mowbray and are inquiring about survivor benefits payable to you as a result of Mr. Mowbray's death in light of a Separation Agreement we have on file. I regret to inform you that you are not eligible for survivor benefits since the Separation Agreement cannot affect the terms of the defined benefit plan. Under s. 61 of Schedule 1 to the *Teachers' Pension Act*, a spousal death benefit is only payable to Mr. Mowbray's current spouse provided they were not living separate and apart at the date of death.

19. The Board paid both the pre-1987 pre-retirement spousal death benefit as well as the post-1986 pre-retirement spousal death benefit to Catherine Mowbray, and did not pay any portion of the death benefit to Anne Stairs.

20. Anne Stairs sought the assistance of the Financial Services Commission of Ontario in January 1997. On May 13, 1999, the Superintendent of Financial Services served upon the Board a Notice of Proposal to make an Order dated May 6, 1999, that stated, in part:

I PROPOSE TO ORDER the Ontario Teachers' Pension Plan Board to comply with section 51 and subsections 48(13) and 87(2)(c) of the *Pension Benefits Act*, R.S.O. 1990, c. P. 8, as amended by the *Financial Services Commission of Ontario Act 1997*, S.O. 1997, c. 28 (the "*Act*") in respect of Ms.

Anne Stairs' right to or interest in benefits provided under sections 48 and 51 of the *Act*, as set out in the domestic contract between Ms. Anne Stairs and her former spouse, Mr. John Roger Mowbray, a domestic contract described in section 51 of the *Act*. The benefits provided under section 48 of the *Act* are in respect [sic] Mr. John Roger Mowbray's service after December 31, 1986. The Ontario Teachers' Pension Plan Board is to comply with section 51 and subsection 48(13) and pay to Ms. Anne Stairs the amounts to which she is entitled in respect of her right to or interest in benefits provided under section 48 and 51 of the *Act* set out in the domestic contract between Ms. Anne Stairs and her former spouse, Mr. John Roger Mowbray, a domestic contract described in section 51 of the *Act*, within sixty (60) days from the date of my Order.

21. On June 14, 1999, the Board delivered a Request for Hearing in respect of the Superintendent's Notice of Proposal, which provided in part:

Relief Sought

Order directing Superintendent to not issue the Proposed Order; to approve the death benefits paid or payable to Ms. Catherine Mowbray pursuant to the *Act*; and such further and other relief as the Applicant may request and this Tribunal may deem just.

ISSUES

The issues were framed as follows:

Issue #1: Is the Ontario Teachers' Pension Plan Board required to pay to Ms. Anne Stairs an interest in the pre-retirement death benefit relating to the service of her former spouse, Mr. Roger Mowbray, pursuant to ss. 48(13) of the *Pension Benefits Act*?

Issue #2: If the answer to issue #1 is "yes", is the Tribunal's jurisdiction limited to considering benefits accrued by Mr. Mowbray after December 31, 1986?

Issue #3: If the answer to issue #1 is "yes", is the interest limited to benefits accrued by Mr. Mowbray as at the date of separation, which is the valuation dated under the *Family Law Act*, R.S.O. 1990, Chap. F.3?

Issue #4: If the answer to issue #1 is "yes", is the interest, or the jurisdiction of this Tribunal to make an order, limited by subsection 51(2) of the *Pension Benefits Act* to 50% of the benefits accrued between January 1, 1987 and the valuation date under the Separation Agreement of July 1, 1988?

Issue #5: In the event this Tribunal orders payment to Ms. Stairs of a pre-retirement death benefit, does this Tribunal have jurisdiction to order Ms. Mowbray to repay to the Ontario Teachers' pension Plan that portion of benefits received by her which relates to entitlements payable to Ms. Anne Stairs? If so, should this Tribunal make such an order?

Issue #6: What is the quantum of any of the interests found to be payable? This issue is to be deferred until the Tribunal has decided the five issues listed above. If the Tribunal finds that any of the interests are payable, the Tribunal is to direct that the parties attempt to settle the quantum payable among themselves, with the Tribunal remaining seized if the parties cannot come to an agreement.

PENSION BENEFITS ACT

The relevant provisions of the *Pension Benefits Act* are as follows:

"Spouse" means either of a man and woman who,

(a) are married to each other, or

(b) are not married to each other and are living together in a conjugal relationship,

(i) continuously for a period of not less than three years, or

(ii) in a relationship of some permanence, if they are the natural or adoptive parents of a child, both s defined in the *Family Law Act;* ("conjoint")

37 (1) A member of a pension plan who meets the qualifications in subsection (2) is entitled to the benefit mentioned in subsection (3).

(2) The qualifications are,

(a) that the member must be a member on or after the 1st day of January, 1988;

(b) that the member must be a member for a continuous period of at least twenty-four months; and

(c) that the member must terminate his or her employment with the employer before reaching the normal retirement date under the pension plan.

(3) The benefit is a deferred pension equal to the pension benefit provided in respect of employment in Ontario or in a designated province,

(a) under the pension plan in respect of employment by the employer after the later of the 31st day of December, 1986 or the qualification date;

(b) under any amendment made to the pension plan after the 31st day of December, 1986; and

(c) under any new pension plan established after the 31st day of December, 1986 for members of the pension plan.

48 (1) If a member or former member of a pension plan who is entitled under the pension plan to a deferred pension described in section 37 (entitlement to deferred pension) dies before commencement of payment of the deferred pension, the person who is the spouse of the member or former member on the date of death is entitled,

(a) to receive a lump sum payment equal to the commuted value of the deferred pension; or

(b) to an immediate or deferred pension the commuted value of which is at least equal to the commuted value of the deferred pension.

(3) Subsections (1) and (2) do not apply where the member or former member and his or her spouse are living separate and apart on the date of the death of the member or former member.

(6) A member or former member of a pension plan may designate a beneficiary and the beneficiary is entitled to be paid an amount equal to the commuted value of the deferred pension mentioned in subsection (1) or (2) if,

(a) the member or former member does not have a spouse on the date of death; or

(b) the member or former member is living separate and apart from his or her spouse on that date.

(7) The personal representative of the member or former member is entitled to receive payment of the commuted value mentioned in subsection (1) or (2) as the property of the member or former member, if the

member or former member has not designated a beneficiary under subsection (6) and,

(a) does not have a spouse on the date of the member or former member's death; or

(b) is living separate and apart from his or her spouse on that date.

(13) An entitlement to a benefit under this section is subject to any right to or interest in the benefit set out in a domestic contract or an order referred to in section 51 (payment on marriage breakdown).

(14) A member and his or her spouse may waive the spouse's entitlement under subsection (1) or (2) in the form approval by the Superintendent and, for the purpose, subsections (6) and (7) apply as if the member does not have a spouse on the date of the member's death.

51 (1) A domestic contract as defined in Part IV of the *Family Law Act*, or an order under Part I of that *Act* is not effective to require payment of a pension benefit before the earlier of,

(a) the date on which payment of the pension benefit commences; or

(b) the normal retirement date of the relevant member or former member.

(2) A domestic contract or an order mentioned in subsection (1) is not effective to cause a party to the domestic contract or order to become entitled to more than 50 per cent of the pension benefits, calculated in the prescribed manner, accrued by a member or former member during the period when the party and the member or former member were spouses.

REASONS

(a) Submissions of the Respondents

Counsel for Ms. Stairs and the Superintendent both submitted that subsection 48(13) of the *Pension Benefits Act* operates to divide and redirect payment of the pre-retirement death benefit otherwise payable in full to an eligible surviving spouse where the deceased plan member had, at some earlier date, entered into a domestic contract that granted an interest in the death benefit to a former spouse.

Counsel for Anne Stairs submitted that the Separation Agreement set out Ms. Stairs' and Mr. Mowbray's intention to deal with Mr. Mowbray's pension in a manner that recognized Ms. Stairs' "substantial interest" in the pension. Counsel asked the Tribunal to enforce the Separation Agreement as drafted and at the hearing requested that the Tribunal order that Ms. Stairs receive a full 25/30ths of the pre-retirement death benefit for all pre-1987 and post-1986 service, with no 50% limitation and no restriction of the division to the benefit accrued during the marriage up to the date of separation.

Counsel for the Superintendent submitted that in accordance with section 37 of the *Pension Benefits Act*, the *Act* draws a clear and unambiguous distinction between pre-1987 and post-1986 rights and entitlements that may be enforced under the *Act*. Counsel for the Superintendent further submitted that where terms of a domestic agreement are unenforceable as drafted under the *Pension Benefits Act*, the Superintendent could, in effect, vary the terms of the domestic agreement and, as in the case of the Separation Agreement in issue, order that a smaller portion than what had been agreed to or sought be paid. Thereby, counsel for the

Superintendent requested that the Tribunal uphold the Proposed Order that Ms. Stairs receive 50% of the death benefit payable in respect of Mr. Mowbray's post-1986 service accrued to the date of separation on July 1, 1988 – that being 50% of Mr. Mowbray's benefit accrued over some 18 months.

(b) Analysis

With respect to the issue of credit splitting, the *Pension Benefits Act* does not permit payment pursuant to a division of pension credits on marriage breakdown prior to the benefit becoming payable to the pension plan member and consequently, may require a former spouse who has not otherwise been paid out of a plan member's other assets to rely upon an "if and when" approach. However, the Separation Agreement entered into by Ms. Stairs and Mr. Mowbray presents further difficulties regardless of their intention to divide his pension, including:

(a) the provision dealing with benefits payable to Ms. Stairs upon Mr. Mowbray's death does not distinguish between pre-retirement and post-retirement entitlements, and thereby purports to grant an interest to Ms. Stairs in a post-retirement death benefit in the event that Mr. Mowbray had another spouse as at the date of his retirement and upon his subsequent death – a provision clearly unenforceable in any amount under the *Pension Benefits Act*;

(b) it fails to address Ms. Stairs' interest in the event of Mr. Mowbray's pre-retirement or post-retirement death where he did not have another surviving spouse; and

(c) it sets out incorrectly the period of Mr. Mowbray's pension accrual that is subject to division under the *Pension Benefits Act*.

While the words of subsection 48(13) that state an entitlement to a pre-retirement death benefit is subject to any right to or interest in the benefit set out in a domestic contract or order under Part I of the *Family Law Act* may lend themselves to the interpretation advanced by the Respondents, the Tribunal prefers a "plain reading" interpretation of the legislation. This is one that takes into account the priority of entitlements expressed in section 48 of the *Act*, and the fact that it cannot be simply any domestic contract that can override or interfere with the payment of pre-retirement death benefits that are otherwise payable under the terms of a pension plan and the *Pension Benefits Act*.

The scheme of priorities in section 48 of the *Pension Benefits Act* is clear and provides that a pre-retirement death benefit payable thereunder is first an entitlement of a surviving spouse so long as that spouse and the member were not living separate and apart as at the date of death and so long as there had been no waiver of the entitlement in the form and manner prescribed by the *Pension Benefits Act*. As in the case of section 44 of the *Act* and post-retirement death or survivor benefits, in the absence of an express waiver, priority is given to the eligible spouse.

In accordance with subsection 48(6) of the *Pension Benefits Act*, only where there is no eligible surviving spouse can a plan member determine who should receive payment of the pre-retirement death benefit by designating a beneficiary. In the absence of an eligible spouse and a designated beneficiary, subsection 48(7) of the *Pension Benefits Act* provides that the pre-retirement death benefit is payable to the deceased plan member's personal representative to be included as part of the member's estate.

As noted, subsection 48(13) of the *Pension Benefits Act* provides that an entitlement to a benefit under any part of section 48 is subject to any right to or interest in the benefits set out in a domestic contract or order under Part I of the *Family Law Act*. Subsection 48(13) of the *Act* does not identify in any manner the parties to the domestic contract that can interfere with an entitlement to a pre-retirement death benefit, but cannot be taken to mean any domestic contract. In that regard, this provision must refer to domestic contracts and court orders that bind or are enforceable against the person to whom the pre-retirement death benefit is payable. In the case of the Separation Agreement between Anne Stairs and Roger Mowbray, the Agreement attempts to redirect payment of a portion of the benefit to which only Ms. Mowbray is entitled under the terms of the pension plan and subsection 48(1) of the *Pension Benefits Act*. There is an issue of privity as Ms. Mowbray was not a party to the Separation Agreement, and did not otherwise waive her entitlement at a later date. As is set out in *Fridman, The Law of Contract in Canada*, 4th ed. (Carswell, 1999) at p. 197:

> ...none but parties to a contract can sue on the contract or any of its terms, and consequently none but a party may be subjected to liability.

The Tribunal also accepts the submissions of counsel for the Board and authority offered, *Dick v. Dick* [1993] O.J. No. 140 (QL) (Gen. Div.), that held that death benefits are not considered or included as "property" for the purposes of Part I of the *Family Law Act*. In the present case, Mr. Mowbray had no proprietary or other interest in the pre-retirement spousal death benefit and therefore could not grant Ms. Stairs any part of or interest in that entitlement by way of contractual agreement. The principle that no person can give away something which they do not own *(nemo dat quod non habet)* applies. At best, Mr. Mowbray could designate a beneficiary for payment of pre-retirement death benefits under ss. 48(6) of the *Pension Benefits Act*, but only in the absence of an eligible surviving spouse as at the date of his death.

To deprive or interfere with Ms. Mowbray's entitlement to a spousal pre-retirement death benefit under the Plan on the grounds of a domestic contract between Mr. Mowbray and a former spouse would require a clear expression of legislative intention. In this regard, *The Berton Dress Inc. v. The Queen*, [1953] Ex. C.R. 83; *Rex v. Hladych*, [1942] 3 D.L.R. 299 (Sask. C.A.); and *Hickey v. Stalker* (1923), 53 O.L.R. 414 (App. Div.) are applicable, and in *Toronto Transit Commission v. Aqua Taxi Limited et al*, [1955] O.W.N. 857 (H.C.J.) it was noted at page 859-860:

> It is trite law that the common law rights of the subject are not held to have been taken away or affected by a statute unless it is expressed in clear language or must follow by necessary implication, and in such cases only to such an extent as may be necessary to give effect to the intention of the Legislature thus clearly manifested. It is presumed that where the objects of an act do not obviously imply a contrary intention the Legislature does not desire to confiscate the property or to encroach upon the rights of persons, and it is therefore expected that if the contrary is intended it will be made manifest, if not in express words, at least by clear implication and beyond reasonable doubt. If the statute is ambiguous, the court should lean to the interpretation which will support existing rights.

In our view, sub-section 48(13) of the *Pension Benefits Act* does not express the required clear and unequivocal Legislative intention to take away or interfere with an entitlement to a pre-retirement death benefit that is payable to a person (an eligible spouse as at the date of death or designated beneficiary), where the domestic contract that would interfere with that entitlement is between the deceased pension plan member and another party, a former spouse.

Counsel for the Superintendent pointed out the lack of a provision similar to subsection 48(13) in the scheme of post-retirement benefits set out in section 44 of the *Pension Benefits Act* as an indication of the Legislature's intention to permit a former spouse to "trump" an existing spouse's entitlement only where the member has died prior to retiring. Counsel also relied upon *Suchostawsky v. Metropolitan Life Insurance Co.*, [1993] O.J. No. 1650 (Q.L.) (Gen. Div). Clearly, in cases of post-retirement death of the plan member where there is a subsequent spouse as at the date of retirement who has not executed a waiver, a domestic contract between the member and a former spouse that purported to grant an interest in the survivor benefit to the former spouse is unenforceable under the *Act*: *Britton Estate v. Britton* (1993), 1 C.C.P.B. 236 (Gen. Div.), affirmed on this point, (1995) 16 R.F.L. (4th) 266 (Div. Ct.). In Suchostawsky, the court enforced a provision in a divorce judgment so as to require payment of a portion of a pre-retirement death benefit to a former spouse, even though there was an eligible spouse as at the date of death. However, there is little in the reasons to indicate how the court came to this conclusion. The result is also inconsistent with the high priority given to spousal entitlements created either as at the date of death in the case of pre-retirement benefits or as at the date of retirement in the case of post-retirement survivor benefits.

To adopt the Superintendent's interpretation would be to accept that the Legislature somehow intended to establish a regime where the ability of a former spouse to enforce certain rights under a domestic contract and to deprive an otherwise eligible existing spouse is dependent upon forces beyond anyone's control: the timing of the plan member's death (pre-or post-retirement). The Tribunal cannot accept that interpretation and the uncertainty that it would cause. Consequently, the provisions in the Separation Agreement as they relate to the payment of pre-retirement death benefits are not effective to give rise to any rights under subsection 48(13) of the *Pension Benefits Act*.

Subsection 48(13) would only divide payment of an entitlement to a pre-retirement death benefit payable to an eligible surviving spouse where it was the surviving spouse who was a party to the domestic contract or was bound by or subject to an order under Part I of the *Family Law Act* requiring such division. For example, where the pension plan member has entered into a cohabitation agreement or a marriage contract with a person who was their spouse on the date of their death, the death benefit would vest in the spouse, and would be subject to the terms of the cohabitation agreement or marriage contract, which might limit the spouse's entitlement to the death benefit. The cohabitation agreement or marriage contract might provide that the pre-retirement death benefits are to be paid to the member's adult children or former spouse, rather than to the surviving spouse.

The Tribunal is sympathetic to the position Ms. Stairs finds herself in but having found the Board's interpretation of ss. 48(13) of the

Pension Benefits Act to be the proper one, the Tribunal must find that she is not entitled to payment of any portion of the death benefit.

ORDER

Accordingly, the answer to the first issue is in the negative and it is not necessary to address issues 2 through 6. The Tribunal directs that the Superintendent refrain from issuing the Order contained in the Notice of Proposal dated May 6, 1999.

At the conclusion of the hearing, counsel for Ms. Stairs requested an opportunity to address the issue of costs. The Tribunal remains seized with respect to the matter of costs in the event any party wishes to make submissions.

DATED at Toronto, this 31st day of May, 2000.

Martha Milczynski
Chair, Financial Services Tribunal

Judith Robinson
Member, Financial Services Tribunal

William Forbes
Member, Financial Services Tribunal

INDEX NO.: FST Decision #13 (FST File No. P0100-2000)

PLAN: London Life Insurance Company Staff Pension Plan
Registration No. 0343368

DATE OF DECISION: July 25, 2000

PUBLISHED: FSCO Bulletin 10/1 and FSCO website

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28 ("the *Act*");

AND IN THE MATTER OF a proposal by the Superintendent of Financial Services to make an Order under Section 69 of the *Act* respecting the London Life Insurance Company Staff Pension Plan, Registration No.0343368

AND IN THE MATTER OF a Hearing in Accordance with subsection 89(8) of the *Act*.

BETWEEN: LONDON LIFE INSURANCE COMPANY
Applicant
– and –
SUPERINTENDENT OF FINANCIAL SERVICES AND THE EXECUTIVE MEMBERS OF THE LONDON LIFE MEMBERS' COMMITTEE, ALEX MURPHY, DON MATHEWSON AND BARBARA MCGEE
Respondents

ORDER

UPON REQUEST made by London Life Insurance Company ("London Life") for an order that all information produced by it in response to interrogatories posed by the Superintendent of Financial Services (the "Superintendent") and in response to a request for disclosure of documentation made by Alex Murphy ("Murphy"), Don Mathewson ("Mathewson") and Barbara McGee ("McGee") be held confidential by the parties was heard at the pre-hearing conference held on July 11, 2000.

ON BEING ADVISED THAT none of the parties opposed the order sought by London Life.

IT IS ORDERED THAT all information produced by London Life in response to interrogatories posed by the Superintendent and in response to a request for disclosure of documentation made by Murphy, Mathewson and McGee (the "Confidential Information") shall, except as otherwise required by law, be kept confidential by the parties to this proceeding and their counsel and shall not be disclosed to any other person for any purpose whatsoever except as authorized by further order of this tribunal or agreement by London Life.

IT IS FURTHER ORDERED THAT prior to filing any Confidential Information with this Tribunal or referencing the Confidential Information in any written submissions to be filed with this Tribunal, counsel for the Superintendent and/or Murphy, Mathewson and McGee will provide reasonable notice to counsel to London Life of its intention to do so, so that London Life has an opportunity to make submissions to the Tribunal as to the way in which such Confidential Information is filed with the Tribunal.

DATED the 25th day of July, 2000 at the City of Toronto, in the Province of Ontario.

Martha Milczynski

INDEX NO.: FST Decision #14 (FST File No. P0100-2000)

PLAN: London Life Insurance Company Staff Pension Plan, Registration No. 0343368

DATE OF DECISION: September 18, 2000

PUBLISHED: Bulletin 10/1 and FSCO website

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28 (the "*Act*");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to make an order under Section 69 of the *Act* respecting London Life Insurance Company Staff Pension Plan, Registration No. 0343368 (the "Plan");

AND IN THE MATTER OF a Hearing in Accordance with subsection 89(8) of the *Act*.

BETWEEN: LONDON LIFE INSURANCE COMPANY
Applicant
– and –
SUPERINTENDENT OF FINANCIAL SERVICES AND THE EXECUTIVE MEMBERS OF THE LONDON LIFE MEMBERS' COMMITTEE, ALEX MURPHY, DON MATHEWSON AND BARBARA MCGEE
Respondents

BEFORE:

Mr. Colin H.H. McNairn, Vice Chair of the Tribunal and Chair of the Panel

Mr. Louis Erlichman, Member of the Tribunal

Mr. C.S. (Kit) Moore, Member of the Tribunal

APPEARANCES:

For the Executive Members of the London Life Members' Committee: Ms. Dona L. Campbell

For the Superintendent of Financial Services: Ms. Deborah McPhail

For London Life Insurance Company: Mr. Jeffrey W. Galway

HEARING
August 29, 2000

DATE:
Toronto, Ontario

REASONS FOR ORDER

The Background

On August 29, 2000 the Tribunal held an oral hearing on a preliminary motion, made by the Executive Members of the London Life Members' Committee (the "Executive Members"), for an order directing London Life Insurance Company ("London Life") to disclose certain information in connection with this proceeding. At the conclusion of the hearing, after receiving submissions from all the parties, the Tribunal made the order set out in Appendix A (the "Order") and undertook to provide written reasons for that Order.

The proceeding to which the Order relates is a request for a hearing filed by London Life pursuant to subsection 89(8) of the *Pension Benefits Act*, as amended (the "*Act*"). That request concerns a Notice of Proposal by the Superintendent of Financial Services (the "Superintendent") to order the London Life Insurance Company Staff Pension Plan,

Registration Number 0343368 (the "Plan") to be wound up in part in relation to those members and former members of the Plan who were employed by London Life and who ceased to be so employed effective between January 1, 1996 and December 31, 1996 (or the date the last Plan member ceased such employment) as a result of the reorganization of the business of London Life or the discontinuance of the business carried on by it at one or more specific locations.

At a pre-hearing conference held on July 11, 2000, the parties agreed that the issues to be determined in the proceeding include the following:

(a) Did a significant number of members of the Plan cease to be employed by London Life as a result of a reorganization or a discontinuance of all or part of London Life's business at any time between January 1, 1996 and December 31, 1996, pursuant to clause 69(1)(d) of the *Act*?

(a.1) Did those who "voluntarily" left employment with London Life through resignation, early retirement, or otherwise, cease to be employed by London Life within the meaning of clause 69(1)(d) of the *Act* as a result of a reorganization or discontinuance of all or part of London Life's business?

(b) Was all or a significant portion of the business carried on by London Life at one or more specific locations discontinued at any time between January 1, 1996 and December 31, 1996, pursuant to clause 69(1)(e) of the *Act*?

(c) If the answer to (a), (a.1), or (b) is yes, should the Tribunal, under subsection 89(9) of the *Act*, direct the Superintendent to order a partial wind-up of the Plan?

(d) If the answer to (a) is yes, what are the appropriate commencement and end dates for the partial wind-up order concerning the Plan?

Disposition of the Motion

London Life resisted disclosing certain information sought by the Executive Committee on this motion on the basis that it constitutes personal information of Plan members who served as administrative staff during the period 1995-1997, specifically their names and addresses, termination dates and reasons for termination, if they were terminated during the period, and payroll information relating to such members. London Life pointed to payroll information as being particularly sensitive.

We set out a three-part test for determining whether pre-hearing disclosure of information should be made in our reasons for orders, dated June 21, 1999, in Monsanto (FST File No. P0013). The first two parts of that test have been clearly met in respect of the personal information in this case. In particular, the information is,

> arguably relevant to one or more of the issues in the proceeding and those issues are not frivolous (the issues having been agreed among the parties at the pre-hearing conference, as noted above), and
>
> sufficiently particularized that the party from whom the information is requested should be able to respond efficiently and with a reasonable degree of precision.

The information sought is arguably relevant for the purpose of deciding which Plan members might qualify to be counted for determining whether a partial wind-up should be ordered and for determining who should be properly included in any partial wind-up group. These

determinations appear to be required in order to resolve the issues raised in this proceeding.

The final part of the test is satisfied if the information is not privileged. Privilege will arise if the information consists of communications where,

> the communications originate in a confidence that they will not be disclosed,
>
> that confidence is essential to the full and satisfactory maintenance of the relationship between the parties to the communications,
>
> the relationship is one that in the opinion of the community ought to be "sedulousy fostered", and
>
> the injury to the relationship that would result from disclosure of the communications must be greater than the benefit thereby gained for the correct disposal of the proceedings. (See *Slavutych v. Baker* (1975), 55 D.L.R. (3d) 224, at p. 228 (Supreme Court of Canada))

Most of the personal information at issue on this motion – the termination dates of employees, the reasons for their termination, and payroll information – did not originate in communications from the affected employees but was generated by London Life and, therefore, cannot have the benefit of privilege. With respect to the balance of the personal information – the addresses of those who were employees during the relevant period, in association with their names – we are of the opinion that any injury to the employer-employee relationship that could result from disclosure would not be greater than the benefit gained for the correct disposal of these proceedings if such disclosure were made. Therefore, the last element of the test for privileged communications is not satisfied. We express no opinion as to whether the other elements of that test are satisfied in the circumstances of this case.

London Life also argued that it was under an obligation of confidentiality in respect of the personal information at issue here that ought to be taken into account by the Tribunal. Specifically, it referred to its privacy guidelines which indicate, among other things, that London Life does not disclose personal information, including that received from employees, without consent except in three situations, one of which is where disclosure is "required by law". Even if we are entitled to have regard to these guidelines, in deciding whether to order disclosure of personal information sought in this case, the guidelines purport to apply only to personal information about employees when it was received from employees. As noted above, most of the personal information with which we are concerned on this motion was not provided by employees. In any event, the guidelines qualify the non-disclosure commitment by providing an exception when disclosure is required by law. Any order of disclosure that we make on this motion will have the effect of requiring disclosure by law, with the result that London Life's compliance with that order will not be at variance with the self-imposed restrictions under its privacy guidelines.

Finally, London Life suggested, as an alternative to the order requested by the Executive Committee, an order directing the disclosure of the personal information in question only to the Superintendent, who could then make the appropriate contact with any additional Plan members who might qualify to be counted in determining whether a partial wind-up should be ordered and for determining who should be included in any partial wind-up group. We are

reluctant to make any order that affords any of the parties the benefit of more disclosure than another party receives.

Although requested to do so by the Executive Committee, we make no order with respect to disclosure of the costing of Plan amendments or Plan benefits during the applicable period or with respect to the discovery of an official of London Life who has knowledge of the termination and hiring practices of London Life from 1995-1997. We expect that the relevant information that might be elicited in those ways can be agreed upon and dealt with by the parties. If any issues remain that cannot be resolved, they can, of course, be brought to this panel of the Tribunal as it will remain seized of disclosure issues that any of the parties may wish to raise in this proceeding.

The Executive Committee and London Life both requested costs on this motion, but agreed at the end of the hearing on the motion to postpone argument on those requests.

DATED the 18th day of September, 2000 at the City of Toronto, Province of Ontario.

Colin H. H. McNairn,
Chair

Louis Erlichman,
Member

C.S. (Kit) Moore
Member

Ontario

Appendix A

Order

London Life Insurance Company is hereby ordered to disclose to the Executive Members of the London Life Members' Committee and to the Superintendent of Financial Services the following, within three weeks of the date of this order:

1. The names, addresses, termination dates and reasons for termination of former administrative staff members of the London Life Insurance Company Staff Pension Plan, Registration No. 1343368 (the "Plan") for the period 1995-1997; and
2. Payroll records relating to administrative staff members of the Plan for the period 1995-1997.

DATED this 29th day of August, 2000.

INDEX NO.: FST Decision #15 (FST File No. P0092-1999)

PLAN: Employees Pension Plan of BICC Phillips Inc., Registration 293761

DATE OF DECISION: November 16, 2000

PUBLISHED: Bulletin 10/1 and FSCO website

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28 (the "*Act*");

AND IN THE MATTER OF a Partial Plan Wind-Up Report submitted by BICC Cables Canada Inc. to the Superintendent of Financial Services in respect of the Employees Pension Plan of BICC Phillips Inc., Registration Number 293761 (the "Plan");

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

BETWEEN: BICC CABLES CANADA INC.
Applicant
– and –
SUPERINTENDENT OF FINANCIAL SERVICES
Respondent

BEFORE:

C. S. (Kit) Moore, Chair of the Panel and Member of the Tribunal

William M. Forbes, Member of the Tribunal

Colin H. H. McNairn, Vice Chair of the Tribunal

APPEARANCES:

For BICC Cables Canada Inc.:
James D. G. Douglas, Markus F. Kremer

For the Superintendent of Financial Services:
Deborah McPhail

HEARING HELD:
October 12, 2000
Toronto, Ontario

REASONS FOR DECISION

The Background

As a result of a plant closure and downsizing, BICC Cables Canada Inc. ("BICC") (formerly BICC Phillips Inc.) prepared a Partial Wind-Up Report dated June, 1999 (the "Partial Wind-Up Report") in respect of a partial wind-up as at May 17, 1996 (the "Partial Wind-Up") of the Employees Pension Plan of BICC Phillips Inc., Registration No. 293761 (the "Plan") (now called the Employees Pension Plan of BICC Cables Canada Inc.). The Partial Wind-Up Report was filed with the Superintendent pursuant to the provisions of the *Act*.

On November 10, 1999, the Superintendent of Financial Services (the "Superintendent") issued a Notice of Proposal to Refuse to Approve the Partial Wind-Up Report (the "Notice of Proposal") because the Report made no provision for payment of certain special early retirement pensions referred to in section 7.3 of the Plan, for those Plan members affected by the Partial Wind-Up whose age plus years of continuous employment or membership in the Plan totalled at least fifty-five at the effective date of the Partial Wind-Up.

Under the authority of subsection 89(6) of the

Act, BICC requested a hearing before the Financial Services Tribunal in respect of the Notice of Proposal. The Tribunal received written submissions from the parties, namely BICC and the Superintendent, and heard their oral arguments at a hearing held October 12, 2000. The Tribunal also received letters of comment from other interested persons.

The Facts

BICC operated the Plan, amending it in 1992 to provide for a "special early retirement pension," as set out in section 7.3 of the Plan. The text of that section is reproduced below under the heading "The Principal Plan Provision at Issue."

The Partial Wind-Up Report made no provision for the payment of special early retirement pensions to any of those members of the Plan affected by the Partial Wind-Up nor did it value any such pensions.

On July 19, 1999, the Superintendent authorized the distribution of the assets representing the defined benefit entitlements under the Plan to the members, former members and other persons affected by the Partial Wind-Up in accordance with the Partial Wind-Up Report, "conditional upon additional adjustments to the benefits of affected members and the employer funding the additional cost, should it be determined that the Special Early Retirement Pension benefit must be provided on wind up."

The Issues

At a pre-hearing conference held on April 17, 2000, the parties agreed on the wording of the substantive issues to be addressed in this proceeding. That wording was included in the pre-hearing conference memorandum as follows:

> (1) What is the proper interpretation of section 7.3 of the Plan?
>
> (2) Should this Tribunal direct that the Respondent [the Superintendent] carry out the proposal set out in the Notice of Proposal?

The Principal Plan Provision at Issue

Section 7.3 of the Plan sets out the requirements for determining the special early retirement date and eligibility for a special early retirement pension, as follows:

7.3 Special Early Retirement Date

If the Continuous Service of a Member terminates before normal retirement date under special circumstances as consented by the Company,

> (a) the Member will be considered to have retired early for the purposes of the Plan on his special early retirement date which is the first day of the month coincident with or next following the month in which the Member's Continuous Service terminates, and
>
> (b) the Member will be entitled to receive a special early retirement pension.

For the purposes of the Plan, "Continuous Service" means an uninterrupted period of employment (sections 2.9 and 5.1), a "Member" means an employee or former employee who has become a member of the Plan and continues to be entitled to benefits under the Plan (section 2.29) and "normal retirement date" means the first day of the month coincident with or next following a Member's 65th birthday (section 7.1).

The Principal Statutory Provisions that are Relevant

The provisions of the *Act* that are particularly relevant to this proceeding are as follows:

> **40.-**(1) A pension plan may provide the following ancillary benefits:

5. Early retirement options and benefits in excess of those provided by section 41 (early retirement option).

41.-(1) A former member is entitled to elect to receive an early retirement pension under the pension plan if he or she,

(a) terminated employment on or after the 1st day of January, 1988;

(b) is entitled to a deferred pension under this *Act*; and

(c) is within ten years of attaining the normal retirement date.

74.-(1) A member in Ontario of a pension plan whose combination of age plus years of continuous employment or membership in the pension plan equals at least fifty-five, at the effective date of the wind up of the pension plan in whole or in part, has the right to receive,

(a) a pension in accordance with the terms of the pension plan, if, under the pension plan, the member is eligible for immediate payment of the pension benefit;

(b) a pension in accordance with the terms of the pension plan, beginning at the earlier of,

(i) the normal retirement date under the pension plan, or

(ii) the date on which the member would be entitled to an unreduced pension under the pension plan if the pension plan were not wound up and if the member's membership continued to that date; or

(c) a reduced pension in the amount payable under the terms of the pension plan beginning on the date on which the member would be entitled to the reduced pension under the pension plan if the pension plan were not wound up and if the member's membership continued to that date.

74.-(7) For the purposes of this section, where the consent of an employer is an eligibility requirement for entitlement to receive an ancillary benefit, the employer shall be deemed to have given the consent.

The Arguments

BICC argued that section 7.3 of the Plan is intended to provide special early retirement benefits to Plan members if their continuous service is terminated in a situation involving special circumstances determined and consented to by the employer. As BICC did not make that determination, BICC took the position that none of the members of the Plan affected by the Partial Wind-Up was entitled to receive a special early retirement pension under section 7.3 of the Plan. BICC then argued that the deemed consent in subsection 74(7) of the *Act* does not operate to confer such an entitlement for two reasons. First, the *Act* cannot supply the determination that "special circumstances" exist under section 7.3 of the Plan, as that determination is for BICC to make in its discretion. Second, subsection 74(7) operates only where the consent of an employer is an eligibility requirement for an "ancillary benefit." BICC maintained that a special early retirement pension under section 7.3 of the Plan is not an "ancillary benefit" as section 7.3 does not confer early retirement options or benefits "in excess of" those provided by section 41 of the *Act* and does not limit eligibility to Plan members of a pension plan who are within ten years of normal retirement, which is a limiting factor in section 41.

The Superintendent argued that "special circumstances" in section 7.3 of the Plan logically means circumstances that are special in the sense that they would not entitle a member to an early retirement pension under any other

provisions of the Plan. Therefore, the consent of BICC called for by section 7.3 is a consent to early termination and need not involve a determination of "special circumstances." Consequently, subsection 74(7) of the *Act* can operate to deem such consent to be given, in the event of the Partial Wind-Up. The Superintendent argued that subsection 74(7) applies in this case because the early retirement pension under section 7.3 of the Plan is a true "ancillary benefit"; it affords an option "in excess of" the option provided under section 41 of the *Act* in that it provides for a special early retirement pension for a Plan member more than ten years from normal retirement.

Reasoning and Results

The Plan contains no definition of the term "special circumstances" as used in section 7.3 nor any statement of the purpose of that section that would assist in understanding the meaning of the section. Section 7.3 must, therefore, be interpreted in the overall context of the Plan without the benefit of such aids.

We agree with the Superintendent that the most reasonable interpretation of section 7.3, taken in context, is that it provides for a special early retirement pension in the event that a member's continuous service terminates before the normal retirement date in circumstances in which an early retirement pension would not otherwise be payable under the Plan. Other sections of the Plan (sections 7.2 and 7.4) provide for an early retirement pension or an unreduced early retirement pension for a Plan member whose continuous service terminates before the normal retirement date and who meets the age or age and service qualifications, prescribed by the relevant section, at the time of termination. Therefore, the "special circumstances" to which section 7.3 logically relates are those other circumstances that do not qualify a member for an early retirement pension under another section of the Plan. The circumstances of those members of a partial wind-up group who are in that position can, therefore, be said to be "special circumstances" in the sense of section 7.3.

If the term "special circumstances" in section 7.3 of the Plan has the meaning set out above, there is no need for BICC to determine the scope of the term on an ad hoc basis by declaring "special circumstances" to exist for a particular member or class of members. Rather, the term speaks for itself and is capable of application in a particular case without any consent or other determination on the part of BICC.

In our view, the consent of the employer required by section 7.3 of the Plan refers to the early termination of the continuous service of a member under special circumstances. Even if special circumstances exist in respect of a member whose continuous service terminates before the normal retirement date, that member does not have a right, under section 7.3, to a special early retirement pension, unless BICC also gives its consent to the early termination of membership.

We are, therefore, in agreement with the Superintendent's interpretation of section 7.3 of the Plan. Had we been of the opinion that the interpretations of section 7.3 of the Plan urged by BICC and the Superintendent were equally compelling, we would still have favoured the Superintendent's interpretation on the basis that any ambiguity should be resolved against BICC as the drafter of the Plan (see *McCreight v. 146919 Canada Ltd.*, [1991] O.J. No. 136 (Q.L.) (Ont. H.C.), esp. at p. 12).

Having determined the proper interpretation of section 7.3 of the Plan, we turn our attention to the potential application of subsection 74(7)

of the *Act*, which involves consideration of the meaning of the term "ancillary benefit" as used in that subsection. This term is not defined in the *Act*, but subsection 40(1) of the *Act* states that a pension plan may provide certain kinds of "ancillary benefits," which include, in paragraph 5:

> Early retirement options and benefits in excess of those provided by section 41 (early retirement option).

The early retirement option under section 41 of the *Act* is available only to those members of a plan who are within ten years of normal retirement. "Ancillary benefits" is defined in the General Regulation under the *Act* (Ont. Reg. 909, as am.) as meaning the benefits referred to in subsection 40(1) of the *Act*, but this definition is simply for the purposes of the Regulation and not the *Act*.

We conclude that the special early retirement pension provided for in section 7.3 of the Plan is, in fact, an "ancillary benefit" in the sense of subsection 74(7) of the *Act*. It involves an early retirement option (if not also an early retirement benefit) that is in excess of the early retirement option provided for in section 41 of the *Act*. One of the accepted meanings of the phrase "in excess of" is "more than" (see *The Concise Oxford Dictionary*, 9th ed. (Oxford: Oxford University Press, 1995). In our view, a special early retirement pension under section 7.3 of the Plan is "more than" the early retirement option under section 41 of the *Act* because, unlike the latter option, it is not simply available to plan members who are within ten years of normal retirement.

We conclude that a member of the Plan who is affected by the Partial Wind-Up is entitled to a special early retirement pension, in accordance with subsection 74(1) of the *Act* as read with section 7.3 of the Plan, provided that,

- the member's age plus years of continuous employment or membership in the Plan total at least fifty-five at the effective date of the Partial Wind-Up in accordance with the opening clause of subsection 74(1), and
- the member does not qualify for an early retirement pension under any other provisions of the Plan with the result that the member's circumstances are "special" in the sense of section 7.3 of the Plan.

The only other qualification for a special early retirement pension – that of the consent of BICC under section 7.3 of the Plan – is deemed to be satisfied, on the Partial Wind-Up, by subsection 74(7) of the *Act*.

Consequently, the proposal of the Superintendent, in her Notice of Proposal, to refuse to approve the Partial Wind-Up Report, for failure to take account of the special early retirement pensions provided for in section 7.3 of the Plan, was proper. We, therefore, direct the Superintendent to carry out the proposal.

DATED at Toronto this 16th day of November, 2000.

C. S. (Kit) Moore
Chair of the Panel

William M. Forbes
Member of the Panel

Colin H.H. McNairn
Member of the Panel

INDEX NO.: FST Decision #16 (FST File No. P0068-1999)

PLAN: Consumers Packaging Inc. Pension Plan II, Registration 998682

DATE OF DECISION: December 8, 2000

PUBLISHED: Bulletin 10/1 and FSCO website

IN THE MATTER of the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the Financial Services Commission of Ontario *Act*, 1997, S.O. 1997, c. 28 (the "*Act*");

AND IN THE MATTER of a Partial Wind-up Report submitted by Consumers Packaging Inc. To the Superintendent of Financial Services respecting the Consumers Packaging Inc. Pension Plan II, Registration Number 998682 (the "Pension Plan");

AND IN THE MATTER OF a Hearing in accordance with subsection 89(8) of the *Act*;

AND IN THE MATTER of an Application for an Award of Costs, in connection with the Hearing Request, made by United Steelworkers of America, Local 203G;

BETWEEN: CONSUMERS PACKAGING INC. ("Consumers")
Applicant
– and –
UNITED STEELWORKERS OF AMERICA, LOCAL 203G
("Local 203")
Respondent
– and –
SUPERINTENDENT OF FINANCIAL SERVICES OF ONTARIO
(the "Superintendent")
Respondent

BEFORE:

Ms. Kathryn M. Bush, Vice-Chair of the Tribunal and Chair of the Panel

Mr. C.S. (Kit) Moore Member of the Tribunal and of the Panel

Ms. Joyce Stephenson, Member of the Tribunal and of the Panel

REPRESENTATIONS BY:

For United Steelworkers of America, Local 203G
Mr. Michael Mazzuca

For the Superintendent
Ms. Deborah McPhail

For Consumers Packaging Inc.:
Ms. Mary Picard

DATE OF REPRESENTATIONS:
On or before August 8, 2000

DECISION RELEASED:
December 11, 2000
Toronto, Ontario

REASONS FOR DECISION

This decision is in response to an application to the Tribunal by the United Steelworkers of America, Local 203G for an award of their costs in this proceeding in the amount of $9,000 or in the alternative in an amount to be assessed on a solicitor and client basis, against Consumers Packaging Inc.

The proceeding to which the application relates arose out of a Notice of Proposal by the Superintendent dated April 30, 1999 related to

the partial wind-up report filed by Consumers.

Consumers filed a hearing request with the Tribunal in respect of the Notice of Proposal on May 14, 1999. A Pre-Hearing Conference was convened by the Tribunal on August 19, 1999. At that Pre-Hearing Conference Local 203 was given party status in these proceedings. At the Pre-Hearing Conference all parties were represented and agreed to the issues in the proceeding. A Settlement Conference was also agreed to at the Pre-Hearing Conference and eventually took place on January 24, 2000. In addition, on agreement of the parties the hearing dates were scheduled for March 7, 8, and 9, 2000. At the Settlement Conference no settlement was reached and deadlines were set for an additional disclosure motion. In addition, deadlines were set for expert witness reports. By letter dated March 1, 2000, six days before the initial hearing date, counsel for Consumers advised the Tribunal that Consumers was withdrawing its Request for a Hearing. By letter dated March 6, 2000, counsel for Local 203 wrote to the Registrar of the Tribunal advising that Local 203 was not prepared to abandon any claim for costs until it had an opportunity to review any revised partial wind-up report filed by Consumers. A revised wind-up report was filed with the Tribunal on May 19, 2000. On July 7, 2000 Local 203 indicated that it would seek costs in this matter. The Superintendent advised that she took no position with respect to the application for costs.

We have concluded an award of costs in favour of Local 203 is not justified in the circumstances of these proceedings.

Firstly, the "Financial Services Tribunal Practice Direction on Cost Awards" (the "Practice Direction") makes it clear that the Tribunal need not follow the civil court practice where the usual rule is that the unsuccessful party pay the successful party's costs. Rather the Tribunal is more likely to make a cost award against the party "if it has engaged in conduct which is clearly unreasonable, frivolous, or vexatious. The Tribunal is less likely to make a cost award against a party that has been reasonable, co-operative and helpful to the Tribunal". In this matter, Consumers always appeared reasonable, co-operative and helpful to the Tribunal.

Secondly, in a matter which was settled before hearing, it is difficult to determine that the position of the party was frivolous, vexatious or manifestly unfounded as described in the Practice Direction. The fact that a matter may appear likely to be unsuccessful for a party may not by itself be sufficient under the Practice Direction to award costs against that party.

Thirdly, in order that parties are better able to assess their rights of having costs assessed against them, we believe a matter should fall clearly within the conduct described in the Practice Direction before costs are awarded. In the circumstances of this case, The Tribunal agrees that the change of position taken by Consumers created some delay in the proceedings, but the Tribunal is not convinced that this delay was unnecessary or unreasonable.

DATED this 8th day of December, 2000 at the City of Toronto, Province of Ontario.

Kathryn M. Bush
Vice Chair of the Tribunal and
Chair of the Panel

C.S. (Kit) Moore
Member of the Panel

Joyce Stephenson
Member of the Panel

INDEX NO.: FST Decision #17 (FST File No. P124-2000)

PLAN: Subsection 67(5) of the *Pension Benefits Act*

DATE OF DECISION: December 21, 2000

PUBLISHED: Bulletin 10/1 and FSCO website

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

AND IN THE MATTER OF a Notice of Proposal to Refuse to Consent by the Superintendent of Financial Services dated August 14, 2000, with respect to an Application for withdrawal of money from a life income fund, locked-in retirement account, or a locked-in retirement income fund (a "locked-in account") based on financial hardship;

AND IN THE MATTER OF a Hearing under section 89(8) of the *Act*.

REASONS

1. The Applicant in this matter requested a hearing in respect of the Superintendent of Financial Services (the "Superintendent") Notice of Proposal to Refuse to Consent dated August 14, 2000 that denied the Applicant access to funds associated with his accrued pension benefit. The Applicant had made his application for these funds pursuant to the recently amended provisions of the *Pension Benefits Act* (namely,subsection 67(5) of the *Pension Benefits Act*) to permit access to locked-in pension funds on the grounds of financial hardship.
2. The Superintendent's grounds for the denial were that:

   (a) the funds were not of a type to which the Superintendent could grant access under the Legislation; and

   (b) the debt owed by the Applicant was not secured against his principle residence and there was no indication that the Applicant faced eviction.
3. Subsection 67(5) of the *Pension Benefits Act* is clear that access or "unlocking" is only possible with respect to a "prescribed retirement savings arrangement of the type that is prescribed".
4. Section 84 of Regulation 909 of the *Pension Benefits Act* prescribes the types of retirement savings arrangements for the purposes of subsection 67(5): a life income fund; a locked-in retirement account and a locked-in retirement income fund.
5. The Regulation defines each of the above arrangements as follows:

   "Life Income Fund" means a RRIF that meets the requirements set out in Schedule 1;

   "Locked-in Retirement Account" means an RRSP that meets the requirements set out in subsection 21(2);

   "Locked-in Retirement Income Fund" means a RRIF that meets the requirements set out in Schedule 1;

   "RRIF" means a registered retirement income fund established in accordance with the *Income Tax Act* (Canada);

"RRSP" means a registered retirement savings plan established in accordance with the *Income Tax Act* (Canada).

6. The Applicant in this case is an active member of a registered pension plan and he has sought to withdraw funds from this registered pension plan. Such access is not permitted by the *Pension Benefits Act* and Regulation. The application does not fall within subsection 67(5) of the *Pension Benefits Act*. It is therefore not necessary to consider the further ground for the Superintendent's refusal.

Order

7. The Superintendent's Notice of Proposal to Refuse to Consent dated August 14, 2000 is affirmed and this application is dismissed.

DATED at Toronto this 21st day of December, 2000.

Martha Milczynski
Chair
Financial Services Tribunal

INDEX NO.: FST Decision #18 (FST File No. P126-2000)

PLAN: Subsection 67(5) of the *Pension Benefits Act*

DATE OF DECISION: January 9, 2001

PUBLISHED: Bulletin 10/1 and FSCO website

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

AND IN THE MATTER OF a Notice of Proposal to Refuse to Consent by the Superintendent of Financial Services (the "Superintendent"), dated September 15, 2000, with respect to an Application for withdrawal of money from a life income fund, locked-in retirement account, or a locked-in retirement income fund (a "locked-in account") based on financial hardship;

AND IN THE MATTER OF a Hearing under subsection 89(8) of the *Act*;

REASONS

1. The Applicant in this matter requested a hearing in respect of the Superintendent's Notice of Proposal to Refuse to Consent dated September 15, 2000 that denied the Applicant access to funds associated with his registered pension plan. The Applicant had applied to withdraw some of these funds, pursuant to subsection 67(5) of the *Act*, which reads as follows:

   67.–(5) Despite subsections 1 and 2, upon application, the Superintendent may consent to the commutation or surrender, in whole or in part, of a prescribed retirement savings arrangement of a type that is prescribed for the purposes of this subsection if the Superintendent is satisfied as to the existence of such circumstances of financial hardship as may be prescribed.

2. The Superintendent's grounds for denial were that:

   1.the plan from which a withdrawal was requested is a registered pension plan, which is not one of the prescribed types of retirement savings arrangements for which the Superintendent may consent to an unlocking of funds;

   2. the low income circumstance of financial hardship prescribed by s. 87(1)7 of Regulation 909, R.R.O. 1990, as amended (the "Regulation") is not satisfied; and

   3. the amount the Applicant may withdraw would be a negative amount, based on the prescribed formula in s. 89(6) of the Regulation.

3. Subsection 67(5) of the *Act* is clear that commutation or surrender (that is, unlocking) of a locked-in account is possible only for "a prescribed retirement savings arrangement of a type that is prescribed". For these purposes, section 84 of the Regulation prescribes only a life income fund, a locked-in retirement account and a locked-in retirement income fund, which are defined in the Regulation as follows:

   "Life Income Fund" means a RRIF that meets the requirements set out in Schedule 1;

   "Locked-in Retirement Account" means an RRSP that meets the requirements set out in subsection 21(2);

> "Locked-in Retirement Income Fund" means a RRIF that meets the requirements set out in Schedule 2;

The Regulation also defines an RRIF as "a registered retirement income fund established in accordance with the *Income Tax Act* (Canada)", and an RRSP as "a registered retirement savings plan established in accordance with the *Income Tax Act* (Canada)."

4. The Applicant in this case has applied to withdraw funds from an account held under a registered pension plan. A registered pension plan is not one of the types of retirement savings arrangements prescribed in section 84 of the Regulation for purposes of subsection 67(5) of the *Act*. As a result, the application does not meet the requirements of subsection 67(5) of the *Act*, and we need not consider the additional grounds for the Superintendent's refusal.

ORDER

The Superintendent's Notice of Proposal to Refuse to Consent, dated September 15, 2000 is affirmed and this application is dismissed.

DATED at Toronto this 9th day of January, 2001.

Mr. C.S. (Kit) Moore
Member, Financial Services Tribunal

INDEX NO.: FST Decision #19 (FST File No. P132-2000)

PLAN: Subsection 67(5) of the *Pension Benefits Act*

DATE OF DECISION: January 22, 2001

PUBLISHED: Bulletin 10/1 and FSCO website

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

AND IN THE MATTER OF a Notice of Proposal to Refuse to Consent by the Superintendent of Financial Services (the "Superintendent"), dated October 23, 2000, with respect to an application for withdrawal of money from a life income fund, locked-in retirement account, or a locked-in retirement income fund (a "locked-in account") based on financial hardship;

AND IN THE MATTER OF a Hearing under subsection 89(8) of the *Act*;

REASONS

1. The Applicant in this matter requested a hearing in respect of the Superintendent's Notice of Proposal to Refuse to Consent dated October 23, 2000 that denied the Applicant access to funds associated with his locked-in registered retirement savings plan. The Applicant had applied to withdraw these funds, pursuant to subsection 67(5) of the *Act*, which reads as follows:

   67.–(5) Despite subsections 1 and 2, upon application, the Superintendent may consent to the commutation or surrender, in whole or in part, of a prescribed retirement savings arrangement of a type that is prescribed for the purposes of this subsection if the Superintendent is satisfied as to the existence of such circumstances of financial hardship as may be prescribed.

2. The Superintendent's grounds for denial were that:

   (a) The low income circumstance of financial hardship prescribed by s. 87(1)7 of Regulation 909, R.R.O. 1990, as amended (the "Regulation") is not satisfied; and

   (b) The amount the Applicant may withdraw would be a negative amount, based on the prescribed formula in s. 89(6) of the Regulation.

3. Before this case was decided, a pre-hearing by telephone conference call was convened with the Applicant and counsel for the Superintendent to discuss certain preliminary matters. As a result, it was agreed that:

4. The Tribunal hearing should be by written submission only; and

5. The only issue to be determined by the Tribunal is whether or not the Superintendent should have consented to the application.

6. This application considered by the Superintendent in reaching her decision included information provided by the Applicant in Part 2A – Withdrawal Based on Low Income. An application submitted on this basis is subject to the circumstances of financial hardship set out in paragraph 7 of subsection 87(1) of the Regulation as follows:

   87.–(1) The following circumstances of financial hardship are prescribed for the purposes of subsection 67(5) of the *Act*:

7. The owner's expected total income from all sources before taxes for the 12-month period following the date of signing the application is 66 2/3 per cent or less of the Year's Maximum Pensionable Earnings ["YMPE"] for the year in which the application is signed.

5. This application was signed in the year 2000, for which the Canada Pension Plan's YMPE was $37,600, in which case 66 2/3 per cent of the YMPE would be $25,066.66. The Applicant has stated that his expected total income from all sources before taxes for the 12-month period following the date of signing the application is $43,349.02, which exceeds $25,066.66. In this case, the low income circumstances of paragraph 87(1)7 of the Regulation are not satisfied.

6. As a result, the application does not meet the requirements of subsection 67(5) of the *Act*, and we need not consider the additional grounds for the Superintendent's refusal.

ORDER

The Superintendent's Notice of Proposal to Refuse to Consent, dated October 23, 2000, is affirmed and this application is dismissed.

DATED at Toronto this 22nd day of January, 2001

Mr. C.S. (Kit) Moore
Member, Financial Services Tribunal

INDEX NO.: FST Decision #20 (FST File No. P0133-2000)

PLAN: Subsection 67(5) of the *Pension Benefits Act*

DATE OF DECISION: January 26, 2001

PUBLISHED: Bulletin 10/1 and FSCO website

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

AND IN THE MATTER OF a Notice of Proposal to Refuse to Consent (a "Notice") by the Superintendent of Financial Services (the "Superintendent") with respect to an application for withdrawal of money from a life income fund, a locked-in retirement account or a locked-in retirement income fund (a "locked-in account") based on financial hardship;

AND IN THE MATTER OF a Hearing under subsection 89(8) of the *Act*;

REASONS

1. The Applicant in this matter made three successive applications to the Superintendent for access to funds associated with a locked-in account in her name. In each case, the application was based on low income, one of several criteria of financial hardship prescribed by subsection 87(1) of Ontario Regulation 909, as amended (the "Regulation"), adopted under the *Act*.
2. The first such application, which requested a withdrawal of $5000 from the locked-in account, was dated June 27, 2000. The Superintendent allowed that application, in the full amount requested, by a Consent dated July 13, 2000. Although the Applicant subsequently characterized this application, in her Request for Hearing in this matter, as "based on property," the application included a completed Part 2A, which relates to withdrawal based on low income. The application did not include any of the other versions of Part 2, which relate to withdrawal based on other prescribed criteria of financial hardship.
3. The second application, which requested a withdrawal of an additional amount from the locked-in account, was dated August 10, 2000. The Superintendent proposed to refuse that application, by a Notice dated November 6, 2000, on the basis that section 89 of the Regulation precludes the making of more than one application for withdrawal from a locked-in account on the basis of low income during any 12-month period.
4. The third application, which requested the withdrawal of an amount from the locked-in account that was substantially the same as that requested in the second application, was dated September 5, 2000. The Superintendent proposed to refuse that application, by a Notice that was also dated November 6, 2000, on the same basis as she proposed to refuse the second application.
5. The Applicant submitted a Request for Hearing, dated November 25, 2000, to this Tribunal in accordance with the *Act*. The Notice that was attached to that Request was the Notice in respect of the second application. Therefore, the Request for Hearing should be treated as being in relation to the

Superintendent's proposed refusal of the second application.

6. The Hearing before the Tribunal in this matter was held by means of the exchange of documents.
7. Section 89 of the Regulation provides that the Superintendent's authority to consent to a withdrawal of funds from a locked-in account on applications based on low income is subject to the condition that only one such application may be made during each 12-month period, but an unsuccessful application is not to be counted as an application for the purposes of that limitation. In the present case, as the second application was based on low income and was made within 12 months of the first application, which was made successfully on the same basis, the Superintendent had no authority to approve the second application even if the low income criterion of financial hardship, which was found to be satisfied on the first application, continued to be met on the occasion of the second application, as may well have been the case. In other words, the Superintendent was not entitled to consider the merits of the second application. This Tribunal cannot consider those merits and direct the Superintendent to act in a manner that is inconsistent with the Regulation.
8. The Applicant could, of course, make a further application, without waiting for the expiry of the 12-month period from the first application, if such an application could be put on the basis of one of the criteria of financial hardship prescribed by the Regulation other than low income – for example, receipt by the Applicant or her spouse of a written demand in respect of a mortgage debt on her principal residence where she could face eviction if the debt were to remain unpaid. The Superintendent would have the authority to consider any such application on its merits.
9. In the circumstances, we must affirm the Superintendent's Notice in respect of the second application. Our reasons for that conclusion would equally apply if the Notice in respect of the third application were at issue before this Tribunal, with the result that our conclusion would be the same in respect of that Notice.

ORDER

The Superintendent is hereby directed to carry out the proposal contained in her Notice of Proposal to Refuse to Consent, dated November 6, 2000, directed to the Applicant and relating to an application dated August 10, 2000 for a withdrawal from a locked-in account of the Applicant.

DATED at Toronto, this 26th day of January, 2001.

Colin H. H. McNairn
Vice Chair
Financial Services Tribunal

INDEX NO.: FST Decision #21 (FST File No. P 137-2000)

PLAN: Subsection 67(5) of the *Pension Benefits Act*

DATE OF DECISION: January 29, 2001

PUBLISHED: Bulletin 10/1 and FSCO website

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

AND IN THE MATTER OF a Notice of Proposal to Refuse to Consent by the Superintendent of Financial Services (the "Superintendent"), dated November 27, 2000, with respect to an application for withdrawal of money from a life income fund, locked-in retirement account, or a locked-in retirement income fund (a "locked-in account") based on financial hardship;

AND IN THE MATTER OF a Hearing under subsection 89(8) of the *Act*;

REASONS

1. The Applicant in this matter requested a hearing in respect of the Superintendent's Notice of Proposal to Refuse to Consent dated November 27, 2000 that denied the Applicant access to funds associated with his locked-in registered retirement savings plan. The Applicant had applied to withdraw these funds, pursuant to subsection 67(5) of the *Act*, which reads as follows:

67.–(5) Despite subsections 1 and 2, upon application, the Superintendent may consent to the commutation or surrender, in whole or in part, of a prescribed retirement savings arrangement of a type that is prescribed for the purposes of this subsection if the Superintendent is satisfied as to the existence of such circumstances of financial hardship as may be prescribed.

2. The Superintendent's ground for denial was that the requirements of subsection 88(2) of Regulation 909, as amended, to the *Act* (the "Regulation") do not permit a withdrawal of any amount in this case.
3. Under subsection 88(2) of the Regulation an individual is entitled to withdraw an amount calculated using the formula A-(B-C) = D, where A is the amount the Applicant applied to withdraw, B is the market value of all the assets of the Applicant, and their spouse or same-sex partner, subject to certain prescribed exclusions, C is the total liabilities of the Applicant, and their spouse or same-sex partner, subject to certain prescribed exclusions, and D is the amount that the Applicant is entitled to withdraw.
4. In this case, the formula in subsection 88(2) of the Regulation results in no amount being eligible for withdrawal as the calculation would be: $14,000 – ($66,300 – 0) = 0. (The calculation cannot result in a negative amount.)
5. As a result, the application does not meet the requirements of subsection 67(5) of the *Act*, and therefore the Superintendent's refusal is affirmed.

ORDER

The Superintendent's Notice of Proposal to Refuse to Consent, dated November 27, 2000, is affirmed and this application is dismissed.

DATED at Toronto this 29th day of January, 2001.

Ms. Kathryn M. Bush
Vice-Chair, Financial Services Tribunal

INDEX NO.: FST Decision #22 (FST File No. P140-2001)

PLAN: Subsection 67(5) of the *Pension Benefits Act*

DATE OF DECISION: January 30, 2001

PUBLISHED: Bulletin 10/1 and FSCO website

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

AND IN THE MATTER OF a Notice of Proposal to Refuse to Consent by the Superintendent of Financial Services (the "Superintendent"), dated December 10, 2000, with respect to an application for withdrawal of money from a life income fund, locked-in retirement account, or a locked-in retirement income fund (a "locked-in account") based on financial hardship;

AND IN THE MATTER OF a Hearing under subsection 89(8) of the *Act*;

REASONS

1. The Applicant in this matter requested a hearing in respect of the Superintendent's Notice of Proposal to Refuse to Consent dated December 10, 2000 that denied the Applicant access to funds associated with a locked-in account. The Applicant had applied to withdraw these funds, pursuant to subsection 67(5) of the *Act*, which reads as follows:

   67.–(5) Despite subsections 1 and 2, upon application, the Superintendent may consent to the commutation or surrender, in whole or in part, of a prescribed retirement savings arrangement of a type that is prescribed for the purposes of this subsection if the Superintendent is satisfied as to the existence of such circumstances of financial hardship as may be prescribed.

2. The Superintendent's ground for denial was that the maximum amount the Applicant may withdraw, determined in accordance with subsections 89(6) and 88(2) of the Regulation, would be less than the minimum $500 withdrawal that may be authorized by the Superintendent, as specified under subsection 85(2)(a) of the Regulation.

3. The issue to be determined by the Tribunal is whether or not the Superintendent should have consented to the application.

4. An application of this nature is also subject to conditions and requirements prescribed in sections 83 through 89 of the Regulation. The following excerpts from those sections are particularly relevant to this application:

   85.-(2)(a) The application shall request that the consent authorize the withdrawal of...the amount calculated under this Part, which shall not be less than $500;

   88.-(2) Subject to section 89, ...the owner is entitled to withdraw an amount calculated using the formula, A - (B - C) = D in which

   "A" is the amount the owner applies to withdraw;

   "B" is the market value of all assets of the owner and the spouse or same-sex partner except the following:

   1. The owner's principal residence and all personal property related to its use.

2. Motor vehicles.

3. Personal effects, including clothing and jewellery.

4. Tools of the trade that are essential to the employment of the owner or the spouse or same-sex partner.

5. Assets that are necessary to the operation of a business or farm which the owner or the spouse or same-sex partner operates and has an interest in, up to a maximum of $50,000 for each person and for each business or farm. However, if the owner and the spouse or same-sex partner operate and have an interest in the same business or farm, the total amount for that business or farm shall not exceed $50,000;

"C" is the total of the liabilities of the owner and the spouse or same-sex partner, except liabilities secured against excluded assets listed under "B"; "(B - C)" cannot be less than 0;

"D" is the amount the owner is entitled to withdraw, net of any withholding tax and fee.

89.–(6) The amount the owner may apply to withdraw under section 88 is the amount by which "E" exceeds "F" where,

"E" is 50 per cent of the Year's Maximum Pensionable Earnings [YMPE] for the year in which the application is signed; and

"F" is 75 per cent of the owner's expected total income from all sources before taxes for the 12-month period following the date of signing the application.

5. This application was signed in the year 2000, for which the Canada Pension Plan's YMPE was $37,600, in which case 50 per cent of the YMPE would be $18,800. In Part 2A of the application, the Applicant has stated that her expected total income from all sources before taxes for the 12-month period following the date of signing the application is $24,000, in which case 75 per cent of this amount would be $18,000. In this case, the amount the Applicant may apply to withdraw is $18,800 less $18,000, or $800, determined in accordance with subsection 89(6) of the Regulation.

6. In Part 3 of the application, the Applicant stated that the total market value of assets to be included was $400 and total liabilities to be included were $0, resulting in a difference of $400. As a result, the amount the Applicant is entitled to withdraw, subject to any other prescribed conditions in the Regulation, is $400, determined in accordance with the formula contained in subsection 88(2) of the Regulation, as follows:

   D = $800 – ($400 – $0) = $400.

7. The calculated amount of $400 does not meet the minimum amount of withdrawal to which the Superintendent may consent, as prescribed by subsection 85(2)(a), which requires that "the amount calculated under this Part…shall not be less than $500". Therefore, the application does not meet the requirements of subsection 67(5) of the *Act*.

ORDER

The Superintendent's Notice of Proposal to Refuse to Consent, dated December 10, 2000, is affirmed and this application is dismissed.

DATED at Toronto this 30th day of January, 2001

Mr. C.S. (Kit) Moore
Member,
Financial Services Tribunal

INDEX NO.: FST Decision #23 (FST File No. P0100-2000)

PLAN: London Life Insurance Company Staff Pension Plan, Registration 0343368

DATE OF DECISION: February 7, 2001

PUBLISHED: Bulletin 10/1 and FSCO website

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28 (the "*Act*");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to make an order under Section 69 of the *Act* respecting London Life Insurance Company Staff Pension Plan, Registration No. 0343368 (the "Plan");

AND IN THE MATTER OF a Hearing in Accordance with subsection 89(8) of the *Act*.

BETWEEN: LONDON LIFE INSURANCE COMPANY
Applicant
and -
SUPERINTENDENT OF FINANCIAL SERVICES AND THE EXECUTIVE MEMBERS OF THE LONDON LIFE MEMBERS' COMMITTEE, ALEX MURPHY, DON MATHEWSON AND BARBARA MCGEE
Respondents

BEFORE:

Mr. Colin H.H. McNairn, Vice Chair of the Tribunal and Chair of the Panel

Mr. Louis Erlichman, Member of the Tribunal and of the Panel

Mr. William M. Forbes, Member of the Tribunal and of the Panel

APPEARANCES:

For the Executive Members of the London Life Members' Committee:
Ms. Dona L. Campbell

For the Superintendent of Financial Services:
Ms. Deborah McPhail
Ms. Lesa MacDonald

For London Life Insurance Company:
Mr. Jeffrey W. Galway
Ms. Lai-King Hum

HEARING DATES:

December 11-15 and December 19-20, 2000

REASONS FOR DECISION

The Background

The Superintendent of Financial Services (the "Superintendent") issued a notice of proposal, dated February 17, 2000, to make an order (the "Notice of Proposal") against London Life Insurance Company ("London Life") in which she proposed to order that the London Life Company Staff Pension Plan, Registration No. 0343368 (the "Plan") be wound up in part. The wind up was directed in relation to those members and former members of the Plan who were employed by London Life and who ceased to be so employed, effective between January 1, 1996 and December 31, 1996 or the date the last Plan member ceased employment (whichever is later) as a result of:

(i) The reorganization of the business of London Life; or

(ii) The discontinuance of all or a significant portion of the business carried on by London Life at one or more specific locations.

In issuing the Notice of Proposal, the Superintendent relied on clauses 69(1)(d) and 69(1)(e) of the *Pension Benefits Act*, as amended (the "*Act*"). The relevant parts of subsection 69(1) of the *Act* are as follows:

69(1) The Superintendent by order may require the wind up of a pension plan in whole or in part if

(d) a significant number of members of the pension plan cease to be employed by the employer as a result of the discontinuance of all or part of the business of the employer or as a result of the reorganization of the business of the employer;

(e) all or a significant portion of the business of the employer at a specific location is discontinued;

On March 6, 2000, London Life delivered to this Tribunal a written notice requesting a hearing in respect of the Notice of Proposal pursuant to subsection 89(6) of the *Act*. At a pre-hearing conference held on July 11, 2000, the executive members of the London Life Members' Committee, Alex Murphy, Don Mathewson and Barbara McGee (the "Members Committee representatives") were granted party status in this matter.

The Issues and their Resolution

We address the issues presented by this case in the manner and the order in which they were framed by the parties at the pre-hearing conference.

Issue (a) Did a significant number of members of the Plan cease to be employed by London Life as a result of a reorganization or discontinuance of all or part of London Life's business at any time between January 1, 1996 and December 31, 1996, pursuant to clause 69(1)(d) of the *Act*?

Issue (a.1) Did those who voluntarily left employment with London Life between January 1, 1996 and December 31, 1996, through resignation, early retirement, or otherwise, cease to be employed by London Life within the meaning of clause 69(1)(d) of the *Act* as a result of a reorganization or discontinuance of all or part of London Life's business?

On February 26, 1996, London Life issued a press release announcing plans "to restructure its Canadian operations to enhance the company's competitiveness, increase growth and improve customer service." The press release went on to state that "re-engineering initiatives, internal reorganization and outsourcing programs will result in expected staff reductions across Canada of approximately 400 over the course of a year."

The anticipated staff reductions as a consequence of this restructuring were to occur in administration – at head office and in the regional offices. The restructuring did not involve the sales staff of London Life.

London Life conceded that the implementation of these plans constituted a "reorganization of the business" of the company, in the sense of clause 69(1)(d) of the *Act*, but contended that a "significant number" of members of the Plan did not cease to be employed by London Life

"as a result of" the reorganization, as contemplated by clause 69(1)(d) of the *Act*. The company agreed that, in the circumstances of this reorganization, it was appropriate to look to terminations of employment of Plan members that occurred during the period from January 1, 1996 to December 31, 1996 in order to determine whether a significant number of members ceased to be employed as a result of the reorganization. However, it maintained that terminations during the period that were involuntary – i.e. those that were company initiated – were the only terminations that were relevant to that determination. In other words, voluntary terminations - i.e. those that occurred through resignation, early retirement or otherwise – should not be included.

The other parties to the proceeding maintained that voluntary and involuntary terminations should be taken into account since; it could reasonably be expected that some members who terminated voluntarily were influenced, to a significant extent, by the lack of security in their tenure or the increase in their workload, brought about by the reorganization, with the result that it was questionable whether they really left on a voluntary basis, and it would be a futile exercise to try to determine the reasons why particular members in fact terminated their employment in order to assess the voluntariness of their departures.

London Life acknowledged for the purposes of this proceeding that, during the period from January 1, 1996 to December 31, 1996, there were 384 involuntary terminations of administrative employees who were members of the Plan that were attributable to the reorganization. It maintained that this was not a significant number in the context of the Plan, which had a total membership of 8908 at the beginning of 1996. That membership can be broken down as follows:

5870 active members
2038 pensioners
825 deferred pensioners
175 terminations not settled
(i.e. options under the Plan on termination not yet elected)

In a Bulletin issued in September of 1990 (vol. 1, issue 3, at p. 17), the former Pension Commission of Ontario (the "PCO"), indicated that:

The question of what is a "significant number" [in the sense of what is now clause 69(1)(d) of the *Act*] will take into consideration a total plan basis and, if appropriate, a specific geographic location or membership class. As a general rule, a 20% drop in membership … will trigger further examination of the case by PCO staff.

(The statement of which this observation is a part was designated as PCO Policy No. W100-450, but that policy is now classified by the Financial Services Commission of Ontario ("FSCO"), the successor to the PCO in the latter's administrative and policy roles, as an "inactive pension policy;" see the FSCO Website at *www.fsco.gov.on.ca*)

In a subsequent decision of the PCO, following a hearing under the *Act* relating to a proposal by the Superintendent of Pensions to order a partial wind up of a Stelco pension plan, the PCO rejected an argument that 20% was a threshold below which it could be expected that a partial wind up would not be ordered (see *Stelco Inc. v. Superintendent of Pensions*, PCO Bulletin (1993), vol. 4, issue 1, p. 40, at p. 45). The PCO was of the opinion that the use of the term "significant" implies a more general and flexible standard and the need to consider each case on its merits." It concluded, in the case

before it, that "the termination of 700 members out of a total of 3996 during an 18-month period must be considered a significant number by virtually any standard."

In dismissing an appeal from this decision, the Ontario Divisional Court affirmed the proposition that an absolute number of terminations, considered without regard to their proportional impact, could be sufficiently high so as to constitute a "significant number" in the sense of clause 69(1)(d) of the *Act* (see *Stelco Inc. v. Ontario (Superintendent of Pensions)* (1994), C.C.P.B. 108, at p. 110 (an appeal from this decision was dismissed by the Court of Appeal, see (1995), 9 C.C.P.B. 126)). The Divisional Court made the following comments about the meaning of the word "significant" in this statutory provision:

> The company [Stelco] took the position that the word "significant" must always be given a meaning resulting from a comparison of the number in question with some other number. In this case, the company took the position that 700 or so employees who were terminated in this reorganization could not be regarded as significant without making some comparison of that number with the total number of employees of Stelco. In the factum of the Superintendent, the meaning given to "significant" is a "noticeably or measurably large amount." That may well be the appropriate meaning for the word in the context of this dispute. The word does not lend itself to a precise meaning. We see nothing wrong in the statement by the Commission that the termination of 700 employees could not be regarded as other than a termination of a significant number of employees. The Commission was saying that, regardless of the size of the overall business operation, 700 persons is a significant number of persons. We agree. (At p.110)

Therefore, in the present case, we are entitled to have regard to the absolute number of terminations of Plan members over the period from January 1, 1996 to December 31, 1996 in determining whether a "significant number" of such members ceased to be employed as a result of the reorganization of London Life. That number is, at least, 384, which London Life has acknowledged to be the number of Plan members who were involuntarily terminated as a result of the reorganization.

We are of the opinion that 384 is a "significant number" of members of the Plan ceasing to be employed, in the course of a year, as a result of the reorganization of the business of London Life. In light of this conclusion, we do not find it necessary to deal with the argument of the Members Committee representatives that the number 384 should be supplemented by the addition of some or all of those administrative employees of London Life who voluntarily terminated their employment during the relevant period – the year 1996 – for the purpose of determining whether a "significant number" of members of the Plan ceased to be employed as a result of the reorganization of London Life. Therefore, we do not comment on how issue (a.1), set out above, should be resolved.

While the foregoing reasoning is sufficient to dispose of issue (a), we have also considered the question of whether the number of involuntary terminations as a result of the reorganization is "significant" in relation to the membership of the Plan. In this case, the significance of the number 384 may be properly assessed by comparing that number to the total number of active members of the Plan who were administrative employees at the relevant time.

The limitation of the comparison to active members is appropriate since clause 69(1)(d) of the *Act* is triggered when a significant number of "members" of a pension plan "cease to be employed" by their employer (see also the definitions of the terms "member" and "former member" in section 1 of the *Act*). It is logical, therefore, to determine the significance of the number of members who ceased to be employed against the number of members who were employed at the time.

The limitation of the comparison to members who are administrative employees also makes sense as the purpose is to determine the significance of the number of members of the Plan who have ceased to be employed as the result of a reorganization that is limited to the administrative side of the business and the employees involved in that part of the business represent a substantial portion of the members of the Plan.

In the course of this proceeding, London Life disclosed information that suggested a range of possible numbers as representing the total size of its active administrative staff complement who were members of the Plan at or about the beginning of 1996. These numbers and the way in which they have been ascertained are as follows:

2572.5, arrived at by adding the number of regular and temporary head office staff (1896) and the number of regular and temporary regional office staff (686.5) at the beginning of 1996 as disclosed by a Human Resources Corporate Staffing Summary excerpted from a Management Information Systems Report for December, 1996 (2572.5 is a payroll number and does not necessarily reflect membership in the Plan, although it might be expected that the payroll number would be higher than the Plan membership number, for example some of the 11 temporary employees who are included in the payroll number may not have qualified for membership in the Plan),

2860 (approximately), arrived at on the basis of the statement in London Life's report to its shareholders on the first quarter results for 1996 to the effect that "approximately 400 positions, representing 14% of total administrative staff in London Life's Canadian operations, will be eliminated as a result of" the 1996 reorganization,

2913, disclosed by the total of the active members column on a chart entitled "London Life MEMBERSHIP BY PROVINCE AS AT 1995/12/31," and

3001, recited in the Facts Part of London Life's written submissions for the hearing in this matter as the number of active administrative members of the Plan as at December 31, 1995.

If we take the number of Plan members who, it is agreed, ceased to be employed as a result of the reorganization, namely 384, as a percentage of this possible range of total active Plan members who were administrative staff at the relevant time, we come up with percentages ranging between 14.9 and 12.8. In our opinion, 384 is a "significant number" of employees ceasing to be employed in the course of a year as a result of a reorganization when that number represents a percentage, of the relevant base of Plan members, that comes anywhere within this range, i.e. even if it is as low as 12.8%. This proportional analysis reinforces our earlier conclusion based on the absolute number of terminations resulting from the reorganization that the number of terminations was "significant" in this case.

Issue (b) Was all or a significant portion of the business carried on by London Life at one or more specific locations discontinued at any time between January 1, 1996 and December 31, 1996, pursuant to clause 69(1)(e) of the *Act*?

The Members Committee representatives maintained that two events in 1996 constituted the discontinuance of all or a significant portion of the business carried on by London Life at various specific locations with the result that the Superintendent was entitled, under clause 69(1)(e) of the *Act*, to require the partial wind up of the Plan. Those events consisted of;

- the closure of five mortgage offices resulting in the termination of 26 administrative staff, and
- the amalgamation of 11 regional sales offices, resulting in the termination of an additional 19 administrative staff.

London Life conceded that the first event came within clause 69(1)(e) of the *Act*. However, it maintained that the second event did not, at least where two or more offices in a particular town or geographic region were consolidated. It argued that, in those circumstances, London Life's business was still carried on after the amalgamation at the specific location at which it was previously carried on, namely the particular town or region, so that there was no discontinuance of business in the relevant sense.

In light of our conclusion as to the proper resolution of issue (a), it is not necessary to address this argument. Both of the events referred to above were part of the larger reorganization that occurred in 1996 and were anticipated, in general terms, by the plans for the restructuring of London Life announced in the February 26, 1996 press release. The Plan members who ceased to be employed as a result of these events were included by London Life in the 384 Plan members who, it was agreed, ceased their employment in 1996 as a result of the reorganization. We have concluded that, in the circumstances, 384 is a "significant number" of members of the Plan. Therefore, there is a clear basis for the Superintendent ordering a partial wind up of the Plan under clause 69(1)(d) of the *Act*, although the Superintendent, in fact, relied on clause 69(1)(e) of the *Act* as well in her Notice of Proposal. In our view, that reliance was unnecessary.

Issue (c) If the answer to (a), (a.1) or (b) is yes, should the Tribunal, under subsection 89(9) of the *Act*, direct the Superintendent to order a partial wind up of the Plan?

London Life argued, in its initial written submissions, that the Tribunal should exercise its discretion, under subsection 89(9) of the *Act*, to refrain from directing the Superintendent to order a partial wind up of the Plan even if there were grounds, under clause 69(1)(d) or clause 69(1)(e) of the *Act*, for ordering such a wind up. However, this argument was not pursued at the hearing. Having found that the pre-conditions for a partial wind up order under clause 69(1)(d) of the *Act* have been satisfied, we are prepared to direct the Superintendent to make such an order since we have not been offered any good reason for not doing so. A similar approach was taken by the PCO in I*mperial Oil Ltd. v. Ontario (Superintendent of Pensions)* (1996), 15 C.C.P.B. 31, at p. 43 (an appeal from this decision was dismissed by the Ontario Divisional Court, see (1997), 16 C.C.P.B. 93).

Issue (d) If the answer to (c) is yes, what are the appropriate commencement

and end dates for the partial wind up order concerning the Plan?

The partial wind up order that the Superintendent proposed to make in this matter was identified in her Notice of Proposal. The proposed order was to the effect that the Plan be wound up in relation to those members and former members of the Plan who ceased to be employed by London Life effective between January 1, 1996 and December 31, 1996 or the date the last Plan member ceased employment, whichever is later, as a result of the reorganization of the business of London Life or the discontinuance of that business as carried on at one or more specific locations. However, at the hearing before the Tribunal, the Superintendent supported the position of the Members Committee representatives as to the commencement and end dates for the partial wind up contemplated by the Notice of Proposal.

The Members Committee representatives maintained that the commencement date for the partial wind up should be January 1, 1995 and that the end date should be December 31, 1997 at the earliest, suggesting that the Tribunal should direct the Superintendent to continue investigating terminations after the latter date. In essence, the Members Committee representatives argued that London Life was engaged in a single initiative through the 1995 to 1997 period to improve its bottom line, by cost cutting or through an appropriate acquisition, the results of which could be properly characterized as an on-going reorganization through the period.

In 1994, the management of London Life began discussing the "reengineering" of the business processes of the company, including the question of how any such program should be presented to employees given that concerns about job security were anticipated. In that same year, an organizational change management group was established "to give input and advice to the leaders of the areas impacted by reengineering on the human side of change." It seems clear that some of the cost savings to be achieved through reengineering were expected to occur through the elimination or consolidation of some administrative positions. We note that this would represent a fundamental change in corporate culture since employment in London Life's administration had generally been regarded as "employment for life," as two of the witnesses testified in this case. The reengineering of business processes was built into the corporate objectives and strategies in the 1995 Business Plan for London Life.

In the course of 1995, reengineering and other strategies resulted in the closure of two claims administration offices in Edmonton and Vancouver, with a loss of 30 positions held by Plan members, the amalgamation of regional sales offices with a loss of approximately 12 jobs and the closure of several mortgage offices with a loss of five to eight jobs. The company also terminated an additional 75 or so administrative staff, who were primarily mortgage office and head office employees, during the year, for a grand total of approximately 122 involuntary terminations in 1995, compared to an average of 13 in the previous five years. London Life agreed that each of the office closure initiatives (relating to claims offices and to mortgage offices) involved a discontinuance of business at a number of specific locations so that grounds existed for a partial wind up order, under clause 69(1)(e) of the *Act*, in respect of the affected Plan members. During the course of 1995, the management team of London Life began planning the restructuring

that was later to be announced in the press release of February 26, 1996.

If the events of 1995 were to constitute a reorganization separate from that in 1996, the number of involuntary terminations of Plan members that resulted from the 1995 reorganization was not likely "significant" so as to justify the invocation of clause 69(1)(d) of the *Act* in respect of that reorganization. But that would not dispose of the argument of the Members Committee representatives that the reorganization that occurred through 1996 should be taken to have started on January 1, 1995, which presupposes a single continuing reorganization. Of course, if we were to find that the events leading to terminations in 1995 were part of such a reorganization, we would have to re-visit the issue of whether, in those altered circumstances, a "significant number" of Plan members ceased to be employed as a result of the reorganization, taking account of the additional terminations in 1995 but bearing in mind that the total was spread over a longer period, i.e. two years rather than one year.

London Life portrayed the changes brought about by the reengineering that took place in 1995 as incremental and simply part of normal good management decisions and, in any event, as unconnected to the restructuring announced in the press release of February 26, 1996.

In its decision in the Imperial Oil case (referred to above), the PCO noted the importance of certainty in the manner of selecting the commencement and end dates of any reorganization, for the purposes of applying clause 69(1)(d) of the *Act*, and the consequent advantage of using a public announcement date as the commencement date. In particular, the PCO noted, in response to the suggestion that the commencement date of the proposed partial wind up in that case be moved back from the announcement date to capture a period in which there was an increase from the usual number of involuntary terminations:

We do not accept that the commencement date should be moved back. Clause 69(1)(d) makes it clear that the terminations must "result" from the discontinuance or reorganization. It is hard to be satisfied that the terminations in the fall of 1991 resulted from the reorganization that had not yet been announced or undertaken. The steps involved in the reorganization had not yet taken place so even if the terminations were in anticipation of changes to the business, they could not be the result of the reorganization. Being related to a reorganization is not the same thing as resulting from a reorganization.

It was the announcement followed by the events described that constitutes the reorganization of the business and it is the terminations that occurred due to those events that are encompassed by the terms of clause 69(1)(d) of the *Act*.

In coming to our decision on this matter, we wish to note that there is a need in all parts of the pension community for certainty about commencement and end dates and how they are selected. The concept of a partial wind up which occurs over a period of several years is difficult for many in the pension industry to understand and accept, making it all the more important that there be some clarity about how the period will be determined. Using the public announcement date is an accepted way of determining a commencement date. If using the public announcement date as the starting point proves problematic, undoubtedly some other mechanism will be used. In this case, the facts are consonant with the view that

reorganization did not take place prior to the public announcement on February 4, 1992.

(At pp. 44-45 of (1996), 15 C.C.P.B. 31.)

In our view, neither the common denominator of cost savings as the rationale for terminations in 1995 and 1996 nor the fact that mortgage offices were closed and regional sales offices were amalgamated resulting in terminations in both those years is sufficient to link the initiatives over the two year period as part of a single reorganization. Indeed, we are not persuaded that there is any compelling reason for moving the commencement date of the reorganization of London Life back from the beginning of 1996, as proposed in the Notice of Proposal, which is ostensibly the most logical time for the commencement of the partial wind up as it was marked by the public announcement of what was clearly a major restructuring plan that was anticipated to result, and did in fact result, in the termination of close to 400 employees over a one year period. In fact, we would have selected the actual date of the announcement, February 26, 1996, as the commencement date but for the fact that London Life presented evidence that the reorganization actually started in January with the termination of five or six Plan members and, therefore, it agreed that, were there to be a partial wind up order against it as a result of the reorganization, January 1, 1996 would be the appropriate commencement date.

In 1995, London Life was in negotiations with The Prudential Insurance Company of America ("Prudential") for the purchase of its Canadian business. However, those negotiations broke down in the latter part of the year and only resumed about the time of the press release of February 26, 1996 that announced plans for the restructuring of London Life. Those plans made no reference to a possible acquisition, although staff were advised, in a communication the same day, that Business Plan priorities would not change and, therefore, London Life would continue, among other things, to look to acquire another Canadian life insurer or block of business. In May of 1996, London Life announced that it had agreed to acquire substantially all the Canadian business of Prudential. The sale closed on July 31, 1996. As of December 31, 1996, approximately 930 former employees of Prudential who had been offered and accepted employment with London Life became members of the Plan, with membership retroactive to August 1, 1996. Some 275 of these new members were terminated by London Life in 1997 in what it claimed was part of the continuing process of integration of the London Life and Prudential operations following the acquisition.

There were 103 other involuntary terminations in 1997, of which 42 related to the closure of London Life's five remaining mortgage offices, apparently as the final step in the process of consolidating mortgage functions at head office. As in the case of the mortgage office closures in earlier years, London Life agreed that it had discontinued its mortgage business at a number of specific locations so that grounds existed for a partial wind up order, under clause 69(1)(e) of the *Act*, in respect of the affected Plan members.

Once again, a sufficient link was not established between the restructuring plans of 1996 and their implementation, on the one hand, and events outside that year, on the other hand, so as to justify extension of the period of the reorganization beyond the year 1996. We make no comment on the question of whether there might have been a separate reorganization,

involving the integration of the Prudential business following the acquisition, that resulted in the cessation of employment of a "significant number" of Plan members since the communications between London Life and PCO or FSCO staff preceding the issue of the Notice of Proposal did not address that question. It was not, therefore, a proper subject for the hearing on this particular Notice of Proposal.

In September of 1997, Great West Life made a successful bid to acquire the shares of London Insurance Group, the parent company of London Life. No employees of Great West Life became members of the Plan. In 1998 and 1999, a number of administrative Plan members lost their jobs at London Life, apparently as a result of the integration of London Life's operations with those of Great West Life. London Life has agreed with the Superintendent's staff to proceed voluntarily with a partial wind up of the Plan with respect to terminations that resulted from this integration. A sufficient link between those terminations or any other terminations in 1998 and 1999 was not made to the events of 1996 so as to justify treating them as a result of the reorganization that was announced on February 26, 1996.

We conclude, therefore, that the appropriate commencement and end dates for the partial wind up order concerning the Plan that was the subject of the hearing before us are January 1, 1996 and December 31, 1996, respectively.

Issue (e) Did London Life have a legitimate expectation that the Superintendent would not issue a notice of proposal to make a partial wind up order under section 69 of the *Act* given the December 5, 1996 letter from the Superintendent to London Life?

Issue (f) Given the December 5, 1996 letter from the Superintendent to London Life, is the Superintendent stopped from now ordering a partial wind up of the Plan if London Life relied upon the aforementioned letter to its detriment?

The December 5, 1996 letter from the Superintendent to London Life was a letter, signed by a pension officer at the PCO, to the effect that, after a careful review of the information provided by London Life relative to the termination of a number of employees over the past year or more, the Superintendent of Pensions had concluded that there were not sufficient grounds to order a partial wind up of the Plan and did not intend to make such an order. This letter was one of a series of letters exchanged between London Life and the PCO, or its successor FSCO, relating to the termination of employees by London Life and the possible consequences of those terminations under the *Act*.

London Life claimed that, in reliance on the representations in this letter, it had not taken steps to preserve all of the documentation relating to terminations that had occurred during the period that the Members Committee representatives later alleged was covered by London Life's reorganization. It then urged this Tribunal to decline to draw any negative inferences from London Life's inability to state with certainty any of the facts that might be relevant to the determination of this case because of the lack of relevant documentation, linking this position with the doctrine of legitimate expectations and the doctrine of estoppel. We do not have to decide whether we are limited in this way, in our assessment of the facts, as we have not drawn any inferences against

London Life because of its inability to state any relevant facts with certainty or to produce any particular supporting documentation.

Disposition

In light of our conclusions as to the proper resolution of the various issues raised by this case, we direct the Superintendent to carry out the proposal contained in the Notice of Proposal, subject to the order contemplated by that proposal being modified so that it directs that "the London Life Insurance Company Pension Plan, Registration Number 0343368 (the "Plan") be wound up in part in relation to those members and former members of the Plan who were employed by the London Life Insurance Company (the "Employer") and who ceased to be employed by the Employer effective between January 1, 1996 and December 31, 1996 as a result of the reorganization of the business of the Employer."

We make no order as to the costs of this proceeding but the panel will entertain written representations on that matter from any of the parties who wish to make them.

DATED at Toronto, this 7th day of February, 2001.

Colin H. H. McNairn, Vice Chair of the Tribunal and of the Panel

Louis Erlichman, Member of the Tribunal and Chair of the Panel

William M. Forbes, Member of the Tribunal and of the Panel

INDEX NO.: FST Decision #24 (FST File No. P0095-2000)

PLAN: Retirement Plan for Employees of Dustbane Enterprises Limited, Registration 229419

DATE OF DECISION: February 15, 2001

PUBLISHED: Bulletin 10/1 and FSCO website

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c.P.8, as amended by the Financial Services Commission of Ontario *Act*, 1997, S.O. 1997, c.28 (the "*Act*");

AND IN THE MATTER OF a proposal by the Superintendent of Financial Services to Make an Order under section 87 of the *Act* respecting the Retirement Plan for Employees of Dustbane Enterprises Limited, Registration Number 229419 (the "Plan");

AND IN THE MATTER OF a Hearing in accordance with subsection 89(8) of the *Act*;

BETWEEN: DUSTBANE ENTERPRISES LIMITED
Applicant
- and -
SUPERINTENDENT OF FINANCIAL SERVICES,548264 ONTARIO INC., and 818787 ONTARIO LIMITED
Respondents

BEFORE:

Kathryn M. Bush
Vice Chair of the Tribunal and
Chair of the Panel

Louis Erlichman
Member of the Tribunal and of the Panel

David Wires
Member of the Tribunal and of the Panel

APPEARANCES:

Andrew K. Lokan and Karen Shaver
For the Applicant

Deborah McPhail
For the Respondent Superintendent

Linda Galessiere
For the Respondents
548264 Ontario Inc. and 818787 Ontario Limited

HEARING DATES:

October 3, 4, 5 and 16, 2000

REASONS FOR MAJORITY DECISION

A. THE BACKGROUND

The Dustbane Pension Plan (the "Plan") was originally registered with the Pension Commission of Ontario on June 1, 1967. Prior to September 1, 1984, the Plan was an annuity purchase plan funded through a Group Deferred Annuity Contract with Standard Life Assurance Company of Canada. Effective June 1, 1984, the Plan became a defined benefit plan and was funded through a Trust Agreement with Mutual Life (now Clarica).

Dustbane Enterprises Limited ("Dustbane") is the Administrator of the Plan. The Plan is for the employees of Dustbane, its subsidiaries, associated or affiliated companies and distributors. The Respondents 548264 Ontario Inc. and 818787 Ontario Limited were at June 1, 1990 distributors under the Plan.

Subsequent to discussions about changing the contractual relationship between Dustbane and its distributors, the Directors of Dustbane

passed a resolution on January 30, 1990 to amend the Plan effective June 1, 1990 to provide that distributors would no longer be part of the Plan and that assets equal to the transfer value would be transferred "to an RRSP, lock-in RRSP, or paid in cash to each employee depending on what they are entitled." The transfer value relative to the distributors was later determined to be $303,700.

At June 1, 1990, the companies in the distributor group (the "Distributors") were J. W. Evans Lessee-Dealer Ltd., Masters Sanitation Ltd., S.M. Bouchard (1978) Inc., D.R. Huntington Sales Ltd., Robinson Sanitation, J.J. Edstrom (1974) Ltd., 818787 Ontario Limited, Mutual Sanitation & Supplies Ltd. and Columbia Distributors Ltd.

At that time none of the Distributors was an affiliate of Dustbane within the meaning of the term "affiliate" in the *Ontario Business Corporations Act*, R.S.O. 1990, c.B.16.

On February 27, 1991 the Plan Actuary filed the Partial Wind-Up Report relating to the June 1, 1990 wind-up. A revised Wind-Up Report was filed on September 23, 1991 which showed a deficit (apparently for the entire plan) of $33,154. That report indicated that it was "decided to ignore the small going concern deficit because that deficit will be funded as outlined in actuarial valuation as of September 30, 1989." An Actuarial Valuation Report as at June 30, 1995 then showed that the wind-up related to the Distributors was now in a $212,000 deficit. That Report noted 'Benefits were valued at 12% interest. Between June 1, 1990 and June 30, 1995 those assets earned the same rate of return as the whole pension fund while the corresponding liabilities grew at a rate of 12%.'

The increase in the deficit arose from the difference between actual Plan earnings and the 12% growth in the liabilities, as well as additional actuarial fees incurred.

In August 1997, Dustbane's Actuary apportioned the deficit for the partially wound-up portion of the Plan amongst the Distributors, notified each Distributor of the amount of its proportionate share of the deficit, and directed each Distributor to pay its share directly to Mutual Life, now Clarica. To date, only one Distributor, Mutual Sanitation, has paid its share of the deficit. One Distributor has become bankrupt since the partial wind up.

The Plan Actuarial Valuation as of June 30, 1998 for the Plan shows that the deficit in the partially wound-up portion of the Plan had increased to $261,400 as of that date.

On December 21, 1999, the Superintendent made a Notice of Proposal to Make an Order requiring Dustbane to pay an amount equal to the total of all payments due or accrued and not paid as at June 1, 1990 plus interest to the date of payment.

On February 26, 2000, Dustbane brought an application to request a hearing before the Tribunal to direct the Superintendent to refrain from making or carrying out the proposed Order.

At the first pre-hearing conference convened by the Tribunal it was agreed that notice of the hearing would be provided to both the Distributors and the affected former members. As a result of that notice 548264 Ontario Inc. and 818787 Ontario Limited requested to be added as parties to this proceeding, along with Dustbane and the Superintendent. That request was granted upon the consent of the other parties.

B. THE ISSUES

At the Pre-Hearing Conferences the parties agreed that the issues to be determined in this proceeding were as follows:

(a) As at Partial Wind-Up date, was the Plan a multi-employer plan within the meaning of s.1 of the *Act*?

(b) If the answer to issue (a) is "yes", who is required to fund the deficit in the Plan's fund?

(c) If the answer to issue (a) is "no", who is required to fund the deficit in the Plan's fund?

(d) Does the Tribunal have the jurisdiction to take into account any delay on the part of the regulator in its determination of the above issues?

(e) If the answer to issue (d) is "yes", are Dustbane or any of the Distributors liable for the deficit in light of the delay by the regulator in the circumstances of this case?

C. ANALYSIS

(a) As at the partial wind-up date, was the Plan a multi-employer plan within the meaning of section 1 of the *Act*?

The *Act* in section 1 defines an "employer" and a "multi-employer pension plan" as follows:

"employer" in relation to a member or a former member of a pension plan, means the person or persons from whom or the organization from which the member or former member receives or received remuneration to which the pension plan is related, and "employed" and "employment" have a corresponding meaning;

"multi-employer pension plan" means a pension plan established and maintained for employees of two or more employers who contribute or on whose behalf contributions are made to a pension fund by reason of agreement, statute or municipal by-law to provide pension benefit that is determined by service with one or more of the employers, but does not include a pension plan where all the employers are affiliates within the meaning of the *Business Corporations Act*;

Two issues were raised in this proceeding relating to this matter. The first was whether the Distributors were in fact employers within the meaning of the *Act* or whether in fact Dustbane was properly characterized as the "employer" of the Distributor's workers for purposes of the *Act*. The second was whether even if the Distributors were employers for the purposes of the *Act* whether they agreed to contribute to the Plan.

Considerable evidence was presented on the relationship between Dustbane and the Distributors:

- all the Distributors were separate corporate entities from Dustbane;
- there was no common ownership between Dustbane and the Distributors;
- the Distributors were lessees of their business premises, which included office and warehouse facilities;
- the Distributors appointed their own board members and Dustbane had no role in the Distributors' boards;
- the Distributors approved their own By-laws/Articles of Incorporation and Dustbane had no role in this;
- the assets of one Distributor were not available to satisfy the debts of another;
- Dustbane prepared cheques for Distributors. In the 1980's, Dustbane began using a direct

deposit system for payroll, in which funds were transmitted directly from Dustbane to the Distributors' employees' bank accounts;

- The Dustbane logo was used on the cheques, invoices, and other stationery used by the Distributors, in addition to the Distributor's name, and Dustbane's signs were prominently displayed on Distributors' premises.

- Dustbane did not hire and fire, discipline, or set rates of pay for the Distributors' employees, although commission rates for sales staff were the same at Dustbane and each of the Distributors;

- Dustbane had no signing authority on the Bank accounts of the Distributors;

- if the Distributor required a bank loan (and at some point, all of the Distributors required financing), Dustbane guaranteed the loan; and

- Dustbane did not control the Distributors' access to funds. However, where Dustbane had guaranteed the Distributor's bank loan, Dustbane reviewed any withdrawals.

The 1984 restatement of the Plan provides as follows:

s.1.8 "Employer" shall mean Dustbane Enterprises Limited, its subsidiaries or affiliated companies and its distributors who have elected in writing to participate in the Plan.

No written elections were apparently ever made. Dustbane's witness testified that when the Plan was amended and restated in 1984 this was simply a continuation of the existing Plan and therefore that despite the Plan wording written elections were not necessary.

The standard clause in the Distributor agreements covering Dustbane's provision of services was as follows ("Buyer" is the Distributor):

8. Services

Buyer agrees to employ Dustbane exclusively to maintain its books and records of account and Dustbane agrees to provide, in addition to this service, advice by specialists in all areas of operation, advertising and merchandising program and the fulfillment of Buyer's reasonable request for assistance, all services to be provided at a fee of 5% on Buyer's sales volume.

Buyer shall have the irrevocable right at all reasonable times to complete access to and audit said Books and Records of Accounts by an independent auditor of its choice at its own expense. Dustbane agrees to supply the services described in this paragraph with respect of any matter only where, in the opinion of the advisors of Dustbane, the interests of Dustbane and of the Buyer do not conflict.

Dustbane maintained that the 5% fee in the "services" section of the Distributor Agreements was meant to cover the cost of administration of the Plan by Dustbane but not contributions to the Plan.

The *Act* has many references to multi-employer pension plans (MEPPs) in addition to the definition in Section 1.

Section 8(1)(e) provides that MEPPs "established pursuant to a collective agreement or a trust agreement" must be governed by a board of trustees with at least 50% member representation.

Section 10(2) requires that "the documents that create and support a multi-employer pension plan pursuant to a collective agreement or a trust agreement shall set out the powers and duties of the board of trustees that is the administrator of the multi-employer pension plan."

Section 14(2) exempts MEPPs "established

pursuant to a collective agreement or a trust agreement" from the general prohibition on reducing earned benefits.

Section 61 requires that an employer who is required to make contributions to a MEPP "shall transmit to the administrator of the plan a copy of the agreement that requires the employer to make the contributions or a written statement that sets out the contributions the employer is required to make and any other obligations of the employer under the pension plan."

Section 85 exempts "Pension benefits provided under a multi-employer pension plan" from the guarantees of the Pension Benefits Guarantee Fund (PBGF).

Section 40(t) of Regulation 909 requires that the annual statement for members of MEPPs include a statement that benefits are not guaranteed by the PBGF and are subject to reduction if liabilities exceed assets at plan wind up. This is not an exhaustive catalogue of references to multi-employer pension plans in the *Act*, nor are the references entirely consistent. In some cases, the reference is to a MEPP "established pursuant to collective agreement or trust agreement", while in others, notably Sections 61 and 85 and Section 40 of the Regulation, the reference is simply to a multi-employer pension plan.

One of the key aims of the *Act* is the protection of the benefits earned by plan members and beneficiaries. The *Act* lays down stringent wind up obligations for employers, and establishes a Guarantee Fund to protect members in the event of employer insolvency at wind up.

The provisions of the *Act*, read together, create a class of multi-employer plans, which are qualitatively different than plans sponsored by a single employer. The *Act* accepts the limitation of employer liabilities within MEPPs, and exempts MEPPs from Guarantee Fund coverage, but insists on a clear statement of employer obligations, for the protection of plan members and beneficiaries, and an arguably higher level of trust obligations.

Dustbane has argued for the lowest possible standard in assessing whether a plan qualifies as a multi-employer plan. Referring only to Section 1 of the *Act*, Dustbane argues that participation in the plan by members employed by corporate entities with some level of independence, and indirect evidence of funds flowing from these entities to the pension fund, are sufficient to render a pension plan a MEPP.

In this case, Dustbane made no effort, prior to the partial wind up, to constitute their pension plan as a MEPP. There were no written agreements concerning pension plan participation with any of the entities which Dustbane now purports to have been separate employers within the MEPP. In none of the Dustbane's reporting to the Pension Commission, from their initial application for registration in1964 until the partial wind up application, was the plan ever referred to as a MEPP, even when the existence of a MEPP was a specific question on the report. In the three years prior to the partial wind up, the Dustbane pension plan made contributions to PBGF, which would have been unnecessary contributions for a MEPP.

The annual statements sent by Dustbane to pension plan members did not contain the prescribed (by Section 40(t) of the Regulations) warning that, since the plan was a MEPP, there was no PBGF protection, and that benefits could be reduced on wind up.

These were not minor technical breaches of the legislation. It goes directly counter to the protection of plan members and beneficiaries, which is at the core of the *Act*, to allow an

employer to claim, after having failed to meet the clear requirements of the legislation, that the plan is a multi-employer plan, and thereby to evade liabilities on partial wind up.

The Dustbane pension plan clearly failed to meet the requirements of a multi-employer plan under the *Act*.

Even if it were concluded that the threshold for a MEPP is at the low level proposed by Dustbane, would their argument that each of the Distributors is a separate employer be successful?

On the question of what constitutes an employer, we cannot simply look at whether the Distributors would be considered as separate employers for the purposes of income tax, labour relations, or other legislation. There are a variety of precedents in a variety of legal contexts which require us to consider the specific facts of each case in relation to the legislation at hand, in deciding who is the actual employer.

There is no doubt that each of the Dustbane Distributors was separately incorporated, and named as the employer on employee T-4 forms. The relationship between Dustbane and its Distributors was a tangled one. Each Distributor was set up to act as Dustbane's sole distributor in a particular geographic area. Dustbane strictly controlled the actions of the Distributors through a distributor agreement. For each of the Distributors, Dustbane laid down sales quotas, limited sales of non-Dustbane products, set wholesale and retail prices, acted as lessor for the Distributors' offices, guaranteed bank loans to Distributors and generally oversaw all of the financial and other operations of the distributors (for a management fee of 5% of gross sales). The distributor agreements make no mention of the pension plan, or of any employee benefit plan.

Dustbane argued that, despite the lack of any written agreement by any of the Distributors, a decades-long history of plan contributions was clear evidence of a tacit agreement by the Distributors to participate in the pension plan as employers. This argument conflicts somewhat with the Dustbane proposition that each of the Distributors was an independent corporate entity. All of the Distributor Corporations do not have an unbroken history to 1959, and in at least one case, the Distributor Corporation was formed less than a year before the partial wind up.

In 1984, the Dustbane Board of Directors unilaterally converted the Dustbane pension plan from an insured basis to a trusteed defined benefit basis, a major change, which increased the possibility of the partial wind up deficit. The decision to convert the plan was made without participation of, or consent by, any Distributor.

The 1984 plan text explicitly requires a written agreement to participate in the pension plan by each employer. It also names the employer as administrator. No written participation agreement was ever obtained from any Distributor, even those who came into being after the 1984 plan changeover. The decision to partially wind up the plan, which Section 68(1) of the *Act* gives to the Administrator of a multi-employer plan, was made unilaterally by Dustbane. The use of actuarial services for the partial wind up, which accounts for a significant portion of partial wind up deficit, was directed solely by Dustbane.

Prior to the partial wind up, Dustbane did not inform the Distributors that they were Employers (and also, according to plan text, Administrators), and might have particular legal and financial obligations as Employers

and Administrators. Dustbane provided the Distributors with no plan documents, other than annual statements sent to the Distributors personally as plan members (which did not identify the plan as a MEPP). Evidence was presented that members' plan statements were distributed via Distributors. Distributors never took any role as plan administrators, never formally ceded their responsibilities as administrators, or were even consulted on matters like the use of plan surpluses, which would normally be a matter for discussion by plan sponsors and administrators. When, subsequent to the wind up, the Distributors were told that they could bear some extra liability as the result of the wind up, they requested, first informally, and then formally, basic plan documents, including the plan text. Dustbane refused to provide this information.

Dustbane has argued that the lack of written participation agreements signed by Distributors was a minor clerical oversight. The sections of the *Act* quoted above show the importance, in the legislation, of clear documentation of Employer obligations in a multi-employer pension plan. Dustbane, acting as sole Administrator of the plan, in sole possession of plan documents, would have been aware, as the Distributors would not, that the plan required Distributors, if they were separate Employers for purposes of the plan, to sign written participation agreements. This was never done.

Dustbane has argued that the fact that "employer contributions" were made by the Distributors is clear proof of the Distributors' tacit agreement to participate in the Dustbane pension plan as employers. Leaving aside the requirements of both the *Act* and the Dustbane plan text for explicit written documentation, this assertion is questionable.

On the basis of the evidence presented, it would appear that the cheques prepared by Dustbane for Distributor signature covered overall payroll costs, with no breakdown of payments for the benefits package, let alone payments for employer pension contributions. It is difficult to read employer agreement to participate into payments of which the Distributors were largely unaware.

It is clear that Dustbane acted, until the possibility arose of transferring the responsibility for partial wind up liabilities to the Distributors, as if it were the sole employer and sole administrator of the Dustbane Pension Plan.

If the Distributors were, in fact, separate employers under the Dustbane Plan, Dustbane seriously breached its fiduciary duties as Administrator, under Section 22 of the *Act*, to the Plan members, and to the Distributors as Employers and co-Administrators, in failing to obtain written participation agreements and consistently failing to act to ensure that employer obligations were broadly understood and would be met.

We therefore conclude that, for purposes of the *Act*, this plan is not a multi-employer plan, and that Dustbane is the employer.

(c) If the answer to issue (a) is "no", who is required to fund the deficit in the Plan's fund?

As we have concluded that this is not a multi-employer plan, the obligation to fund the deficit falls on the Employer, Dustbane.

(d) Does the Tribunal have a jurisdiction to take into account any delay on the part of the regulator in its determination of the above issues?

There is no question that delay occurred in

this matter. A June 1, 1990 partial wind-up resulted in a Notice of Proposal over nine years later.

In addition, it appears that a total of 28 employees or officers of PCO/FSCO worked on the Dustbane application between its filing and Notice of Proposal, including 11 Pension Officers, 4 Analysts, Acting Officers or Assistants, 4 Plan Examiners, 2 Actuaries, 5 Consultants, and 3 Directors.

There is, however, a question as to the cause of that delay.

The following is a chronology of the partial wind-up application which is clearly illustrative of delay.

March 29, 1990 – Dustbane advises Pension Commission of Ontario ("PCO") of its intention to partially wind up Plan;

April 5, 1990 – PCO Officer acknowledges letter and requests additional information;

April 11, 1990 – Dustbane provides PCO with copy of Notice to Distributors dated March 24, 1990 regarding the partial wind-up;

May 7, 1990 – Dustbane provides Distributors with estimates of employer obligations as a result of partial wind up of plan – states that exact options and amounts will only be available "after June 1, 1990 once contribution data to June 1st has been received from your offices";

February 27, 1991 – Dustbane files first Partial Wind-Up report;

July 11, 1991 – Dustbane requests review and approval of Modern Building Transfer by July 31, 1991;

August 8, 1991– PCO requests that Dustbane complete Checklist and questions the Dustbane actuary's interest rate assumptions;

August 15, 1991 – Dustbane certifies that all contributions have been made to pension fund to date of partial wind-up;

September 20, 1991 – Dustbane requests approval to pay benefits to Huntington employee – G. Courtney;

September 23, 1991 – Dustbane files Revised Wind Up Report including Superintendent's Checklist and the Dustbane actuary explains basis for attributing interest rates;

October 22, 1991 – Superintendent authorizes payment of benefits to G. Courtney on condition that transfer ratio maintained at "1";

November 1, 1991 – PCO staff advises actuary of deficiencies in Superintendent's checklist and that Partial Wind-Up Report cannot be approved until Modern Building Transfer asset approved;

November 6, 1991 – Dustbane actuary advises administrator that Huntington must pay $173.03 with respect to G. Courtney to maintain transfer ratio of "1";

December 13, 1991 – Dustbane submits Revised Superintendent's Checklist addressing all deficiencies in PCO letter of 1/11/91;

March 20, 1992 – Letter from PCO staff regarding further deficiencies and requests information about revised Partial Wind-Up report filed on September 23/91;

October 2, 1992 – Dustbane provides expanded solvency valuation and responds to all issues raised in letter of 03/20/92;

May 3, 1993 – Dustbane files Final Asset Transfer report for Modern Building Cleaning Inc. sale;

August 30, 1993 – Superintendent approves Asset Transfer on condition that Dustbane files certified Notice to Plan Members of asset transfer;

November 8, 1993 – Dustbane files Final Partial Wind Up Report including revised interest rates;

May 31, 1994 – Dustbane files certified copy of Notice to employees regarding Modern Building Asset Transfer and Superintendent gives final approval of asset transfer;

September 7, 1994 – Dustbane actuary writes letter to PCO regarding summary of events, breakdown of member benefits using revised interest rates and requests direction and approval to file valuations;

January 5, 1995– Dustbane actuary contacts PCO requesting response to letter of 09/07/94;

January 13, 1995 – Letter from PCO asking Dustbane to clarify partial wind-up report information and requests other information;

April 30, 1996 – Dustbane resubmits all documents requested, responds to all issues raised and indicates dates that documents addressing issues were originally filed with PCO;

July 22, 1996 – Letter from PCO requesting clarification about information included in all partial wind up reports;

December 19, 1996 – Telephone call between PCO and Dustbane actuary regarding triennial valuation as at June 30, 1995;

January 30, 1997 – Letter from PCO to Dustbane actuary indicating that the partial wind up will be forwarded to Superintendent for decision by February 6, 1997;

January 31, 1997 – Dustbane files June 30, 1995 actuarial valuation;

February 3, 1997 – Dustbane responds to PCO letter of 7/22/96 by referring PCO to previous partial wind-up reports and submissions;

February 28, 1997 – PCO sends enforcement letter regarding deficit at June 1, 1990;

March 4, 1997 – Dustbane responds with letter from Mutual Life confirming that special payment – $78,000 made on January 22, 1997;

August 11, 1997 – Dustbane actuary allocates deficit among distributors and advises each to make payments directly to Mutual Life;

March 18, 1998 – Dustbane advises former member that benefits cannot be paid until deficit paid;

September 8, 1998 – PCO advises Dustbane that Superintendent gave blanket approval to pay benefits;

October 26, 1998 – Dustbane advises the Financial Services Commission of Ontario ("FSCO") that it is not in position to finalize member benefits because of unfunded liability and member's employer is bankrupt;

November 27, 1998 – s.98 letter to Dustbane demanding copy of written agreement to participate in plan and up-to-date list of distributors;

December 21, 1998 – Dustbane responds to FSCO, provides copies of distribution agreement and explains service provision, how distributors and employers contribute to plan and the names and addresses of distributors as requested;

March 2, 1999 – s.98 letter to Dustbane;

March 8, 1999 – Response from Dustbane;

March 19, 1999 – Dustbane files actuarial valuation as at June 30, 1998;

June 28, 1999 – Distributor S.M. Bouchard provides T4 slips 1989-1990 showing S.M. Bouchard Inc. as employer;

June 29, 1999 – s.98 letter states that the information provided does not adequately address issue of written or oral agreement;

June 29, 1999 – s.98 letter to distributors regarding the deficit in plan at June 1, 1990;

August 4, 1999 – FSCO requests that Dustbane actuary provide breakdown of deficit and professional fees since partial wind-up;

August 12, 1999 – Dustbane actuary responds to FSCO and provides a reconciliation of asset changes from 1990 – 1995 and from 1995 – 1998;

August 30, 1999 – Distributor J.W. Evans provides copy of distribution agreement;

September 14, 1999 – Dustbane actuary provides further response to FSCO request regarding a reconciliation of professional fees for 1990-1998;

October 18, 1999 – Letter from solicitor for J.W. Evans – Distributor explaining relationship with Dustbane, including copies of T4 slips 1985, 1988 – 1990 showing J.W. Evans as employer; and

December 21, 1999 – Superintendent issues Notice of Proposal to Make an Order against Dustbane.

The Superintendent led evidence on the issue of delay to show that Dustbane was aware each year of the Plan's fund's rate of return and of the 12% interest rate being applied to the partial wind up and that the size of the deficit as revealed in early 1997 should have caused concern. Further, the Modern Building asset transfer took what appeared to be an inordinate amount of time, 4 years, to complete and this hampered the completion of the partial wind-up. In addition, no funding schedule had ever been filed for the deficit shown in the 1989 report, and a funding schedule was necessary in order to obtain approval of the partial wind-up report. Finally, the fact that Dustbane did not complete actuarial valuations between 1986 and 1995 also seemed to slow down the process.

Without commenting on the source of the delay at this time, it is clear that the time spent to complete this partial wind-up contributed significantly to the deficit in this Plan. The members' benefits ought to be protected irrespective of any delay and therefore we do not believe that any delay should affect our findings above.

The question of delay, however, may be relevant to any party seeking an award of costs in this matter.

D. THE DISPOSITION

We reject Dustbane's application and direct the Superintendent to carry out her proposal contained in the Notice of Proposal.

We make no order as to the costs of this proceeding but the panel will entertain written representations on that matter from any of the parties who wish to make them.

DATED at Toronto, this 15th day of February, 2001.

Louis Erlichman
Member of the Tribunal and of the Panel

David Wires
Member of the Tribunal and of the Panel

REASONS FOR MINORITY DECISION

A. ANALYSIS

For the reasons described below I disagree with the Majority Decision except with respect to the issues of delay and costs.

> (a) As at the partial wind-up date, was the Plan a multi-employer plan within the meaning of section 1 of the *Act*?

The Majority Decision sets out (i) the definitions of an "employer" and a "multi-employer pension plan" from section 1 of the *Act* and (ii) the testimony of the witnesses for all the parties on the issue of employer status and I will not repeat them.

Two issues were raised in this proceeding relating to this matter. The first was whether the Distributors were in fact employers within the meaning of the *Act* or whether in fact Dustbane was properly characterized as the "employer" of the Distributor's workers for purposes of the *Act*. The second was whether, even if the Distributors were employers for the purposes of the *Act*, whether they agreed to contribute to the Plan.

While it is clear that Dustbane had significant influence on the Distributors by virtue of the bank guarantees and the terms of the Distributorships relating to signage and logo usage among other matters, it is also clear that the relationship of the Distributors and their workers was one of employer/employee. The Distributors chose who to hire, including family members, who to fire and the salary levels. Day-to-day operations were controlled entirely by the Distributors. The Distributors maintained employer status for tax purposes.

It is true that the employee/employer status has been interpreted with respect to the purpose of the relevant legislation. The question then arises as to whether the purposes of the *Act* would alter the determination of the Distributors as employers.

The *Act* is "remedially intended" to ensure that pension benefits which are promised are paid. The purposes of the *Act* do not; however, prefer payment by one employer rather than the other. Accordingly, the purposes of the *Act* do not justify any alteration in the finding of the Distributors as employers in this proceeding.

The second issue now to be considered is whether the Distributors agreed to contribute to the Plan.

It should be recalled that the definition of "multi-employer pension plan" in section 1 of the *Act*, as quoted above, has three requirements:

> (a) two or more employers contribute to a pension plan for employees, or contributions are made on their behalf;
>
> (b) the contributions are made by reason of an agreement, statute, or municipal by-law; and
>
> (c) the employers are not affiliates within the meaning of the Business Corporations *Act*.

The third requirement was accepted by all parties as being satisfied. Given the finding that the Distributors are employers the first requirement is also satisfied. Accordingly, the matter to be determined was whether contributions were made to the Plan by the Distributors as a result of an agreement.

The 1984 restatement of the Plan provides as follows:

> s.1.8 "Employer" shall mean Dustbane Enterprises Limited, its subsidiaries or affiliated companies and its distributors who have elected in writing to participate in the Plan.

No elections were apparently ever made. Dustbane's witness testified that when the Plan

was amended and restated in 1984 this was simply a continuation of the existing Plan and therefore, despite the Plan's wording, written elections were not necessary.

Dustbane maintained that the 5% fee in the "services" section of the Distributor Agreements was meant to cover the cost of administration of the Plan by Dustbane but not contributions to the Plan.

8. Services

Buyer agrees to employ Dustbane exclusively to maintain its books and records of account and Dustbane agrees to provide, in addition to this service, advice by specialists in all areas of operation, advertising and merchandising program and the fulfillment of Buyer's reasonable request for assistance, all services to be provided at a fee of 5% on Buyer's sales volume.

Buyer shall have the irrevocable right at all reasonable times to complete access to and audit said Books and Records of Accounts by an independent auditor of its choice at its own expense. Dustbane agrees to supply the services described in this paragraph with respect of any matter only where, in the opinion of the advisors of Dustbane, the interests of Dustbane and of the Buyer do not conflict.

The evidence supports the following findings:

Initially, Dustbane prepared and sent out payroll cheques to the Distributors for signature by them and distribution to their own employees. At some point in the 1980's, following an incident in which a group of cheques were lost, Dustbane moved to a system whereby Dustbane (still merely providing a payroll service) would send or deposit pay cheques directly to the Distributors' employees, and be reimbursed by the Distributors.

Both employee and employer remittances to the Plan (as well as other benefits) were effected by means of cheques prepared by Dustbane and sent to the Distributors for signature, payable in the case of the Plan directly to the Mutual Group.

The witnesses for the Distributors could not recall signing such cheques; however, one admitted that his recollection generally was hazy and the other admitted that it was possible that he had signed such cheques.

It was not contested that the Distributors made other employer remittances by way of cheques prepared as described above, such as Canada Pension Plan, Employment Insurance and other employer-funded benefits.

Accordingly, the evidence supports the determination that the Distributors were contributing to the Plan.

The question then turns to whether the Distributors agreed to participate in the Plan.

With respect to this issue some facts are troubling. The evidence suggests that, not only did the Distributors not sign elections as required under the 1984 Plan text, they never even received a copy of the Plan text. Rather the Distributors only received annual statements for delivery to their employees and cheques for payment of contributions to the Plan.

The provision of the Distributor Agreement stated above is not at all clear with respect to the obligations that the Distributors had under the Plan. However, the Distributors had been part of the Pension Plan since 1959. The Distributors could decline to participate in the Pension Plan, and some in fact did so. Eventually, the topic of the Pension Plan came up at the Advisory Board of Dustbane and Distributors, in the context of the Distributors' desire to terminate or renegotiate their Services

Agreement with Dustbane. At this point, some Distributors specifically wanted to remain in the Plan (while not paying the 5% fee and not participating in other benefits). Dustbane was not prepared to agree to this and the decision was made that the Distributors would then cease to participate in the Plan. I disagree with the Majority Decision as to whether this decision was made unilaterally.

One Distributor witness did not recall receiving monthly statements setting out employer contributions. However, he admitted in cross-examination that he was aware when he bought the shares of his company that company made Canada Pension Plan, Employment Insurance and "group insurance" remittances, and that at least by 1983, he was aware his employees were participating in the Plan, his company was being charged for regular employer contributions for the Plan, and that he was "content" with this participation.

Accordingly, while the elections reference in the 1984 Plan text were never completed, and the Distributors do not seem to have been provided with Plan documents as would have been appropriate, it does appear that a 31 year course of participation in the Plan, including the payment of retiree benefits during that time, establish an agreement to participate in the Plan.

In summary, having found that the Distributors were employers contributing to the Plan by agreement, the Plan was a multi-employer plan within the meaning of s.1 of the *Act*.

This Tribunal's decision in *The Canadian Union of Public Employees, Locals No. 1144 and 1590 ("CUPE") and Superintendent of Pensions, the Sisters of St. Joseph for the Diocese of Toronto and Upper Canada (the "Sisters"), St. Michael's Hospital, St. Joseph's Health Centre and Provident Centre (the "Hospitals")* (1998) No. XDEC-42, 12/18/98, (Financial Services Tribunal) ("*Sisters of St. Joseph*") is readily distinguishable from the present case.

In *Sisters of St. Joseph*, the Tribunal found that the Sisters of St. Joseph Plan was not a multi-employer pension plan but was established and maintained only for one employer, the Sisters. The Tribunal reached its conclusion on the basis that there were no separate corporate entities – only divisions of one entity and the Sisters:

(a) owned and operated all bank accounts from which the Hospital's payroll and benefits costs were met;

(b) appointed signing officer, auditors and board members to the Hospitals;

(c) approved the by-laws of the Hospital;

(d) owned the Hospital properties;

(e) retained the power to own and operate each Hospital;

(f) controlled bank accounts from which employee remuneration was paid; and

(g) had the authority to transfer the assets of one Hospital to satisfy the debts of another.

The Majority Decision cites a number of provisions of the *Act* which relate to multi-employer plans. The *Act* and the Regulations thereunder do not provide a systematic code for understanding the intended treatment of multi-employer plans. Rather the legislation contains a series of apparently unconnected provisions that seem to have been intended to address only limited concerns. Multi-employer plans in the collectively bargained arena have different concerns than those in the present case. It would be preferable that the legislation would be amended to provide a more systematic

consideration of these plans and to consider the different contexts in which these plans may arise. However, the circumstances under consideration in this matter do not appear to justify overriding the appropriate legal conclusion regarding who was the employer in relation to the relevant employees and who is responsible for the liabilities of the pension plan.

(b) If the answer to issue (a) is "yes", who is required to fund the deficit in the Plan's fund?

While the Plan documentation could have been clearer on this issue, it would seem appropriate that given that the Distributors were employers participating in the Plan that they would be liable to the deficit allocable to their employees.

No evidence was adduced in this proceeding as to the proper allocation of the deficit and therefore we make no finding on this issue.

We do, however, note two matters arising from the evidence in this matter which are troubling and the parties may wish to consider further.

Firstly, it is unclear whether the Distributors agreed to pay the actuarial fees related to the partial wind-up. No evidence of such agreement was adduced. Prior to the wind-up all actuarial fees seemed to have been paid for out of the 5% service fee quoted above. In March 1990, Dustbane advised the Distributors by letter that the wind up may result in financial obligations:

> "As you are aware, severing from the Dustbane pension plan may result in financial obligations on the part of the Distributor. Our actuarial consultants are presently in the process of preparing an estimate of what each Distributor's obligations will be at June 1, 1990. Since the final figures can change depending on the options chosen by your employees, it will not be possible to know the exact amounts until after June 1, 1990."

However, that statement is quite vague as to the source of the financial obligations and certainly no mention is expressly made of the actuarial fees until most of those fees had been incurred.

Secondly, the evidence raises issues as to whether Dustbane properly supplied information regarding the Plan to Distributors and plan members, even upon request.

(c) Does the Tribunal have a jurisdiction to take into account any delay on the part of the regulator in its determination of the above issues?

I agreed with the Majority Decision with respect to this issue.

B. THE DISPOSITION

In light of our conclusions, I would order the Superintendent to refrain from carrying out the proposal contained in the Notice of Proposal.

I agree with the Majority Decision with respect to the issue of costs.

DATED at Toronto, this 15th day of February, 2001.

Kathryn M. Bush
Vice-Chair of the Tribunal and
Chair of the Panel

INDEX NO.: FST Decision #25 (FST File No. P0145-2001)

DATE OF DECISION: February 21, 2001

PUBLISHED: Bulletin 10/1 and FSCO website

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

AND IN THE MATTER OF a Notice of Proposal to Refuse to Consent (a "Notice") by the Superintendent of Financial Services (the "Superintendent") with respect to an application for withdrawal of money from a life income fund, a locked-in retirement account or a locked-in retirement income fund (a "locked-in account") based on financial hardship;

AND IN THE MATTER OF a Hearing under subsection 89(8) of the *Act*.

REASONS

1. The Applicant in this matter made an application to the Superintendent, on the basis of financial hardship, for access to funds associated with a locked-in account in her name. Specifically, the application was based on low income, one of several grounds of financial hardship prescribed by subsection 87(1) of Ontario Regulation 909, as amended (the "Regulation"), adopted under the *Act*.
2. The Superintendent proposed to refuse the application, by a Notice dated December 11, 2000, on the basis that the Applicant's expected income for the next year was more than the qualifying low income amount, determined in accordance with the formula set out in paragraph 7 of subsection 87(1) of the Regulation. The Superintendent also observed in the Notice that the Regulation (in subsection 89(6)) establishes a maximum amount, determined by a prescribed formula, that can be withdrawn from a locked-in account on the basis of low income and that in this case, applying the formula, the maximum amount would be zero.
3. In her request for a hearing before this Tribunal, the Applicant does not allege that the Superintendent made any errors in applying the formulas, set out in the Regulation, for determining the qualifying low income amount or the maximum amount of a permissible withdrawal and the Tribunal finds no such errors.
4. This Tribunal does not have the authority to direct the Superintendent to allow an application for a withdrawal from a locked-in account that does not meet the requirements of the Regulation. Therefore, although the evidence of financial hardship on the part of the Applicant may be compelling, the application in this case cannot be granted because of the failure to meet those requirements. There are, of course, other grounds of financial hardship besides low income that can be advanced in an application for withdrawal from a locked-in account. If the circumstances of the Applicant are such that she could meet the qualifications for reliance on one or more of those other grounds, a further application could be made to the Superintendent.
5. In the circumstances, the Tribunal must affirm the Superintendent's Notice dated December 11, 2000 in respect of the present application.

ORDER

The Superintendent is hereby directed to carry out the proposal contained in the Notice, dated December 11, 2000, directed to the Applicant.

DATED at Toronto, this 21st day of February, 2001.

Colin H. H. McNairn
Vice Chair
Financial Services Tribunal

FINANCIAL SERVICES TRIBUNAL: FST FILE #P139-2001

INDEX NO.: FST Decision #26 (FST File No. 139-2001)

DATE OF DECISION: February 27, 2001

PUBLISHED: Bulletin 10/1 and FSCO website

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

AND IN THE MATTER OF a Notice of Proposal to Refuse to Consent (a "Notice") by the Superintendent of Financial Services (the "Superintendent") with respect to an application for withdrawal of money from a life income fund, a locked-in retirement account or a locked-in retirement income fund (a "locked-in account") based on financial hardship;

AND IN THE MATTER OF a Hearing under subsection 89(8) of the *Act*.

REASONS

1. The Applicant in this matter requested a hearing in respect of the Superintendent's Notice of Proposal to Refuse to Consent dated December 12, 2000 that denied the Applicant access to funds associated with a locked-in account. The Applicant had applied to withdraw these funds, pursuant to subsection 67(5) of the *Act*, which reads as follows:

   67.–(5) Despite subsections 1 and 2, upon application, the Superintendent may consent to the commutation or surrender, in whole or in part, of a prescribed retirement savings arrangement of a type that is prescribed for the purposes of this subsection if the Superintendent is satisfied as to the existence of such circumstances of financial hardship as may be prescribed.

2. The Superintendent's ground for denial was that this application (the "November Application"), which was made on the basis of low income, was made within 12 months after the date of another successful application (the "July Application") made on the basis of low income, contrary to the conditions imposed by subsections 89(4) and 89(5) of Ontario Regulation 909 as amended (the "Regulation"), as follows:

   89.–(4) Only one application may be made during each 12-month period.

   (5) An unsuccessful application is not counted for the purposes of subsection (4).

2. The issue to be determined by the Tribunal is whether or not the Superintendent should have consented to the November Application.

2. The July Application was first received by the Superintendent on June 26, 2000, then amended and re-signed by the Applicant on July 5, 2000. On July 24, 2000, the Superintendent consented to withdrawal of the full amounts requested by the Applicant, on the basis of low income, and also on the basis of a debt against the principal residence. Therefore, the July Application was a successful application on both bases for which withdrawals were requested. Only the consent on the basis of low income is relevant to the matter now before the Tribunal.

2. On November 9, 2000, the Applicant signed the November Application, in which she applied to withdraw $5,000 from her locked-in account on the basis of low income. As this application was made within 12 months

after the successful June Application, which also included a request on the basis of low income, the November Application does not meet the conditions set out in subsections 89(4) and 89(5) of the Regulation.

This Tribunal does not have the authority to direct the Superintendent to allow an application for a withdrawal from a locked-in account that does not meet the requirements of the Regulation. Although the evidence of financial hardship on the part of the Applicant may be compelling, the November Application cannot be granted because it fails to meet one of those requirements. If in July, 2001, 12 months after the date of the successful July Application, the circumstances of the Applicant are such that she could meet the qualifications for reliance on low income or debt against the principal residence, a further application for withdrawal of locked-in funds can then be made to the Superintendent. Prior to that time, any application of this nature must be on one of the other grounds of financial hardship prescribed by the Regulation.

In the circumstances, the Tribunal must affirm the Superintendent's Notice dated December 12, 2000 in respect of the November Application.

ORDER

The Superintendent is hereby directed to carry out the proposal contained in the Notice of Proposal to Refuse to Consent, dated December 12, 2000, directed to the Applicant.

DATED at Toronto, this 27th day of February, 2001

Mr. C. S. Moore
Member, Financial Services Tribunal

Notes:

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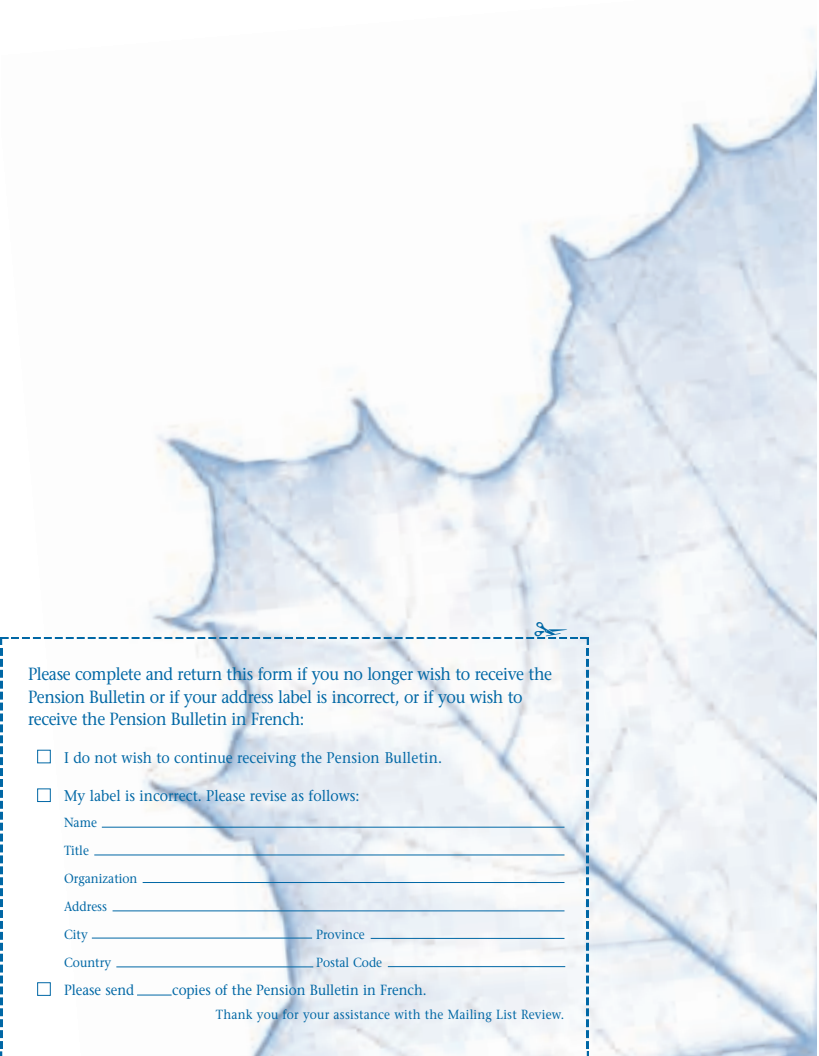

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