



SECTION:	General
INDEX NO.:	G200-100
TITLE:	Court Proceedings – Involvement of FSCO/Superintendent of Financial Services
APPROVED BY:	Superintendent of Financial Services
PUBLISHED:	FSCO Website (May 2009)
EFFECTIVE DATE:	When published

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.

*Note: The electronic version of this policy, including direct access to all linked references, is available on FSCO's website at www.fSCO.gov.on.ca. All pension policies can be accessed from the **Pensions** section of the website through the **Pension Policies** link.*

The purposes of this policy are to present FSCO's position on its potential involvement in court proceedings commenced by administrators of pension plans (administrators), employers, employees, plan members, former members, trustees, custodians, and others involving issues under the PBA; and to communicate the procedures to be followed when such a proceeding is commenced.

The courts are issuing decisions which may impact on the administration and enforcement of the PBA or Regulation. These decisions may be interpreted as binding the actions of the Superintendent of Financial Services (Superintendent), despite the fact that the Superintendent did not intervene or otherwise participate in the proceeding. As a result, FSCO is adopting a position that FSCO should be informed of such court proceedings no later than the time the proceeding is commenced, so that the Superintendent can decide whether to become involved in the proceeding in a timely fashion.

Requirement to Inform

FSCO is to be informed of any proceeding before a court that involves an interpretation or application of the PBA or Regulation, the Companies' Creditors Arrangement Act, or the Bankruptcy and Insolvency Act. Such proceedings may include, but are not limited to, proceedings concerning the payment of surplus to the employer or an interpretation of the PBA or the Regulation.

FSCO is to be given notice of such court proceeding. Notice should be given no later than the date the proceeding is commenced or as soon as practicable after that date. Notice, including a paper-based copy, should be delivered to the Pensions Plan Branch staff member assigned to the plan in question.

Requirement to Provide Supporting Documents

A copy of all documents filed with the court by the applicant/plaintiff/moving party should be provided to FSCO staff no later than the date the application is filed with the court or as soon as practicable after that date. Upon receipt of such documentation, FSCO staff will review the material and determine what action, if any, the Superintendent will take, given the circumstances and the facts provided. It is not necessary to name the Superintendent as a party to the proceeding. If appropriate, the Superintendent will bring a motion to the court to be added to the proceeding.

When will FSCO or the Superintendent Intervene?

Specific concerns which may give rise to an application to intervene include situations where

- it appears that the matter does not comply with the PBA or regulatory requirements
- it appears that a complete record is not being filed with the court
- it appears that there is some opposition to the relief being sought
- it appears that members are not being fully informed as to their rights, or all of the facts
- in a class proceeding, the scope of the class for whom the relief is requested is not the same as the scope of members and other persons who would be affected by the court's determination, or in any other type of proceeding, notice is not being provided to all persons who could be affected
- the relief sought from the court is such that it may bar or be interpreted as barring the Superintendent from ensuring compliance with the PBA or regulatory requirements
- the relief sought from the court may conflict with the Superintendent's obligations under the PBA
- it appears that the interests of all affected groups may not be considered by or brought to the attention of the court
- it appears that all issues that the Superintendent should consider in ensuring compliance may not be addressed in the court proceeding
- the standards of notice required for applications in such subject matters to the Superintendent were not met

Class Proceedings

The Superintendent may seek to become involved in proceedings under the *Class Proceedings Act, 1992* when any of the above situations are present, or when it appears that the court case could result in an order or judgment involving the interpretation of the PBA or Regulation or expressing compliance with the PBA or Regulation, such that the Superintendent could otherwise refuse to grant or approve the relief sought.

The Pension Plans Branch staff member assigned to the plan in question should be provided with a notice of the proceedings, including a paper-based copy of the notice, and all relevant documents and materials no later than the commencement of the proceeding.