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Partial Wind Up - Identification and Administration of Surplus - Compliance with PBA, subsection 70(6)

Subsection 70(6) of the *Pension Benefits Act*, R.S.O. 1990 (the "PBA") states:

On 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.

It is the Commission's position that the rights and benefits referred to in subsection 70(6) include any entitlement to surplus that would exist assuming that a full wind up of the plan occurred on the date of partial wind up. Where a surplus would exist on full wind up, it is not acceptable to identify partial wind up assets as those equal only to the partial wind up liabilities.

Clause 70(1)(c) of the PBA requires that the Administrator of a plan that is to be wound up completely or in part file a wind up report that sets out "the methods of allocating and distributing the assets of the pension plan and determining the priorities for payment of benefits". Accordingly, on partial wind up, it is the actuary's responsibility to identify assets related to the partial wind up in the same manner as the PBA would require on full wind up. The determination of the amount of assets related to a partial wind up must be done on a basis that is appropriate in the circumstances. Furthermore, where surplus is identified as a portion of the assets related to a partial wind up, it is the Administrator's responsibility to administer the surplus as required by the PBA and Regulation 909, R.R.O. 1990, as amended (the "Regulation").

If a plan would be in a surplus position if it fully wound up at the date of the partial wind up, the failure to identify surplus related to the partial wind up is inconsistent with the following requirements of the PBA and the Regulation:

! Subsection 70(6) and clause 70(1)(c) of the PBA.

- ! The definition of partial wind up under Section 1 of the PBA which provides that, "partial wind up" means the termination of a part of a pension plan and the distribution of the assets of the pension fund related to that part of the pension plan.
- ! Clause 28(2)(q) of the Regulation which requires, "... a statement of the method of distribution and, if applicable, the formula for allocation of any surplus among the plan beneficiaries."
- ! Subsection 8(1) of the Regulation which states, "... No payment may be made from surplus out of a pension plan that is being wound up in whole or in part unless,
 - (a) the payment is to be made to or for the benefit of members, former members and other persons, other than an employer, who are entitled to payments under the pension plan on the date of wind up; or
 - (b) the payment is to be made to an employer with the written agreement of,
 - i) the employer,
 - ii) the collective bargaining agent of the members of the plan or, if there is no collective bargaining agent, at least two-thirds of the members of the plan, and
 - iii) such number of former members and other persons who are entitled to payments under the pension plan on the date of the wind up as the Commission considers appropriate in the circumstances."

Whatever determination the Administrator makes concerning surplus identified on partial wind up, it must be in accordance with the PBA, the Regulation and any relevant Commission policies, procedures and administrative practices. Distribution of the assets related to a partial wind up must conform with the proposals set out in the partial wind up report approved by the Superintendent. A supplement to a partial wind up report will be required if the surplus distribution proposals are not reflected in the initial report.