



SECTION: Surplus

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TITLE: Making Application Under ss. 7a(2)(c)
- O. Reg. 708/87

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Procedure on Applications under Regulation 7a(2)(c) O.Reg. 708/87

This procedure takes immediate effect.

Regulation 7a(2)(c) requires both the consent of the Commission under subsection 79(1) of the PBA, 1987 and a court order authorizing the distribution of funds for the payment of surplus to an employer on wind-up. Accordingly, the applicant must make application to both the Commission and the Court.

In view of the uncertainty about appropriate procedures for such application, and the Commission's concern that adequate notice of the proceedings be given to all parties for both applications, the Commission is issuing the following guidelines.

1. The Commissions' preferred method of procedure is for applicants to apply to the Commission under subsection 79(1) of the PBA, 1987 and Regulation 7a(2)(c) for its consent before applying to the court for an order authorizing the distribution of funds from surplus.
2. If an applicant obtains a court order authorizing the distribution of funds from surplus before obtaining Commission consent, the Commission will require assurance that the following criteria were met in the court proceedings:
 - the standards of notice required for applications to the Commission as to length of notice, method of notification, information in the notice, and parties notified have been complied with;
 - all issues which the Commission would consider have been addressed; and
 - the interests of all affected groups were considered and assessed by the court.

If the Commission concludes that procedures used for the court application have not satisfied the criteria which the Commission would apply to its own proceedings, the Commission may exercise its concurrent jurisdiction and hold a hearing in which the issue of entitlement is considered, requiring adequate notice, legal representation for beneficiary groups, and determination of the issues.

The Commission may order that the costs of representation for beneficiary groups in such a hearing be paid out of the relevant portion of the pension surplus.

3. The Commission may continue to invoke its power to attach such terms and conditions to its consent as it considers proper.
4. For greater certainty, no application under Regulation 7a(2)(c) will be considered by the Commission until the Superintendent has approved the wind-up report, nor should such an application proceed to the court.