



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

AND IN THE MATTER OF a Notice of Intended Decision of the Superintendent of Financial Services, under section 78(1) of the *PBA*, to consent to a payment out of the Aviva Canada Inc. Pension Plan, Registration Number 0235523.

TO: **Aviva Canada Inc.**
2206 Eglinton Avenue East, Suite 300
Scarborough, ON M1L 4S8

Attention:
Diana Britton
Vice President of Total Rewards and
Operations Excellence

Applicant and Employer

NOTICE OF INTENDED DECISION

I INTEND TO CONSENT, under section 78(1) of the *PBA*, to the payment out of the Aviva Canada Inc. Pension Plan, Registration Number 0235523 (the “Plan”) in respect of the partial wind up effective December 31, 1999, of its predecessor pension plan the **Pension Plan for Employees of The General Accident Assurance Company of Canada and Associated Companies Registration No. 0264457** (the “GAA” Plan), to **Aviva Canada Inc.**, in the amount of \$3,626,950 as at December 31, 2007, less the Applicant’s surplus sharing expenses, plus adjustments to the actual date of payment, as determined in accordance with the Surplus Sharing Agreement.

I INTEND TO MAKE THE CONSENT effective only after the Applicant satisfies me that any payments pursuant to the Surplus Sharing Agreement to which the members, former members and any other persons are entitled, and any other payments to which the members, former members and any other persons are entitled, have been paid, purchased, or otherwise provided for.

REASONS:

1. Aviva Canada Inc. is the employer as defined in the Plan.
2. The Plan is the successor plan to the GAA Plan.
3. The GAA Plan was partially wound up, effective December 31, 1999.
4. The GAA Plan was merged with the Plan effective January 1, 2000.
5. As at the partial wind-up date, December 31, 1999, surplus relating to the partial wind up of the GAA Plan was estimated at \$5,219,500. A supplementary report to the partial wind-up report as at December 31, 2007, indicates the surplus to be \$8,525,800.
6. The application discloses that by written agreement made by the Employer, and 92.2% of the Eligible Members (as defined in the application), who were affected by the Partial wind up (as defined in the application), or, if any such person is deceased, by his or her beneficiary who is legally entitled to claim through the member, the surplus in the wound up portion of the plan at the date of payment is to be distributed:
 - a) 50% to the Employer; and
 - b) 50% to the beneficiaries of the Plan as defined in the Surplus Sharing Agreement.
7. The Employer has applied, pursuant to sections 78(1) and 79(3) of the *PBA*, and section 8(1)(b) of Regulation 909, R.R.O. 1990 ("Regulation"), for consent of the Superintendent of Financial Services to the payment to the Employer of 50% of the surplus from the Plan, after payment of all Plan benefits (including ad hoc increases) and partial wind-up expenses.
8. Since the Employer's application was filed, the *PBA* has been amended by Chapter 24, Statutes of Ontario, 2010. Section 79(3) has been replaced by section 79(3.1) and the requirements of section 8(1)(b) of the Regulation are now found in section 77.11 of the *PBA*.
9. Section 79(3.1) of the *PBA* provides:

"Subject to section 89, the Superintendent shall not consent to payment of surplus to an employer out of a pension plan that is being wound up in part unless,

 - (a) all of the criteria described in clauses (3)(a), (c) and (d) are satisfied; and
 - (b) the payment of surplus to the employer on the partial wind up of the pension plan is authorized either as provided in section 77.11, or by a court order declaring that the employer is entitled to the surplus when the plan is being wound up in part.

10. Sections 79(3) (a), (c) and (d) of the *PBA* provide as follows:
 - (a) the Superintendent is satisfied, based on reports provided with the employer's application for payment of the surplus, that the pension plan has a surplus;
 - (c) provision has been made for the payment of all liabilities of the pension plan as calculated for purposes of the termination of the pension plan; and
 - (d) the applicant and the pension plan comply with all other requirements prescribed under other sections of this Act in respect of the payment of surplus.

11. Sections 77.11(7) and (8) of the *PBA* provide:
 - (7) A written agreement among the following persons may provide for payment of surplus to the employer in the circumstances specified in the agreement and as of the date specified in the agreement:

.....

 3. If the surplus is to be paid to the employer on the partial wind up of the pension plan,
 - i. the employer,
 - ii. at least two-thirds of the members of the pension plan affected by the partial wind up (and, for this purpose, a trade union that represents or represented affected members on the date of the partial wind up may agree on behalf of those members), and
 - iii. the number which is considered appropriate in the circumstances by the Superintendent of former members and other persons who are affected by the partial wind up and who are entitled to payments under the pension plan as of the date of the partial wind up.
 - (8) A written agreement prevails over any document that creates and supports the pension plan and pension fund, it prevails over subsections (2), (3) and (4), and it prevails despite any trust that may exist in favour of any person.

12. The Superintendent considers that the agreement of 2/3 of the total number of former members and other persons who are affected by the partial wind up and who are entitled to payments under the Plan as of the date of the wind up is appropriate within the meaning of section 77.11(7) of the *PBA*.

13. The application appears to comply with sections 78(1), 79(3.1)(a) and (b) and section 77.11 of the *PBA*.

14. 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 section 89(6) of the *PBA*. **To request a hearing, you must**

deliver to the Tribunal a written notice that you require a hearing, within thirty (30) days after this Notice of Intended Decision is served on you.¹

YOUR WRITTEN NOTICE must be delivered to:

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

Attention: The Registrar

FOR FURTHER INFORMATION on a Form for the written notice, please see the Tribunal website at www.fstontario.ca or contact the Registrar of the Tribunal by phone at 416-590-7294, toll free at 1-800-668-0128, ext. 7294, or by fax at 416-226-7750.

IF YOU FAIL TO REQUEST A HEARING WITHIN THIRTY (30) DAYS, I MAY CARRY OUT THE INTENDED DECISION AS DESCRIBED IN THIS NOTICE.

DATED at Toronto, Ontario, this 10TH day of December, 2010.

K. David Gordon
Deputy Superintendent, Pensions

1 NOTE - Pursuant to section 112 of the *PBA* any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by regular mail and any document sent by regular mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.