



SECTION: General

INDEX NO.: G200-101

TITLE: Court Proceedings – Involvement of FSCO/Superintendent of Financial Services

APPROVED BY: Superintendent of Financial Services

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REPLACES: G200-100

This policy replaces G200-100 (Court Proceedings – Involvement of FSCO/Superintendent of Financial Services) 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 regulations made under the PBA(Regulations), the FSCO Act, PBA or Regulations 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, spouses and former spouses of members and former members, trustees, custodians, and others involving issues under the PBA and Regulations; 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 Regulations. These decisions may be interpreted as binding the actions of the Superintendent of Financial Services (Superintendent), despite the fact that the Superintendent did not have notice or 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 apply for intervention or otherwise 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 Regulations, or an application under the *Companies' Creditors Arrangement Act* (CCAA) or the *Bankruptcy and Insolvency Act* that involves the plan sponsor. Such proceedings may include, but are not limited to, proceedings concerning the payment of surplus to the employer, a filing for CCAA protection by a plan sponsor, or a matter before a family law court that involves an interpretation of the PBA or the Regulations, including a division of pension benefits on marriage breakdown.

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 Division staff member assigned to the plan in question.

Requirement to Provide Supporting Documents

A copy of all relevant documents filed with the court by the applicant/plaintiff/moving party, or by the defendant/respondent where available, should be provided to the Pension Division staff member, 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 for intervention or some other involvement in the proceeding.

When will FSCO or the Superintendent Intervene?

Specific concerns which may give rise to an application to intervene or other involvement include situations where:

- a) it appears that the matter does not comply with the PBA or regulatory requirements;
- b) it appears that a complete record is not being filed with the court;
- c) it appears that there is some opposition to the relief being sought;
- d) it appears that members are not being fully informed as to their rights, or all of the facts;
- e) 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;
- f) the relief sought from the court is such that, if granted, it may bar or be interpreted as barring the Superintendent from ensuring compliance with the PBA or regulatory requirements;
- g) the relief sought from the court, if granted, may conflict with the Superintendent's obligations under the PBA;
- h) it appears that the interests of all affected groups may not be considered by or brought to the attention of the court;

- i) it appears that all issues that the Superintendent should consider in ensuring compliance may not be addressed in the court proceeding;
- j) the standards of notice required for applications or other requirements under the PBA or Regulations in such subject matters to the Superintendent were not met.

In any of the above circumstances, or other circumstances that may be relevant but are not listed above, the Superintendent will exercise discretion in deciding whether to apply to become involved in the proceeding. The Superintendent reserves the right to assess each case on its own facts and on the risk factors involved.

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 Regulations or expressing compliance with the PBA or Regulations, such that the Superintendent could otherwise refuse to grant or approve the relief sought.

The Pension Division 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.