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**SECTION:** Surplus

**INDEX NO.:** S900-506

**TITLE:** Subsections 79(2) and (4) of the PBA Came Into Effect January 1, 1998

**APPROVED BY:** Superintendent of Pensions & CEO, Financial Services Commission of Ontario

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**Q. Has subsection 8(3) of Regulation 909 ("Reg. 909") under the *Pension Benefits Act* ("PBA") been extended?**

A. Yes. Subsection 8(3) of Reg. 909 under the PBA was extended to December 31, 1998. The amendment extending the operation of section 8 of Reg. 909 under the PBA was filed on November 19, 1997 as O. Reg. 415/97.

**Q. Have subsections 47(9) and (10) of Reg. 909 under the PBA been extended? If not, what is the effect?**

A. No. Subsections 47(9) and (10) of Reg. 909 under the PBA were not extended by O. Reg. 415/97. The expiration of these subsections on December 31, 1997 has removed the temporary suspension of the application of subsections 79(2) and (4) of the PBA. As a result, effective January 1, 1998, this may have significant implications for surplus withdrawal applications for both ongoing plans and plans that are winding up.

These subsections state:

79(2) A pension plan that does not provide for the withdrawal of surplus money while the pension plan continues in existence shall be construed to prohibit the withdrawal of surplus money accrued after the 31st day of December, 1986.

79(4) A pension plan that does not provide for payment of surplus money on the wind up of the pension plan shall be construed to require that surplus money accrued after the 31st day of December, 1986 shall be distributed proportionately on the wind up of the pension plan among members, former members, and any other persons entitled to payments under the pension plan on the date of the wind up.