

# PENSION BULLETIN

JANUARY 2005 – VOLUME 14, ISSUE 1

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Ontario

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## GENERAL ANNOUNCEMENTS

### CAPSA Governance Guidelines

On October 25, 2004, the Canadian Association of Pension Supervisory Authorities (CAPSA) released the Pension Plan Governance Guidelines and Self-Assessment Questionnaire. Developed for use by pension plans of all types and sizes, the guidelines are intended to help pension plans implement and maintain effective governance practices.

CAPSA Guideline No. 4, the Pension Plan Governance Guidelines and Self-Assessment Questionnaire, is available on the CAPSA website at: [www.capsa-acor.org](http://www.capsa-acor.org).



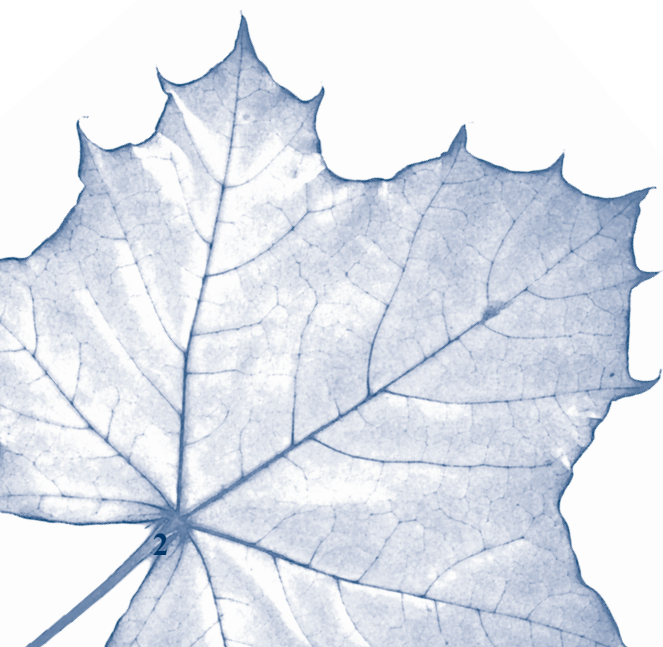




## Joint Forum Guidelines for Capital Accumulation Plans

On May 28, 2004, the Joint Forum of Financial Market Regulators released Guidelines for Capital Accumulation Plans (CAPs). The Guidelines apply to all CAPs in Canada, including defined contribution pension plans. It is expected that all CAPs will be operating in accordance with the CAP Guidelines by December 31, 2005.

The CAP Guidelines have been adopted by the Canadian Association of Pension Supervisory Authorities (CAPSA) as CAPSA Guideline No. 3. Copies may be found on both the CAPSA website at: [www.capsa-acor.org](http://www.capsa-acor.org), and the Joint Forum website at: [www.jointforum.ca](http://www.jointforum.ca).



## **Pension Division - Staff Changes**

Irene Mook-Sang and Rosemin Jiwa-Jutha have accepted the newly created positions of Manager, Pension Operations, in the Pension Plans Branch.

Marion Gassenauer has accepted the assignment of Assistant Pension Officer. Janice Juba has accepted the assignment of Pension Analyst. Salim Hajee has accepted the assignment of Pension Officer. Tim Thompson has returned to the Division part time as a Pension Officer.



## **Vendor of Record Arrangement - Administrator Appointments for Defined Benefit Plans of Insolvent Employers**

The Financial Services Commission of Ontario (FSCO) maintains a roster of firms from which the Superintendent of Financial Services (the Superintendent) selects and appoints administrators to wind up defined benefit plans of insolvent employers. The Superintendent makes such appointments pursuant to his authority under section 71 of Ontario's Pension Benefits Act.

FSCO will, in the near future, re-establish the roster by issuing a Request for Proposals (RFP) through MERX™, the electronic tendering system used by the Government of Ontario, for the establishment of a Vendor of Record (VOR) arrangement, whereby the services of qualified firms (vendors) who are able to act as administrators of pension plans are available to the Superintendent, at the option of the Superintendent, and on short notice. For further information about MERX™ call 1-800-964-MERX or visit the MERX™ website at [www.merx.com](http://www.merx.com).

The RFP will provide a description of the services to be provided, the stages of proposal evaluation, including mandatory requirements and rated criteria, and the terms and conditions of the RFP process.

The number of placements on the roster will be limited. Vendors who are selected will be placed on the roster for approximately four (4) years from the date of selection with the option in favour of the Superintendent to extend this period for an additional period of one (1) year on the same terms and conditions. The Superintendent reserves the right to make specific plan appointments outside the VOR arrangement where the Superintendent considers that circumstances warrant it.



## COURT/PROSECUTION MATTERS

The information set out below is current to November 22, 2004.

### Court Matters

#### 1. National Steel Car Limited

The Superintendent consented to the transfer of assets from the Amended Pension Plan for Salaried Employees of National Steel Car Limited (the "Salaried Plan") to the Amended Pension Plan for Hourly Employees of National Steel Car Limited (the "Hourly Plan"). The Superintendent's consent was given after submissions opposing the transfer were made by some members of the Salaried Plan. The letter giving the consent stated that anyone dissatisfied with the consent could request a hearing before the Financial Services Tribunal (FST). A hearing was requested.

The FST held the hearing on January 15 to 17, 2002. On May 31, 2002, the FST released its decision. In response to a motion brought by National Steel Car at the hearing, a majority decision held that the FST has no jurisdiction to conduct a hearing where the Superintendent has consented to the transfer of assets, relying upon the express wording of subsection 89(4). One panel member dissented, finding that there was jurisdiction based on the HOOPP and other cases and on a purposive reading of the PBA. The panel unanimously found that if there was jurisdiction, the Superintendent's consent would have been upheld, as surplus was not an "other benefit" to be considered under subsection 81(5) of the PBA.

The Salaried Plan members have appealed the FST's decision to the Divisional Court. The appeal was heard on September 13 and 14, 2004. The court orally allowed the appeal on the jurisdictional issue, stating that reasons would be released later. These reasons have not yet been released. The court reserved its decision on the transfer issue.

#### 2. Marshall-Barwick Limited

The FST held a hearing in this matter on September 9, 2002. The issue at this hearing was whether a Notice of Proposal proposing to refuse to approve the partial wind up report (because a member allegedly terminated for cause was not included in the partial wind up group) should be upheld. The FST released its decision on November 29, 2002, upholding the Superintendent's Notice of Proposal and directing the Administrator to file a revised wind up report that includes, in the partial wind up group, the member terminated for cause.

The company has appealed the FST's decision to the Divisional Court. No date has been set for hearing the appeal.

#### 3. Plumbers Local 463 Pension Plan

The board of trustees of the Plumbers Local 463 Pension Plan has filed an application for judicial review in respect of an order issued by the Superintendent on October 6, 2003 requiring the trustees to pay the cost of an examination of the Plan out of the fund for the Plan. No hearing date has been set.





Ontario

#### 4. Donohue Forest Products Inc.

The spouse of a deceased Plan member requested a hearing before the FST with respect to a Notice of Proposal issued by the Superintendent on November 8, 2002, which refused to order the Plan Administrator to recalculate the pre-retirement death benefit owing. The hearing took place July 2, 2003 and September 22 and 25, 2003. The FST released its decision on January 9, 2004, finding that the Notice of Proposal should be affirmed. The applicant has appealed the FST's decision to the Divisional Court. The Divisional Court heard and dismissed the appeal on November 10, 2004. The applicant has filed a Notice of Motion for leave to appeal the Divisional Court's decision to the Court of Appeal.

#### 5. Kerry (Canada) Inc.

The FST conducted a hearing that arose from a Notice of Proposal in which the Superintendent of Financial Services proposed to order Kerry (Canada) Inc. to reimburse certain expenses paid from the pension fund and to amend its Pension Plan so that only expenses for the exclusive benefit of the members could be paid from the fund.

The FST released its decision on March 4, 2004. The FST held that certain expenses were to be reimbursed to the fund, while certain other expenses did not have to be reimbursed as they were incurred for the exclusive benefit of the members. The FST also held that there was no jurisdiction under the PBA for the Superintendent to order a plan amended.

A group of former members comprising the DCA Employees Pension Committee for the Pension Plan for the Employees of Kerry (Canada) Inc. has appealed the FST's decision. The appeal is scheduled to be heard on March 31 and April 1, 2005.

#### 6. Participating Co-Operatives of Ontario Trustee Pension Plan

The board of trustees of the Participating Co-Operatives of Ontario Trustee Pension Plan filed an application before the Divisional Court under Rule 14 of the *Rules of Civil Procedure*, the *Pension Benefits Act* and the *Trustees Act* for the appointment of replacement trustees or an administrator and a declaration discharging the current Trustees. The application is scheduled to be heard on February 3, 2005.



## **Prosecution Matters**

### **1. Mutual/Hadwen Imaging Technologies Inc.**

Charges were laid against the employer, successor employer and two corporate officers for the employer and successor employer for failing to remit employer and employee contributions. The first appearance was on April 14, 2004. Trial dates have been set for January 17 to 21, 2005.

remit employer and employee contributions. The remaining charges were withdrawn. The employer was fined \$3,500, exclusive of victim fine surcharge. The corporate officer received a suspended sentence and was placed on probation for one year.

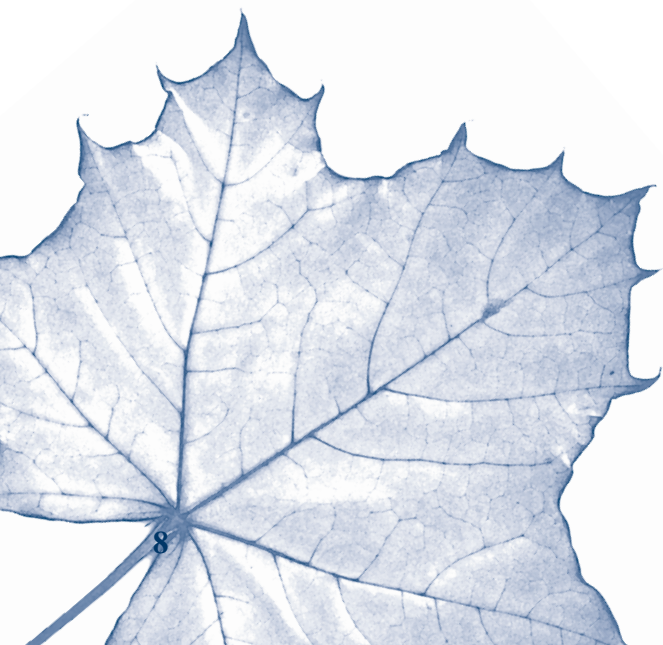
### **2. Cleaver-Books of Canada Ltd.**

Charges were laid against the corporation for failing to file a financial statement for the fiscal years ending 2000, 2001 and 2002 with respect to the Pension Plan for Hourly Employees of Cleaver -Brooks of Canada. The first appearance was held on July 13, when the matter was adjourned to August 11, 2004. On October 13, 2004, the corporation pleaded guilty to all three counts and was fined a total of \$6,000, exclusive of the victim fine surcharge.

### **3. Whiz-a-Top Services Ltd.**

Charges were laid against the employer and one of its directors with respect to the Registered Pension Plan for the Employees of Whiz-a-Top Services Limited, for failing to remit employer and employee contributions and failing to pay the filing fee for the Annual Information Return for the 2001 and 2002 fiscal years. The first appearance was on September 15, 2004. On November 24, 2004, the employer and its corporate officer each pleaded guilty to the two counts of failing to





## LEGISLATIVE CHANGES / REGULATORY POLICIES

Financial Services Commission of Ontario  
Commission des services financiers de l'Ontario

<b>SECTION:</b>	Locked-In Accounts
<b>INDEX NO.:</b>	L200-401
<b>TITLE:</b>	2005 LIF Maximum Payment Amount Table
<b>APPROVED BY:</b>	Deputy Superintendent, Pensions
<b>PUBLISHED:</b>	FSCO website (December 2004)
<b>EFFECTIVE DATE:</b>	January 1, 2005

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*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 Regulation 909, R.R.O. 1990 ("Regulation"), the FSCO Act, PBA or Regulation govern.*

The table on the following page has been prepared by the Financial Services Commission of Ontario (FSCO). Additional copies of this table and copies of policies published by FSCO about the Ontario LIF are available on FSCO's website at: [www.fSCO.gov.on.ca](http://www.fSCO.gov.on.ca), or may be picked up in person at the reception desk, 4th Floor, 5160 Yonge Street, North York, Ontario.

Interest assumptions used in the table on the following page:

- (1) 6.00%, which represents the greater of the CANSIM B14013 rate for November 2004 (4.87%) and 6.00% for the first 15 years, and
- (2) 6.00% for the years remaining to the end of the year in which the LIF owner attains 90 years of age. (Assumption to age 90 is for the purpose of maximum payment calculation only. The balance of a LIF must be used to purchase a life annuity by the end of the year in which the LIF owner attains 80 years of age.)

Percentages shown must be prorated for the initial fiscal year if less than twelve months. Part of a month is treated as a full month.





## 2005 Maximum Annual Payment Amount Table for an Ontario Life Income Fund (LIF)

Age at January 1, 2005	New Age During 2005	Years to End of Year Age 90 is Attained	Maximum Payment as a Percentage of the LIF Balance as at January 1, 2005*
48	49	42	6.19655%
49	50	41	6.23197%
50	51	40	6.26996%
51	52	39	6.31073%
52	53	38	6.35454%
53	54	37	6.40164%
54	55	36	6.45234%
55	56	35	6.50697%
56	57	34	6.56589%
57	58	33	6.62952%
58	59	32	6.69833%
59	60	31	6.77285%
60	61	30	6.85367%
61	62	29	6.94147%
62	63	28	7.03703%
63	64	27	7.14124%
64	65	26	7.25513%
65	66	25	7.37988%
66	67	24	7.51689%
67	68	23	7.66778%
68	69	22	7.83449%
69	70	21	8.01930%
70	71	20	8.22496%
71	72	19	8.45480%
72	73	18	8.71288%
73	74	17	9.00423%
74	75	16	9.33511%
75	76	15	9.71347%
76	77	14	10.14952%
77	78	13	10.65661%
78	79	12	11.25255%
79	80	11	11.96160%

- The maximum annual payment percentage is calculated on the basis of a twelve-month fiscal year to December 31, 2005 using the interest assumptions on the previous page.



Financial Services Commission of Ontario  
Commission des services financiers de l'Ontario

**SECTION:** Surplus

**INDEX NO.:** S900-510

**TITLE:** Application by Employer for Payment  
of Surplus on Full Wind Up of a Pension Plan  
- PBA ss. 78 and 79  
- Regulation 909 s. 8

**APPROVED BY:** Superintendent of Financial Services

**PUBLISHED:** FSCO website (September 2004)

**EFFECTIVE DATE:** September 30, 2004

**REPLACES:** S900-509

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*This policy replaces S900-509 with respect to the distribution of surplus to an employer on the full wind up of a pension plan. Policy S900-511 replaces S900-509 with respect to the distribution of surplus to an employer on a partial wind up of a pension plan.*

*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 Regulation 909, R.R.O. 1990 ("Regulation"), the FSCO Act, PBA or Regulation govern.*

This policy sets out the procedure for filing an application to distribute surplus to an employer ("surplus application") with the Superintendent of Financial Services ("Superintendent") on a full plan wind up pursuant to section 78 of the PBA and section 8 of the Regulation. This policy and the application procedure set out here only apply where any of the surplus is distributed to the employer. While compliance with this policy is intended to facilitate the application process, the Superintendent has the ultimate authority to decide whether to consent to or reject an application, and the Superintendent is not bound by this policy.

Subsection 78(1) of the PBA provides that surplus may not be paid to an employer unless the Superintendent consents to the payment. The Superintendent shall not consent to

a surplus application until specific requirements and conditions have been satisfied. Statements and documents supporting the applicant's assertion that the requirements and conditions have been satisfied should be included in the surplus application to the Superintendent.

For the purposes of this policy, a reference to the wind up of a plan means the full wind up of the plan, unless otherwise noted.

### General

The onus is on the applicant to satisfy the Superintendent that the surplus application meets the requirements of the PBA and the Regulation. The applicant should also demonstrate compliance with all relevant policies, procedures and administrative practices.

Policy S850-200 ("Filing Applications with the Superintendent of Financial Services") outlines the general procedure for filing those applications, including surplus applications, that were made to the Pension Commission of Ontario (the "PCO") in the first instance before the full proclamation of the FSCO Act.

It is the applicant's responsibility to decide whether plan-specific circumstances warrant the inclusion of additional information or documentation to support the surplus application. For example, additional information about members or former members or additional plan documentation may be relevant in the following circumstances:

- the source of all or a portion of the assets of the pension fund can be traced to the pension fund of another pension plan;
- all or a portion of the liabilities of a pension plan were converted to liabilities determined on another basis (a plan conversion);
- there was a partial wind up at any time prior to the date of the full wind up; or
- all or a portion of the liabilities of a pension plan relate to members, former members or other persons with employment in a jurisdiction other than Ontario.

If information necessary for the Superintendent to approve a surplus application is missing, the Superintendent will not be able to consent.

**The content of this policy is set up under the following sections and headings:**

### DISTRIBUTION OF SURPLUS TO AN EMPLOYER ON FULL WIND UP

General Principles  
 Notice of the Surplus Application  
 Written Agreement  
 The Surplus Application  
 Filing the Surplus Application  
 Member Statement

### SCHEDULE I

Surplus Application Format  
 and Explanatory Notes



## **SCHEDULE II**

### **Certification of Compliance with Surplus Requirements of Other Jurisdictions**

### **DISTRIBUTION OF SURPLUS TO AN EMPLOYER ON FULL WIND UP**

#### **GENERAL PRINCIPLES**

1. Where an employer wants to be paid surplus on plan wind up, section 78 of the PBA provides that the employer must apply and that no payment may be made without the Superintendent's prior consent. Before the Superintendent can propose to consent to a surplus application, the applicant must satisfy the requirements of subsection 78(2) of the PBA concerning notice and disclosure of all plan provisions relevant to surplus entitlement on wind up. In addition, the requirements of subsections 79(3) and (4) of the PBA must be satisfied, as well as all the requirements of the Regulation.
2. Where the plan wind up results from an event affecting the employment of the members, all members participating in the plan on or after the date notice of the event is given must be included as members for purposes of the wind up, including the surplus distribution. This requirement applies even if a member terminates or is terminated after the notice date but prior to the event actually occurring.
3. In order to expedite the payment of basic benefits, an employer winding up a pension plan would generally not file a surplus application until after the payment

of basic benefits from the plan has been approved. Payment of basic benefits may be through a transfer of the basic benefits as provided under subsection 73(2) of the PBA, or the purchase of annuities.

The distribution of surplus to members may be provided by benefit enhancements or in cash. Where any surplus is to be distributed to the employer under the terms of a surplus sharing agreement, the surplus would be paid in cash after all other distributions have been made. FSCO must be notified when all assets of the plan have been distributed.

4. Compliance with the requirements of the FSCO Act, PBA, Regulation and conditions identified in any policy, procedure and administrative practice of the former PCO or of FSCO which affects the surplus application, is the responsibility of the applicant.
5. Applicants are responsible for ensuring that the information contained in the surplus application and any supporting documents is complete and accurate.

#### **NOTICE OF THE SURPLUS APPLICATION**

##### **Content**

6. The notice of the surplus application required by subsection 78(2) of the PBA (the "Surplus Notice") must include the information prescribed under subsection 28(5) of the Regulation.
7. With respect to clause 28(5)(c) of the Regulation (i.e., surplus attributable to employee and employer contributions),

the methodology used to determine the surplus attributable to employee and employer contributions should be consistent with policy S900-801 ("Surplus Attributable to Employer and Employee Contributions on Plan Wind Up").

8. With respect to clause 28(5)(e) of the Regulation (i.e., the statement that written submissions may be made to the Superintendent within 30 days of receipt of the Surplus Notice), the Surplus Notice must state that written submissions are to be directed to the Superintendent. In addition, the Surplus Notice should state that the Superintendent will provide copies of all submissions to the employer.
9. With respect to clause 28(5)(f) of the Regulation (i.e., authority for surplus reversion), there must be full and complete disclosure of all provisions of the plan and trust documentation from inception that may be relevant in determining entitlement to the payment of surplus on wind up, including provisions in all current and prior plan texts, trust agreements, insurance contracts, employee booklets, employee notices, collective bargaining agreements, information brochures and any other documents that may be relevant.

The actual wording of all the provisions from the plan and trust documentation from inception that may be relevant to surplus entitlement and to the question of authority to make plan amendments must be cited in the Surplus Notice, along with a full analysis of their implications. The Surplus Notice must also include

a complete historical analysis of all the plan, trust and other documentation that may be relevant to determine whether the plan constitutes a trust. If the plan at any time constituted a trust, the historical analysis must demonstrate that any amendment to the trust that has a bearing on surplus entitlement was valid.

Where the plan and trust documentation do not contain explicit provisions addressing surplus entitlement, this fact must also be disclosed in the Surplus Notice. As provided under subsection 47(10) of the Regulation, as of January 1, 1998, if the pension plan did not provide for the distribution of surplus on wind up, the applicant must refer to subsection 79(4) of the PBA and its consequences for the surplus application.

If a surplus application requires a court order pursuant to subsection 8(2) of the Regulation, the applicant should refer to the procedure under policy S900-600 ("Making Application Under ss. 7a(2)(c)").

10. The Surplus Notice must state that the application and the analysis of the plan documents were prepared by the applicant, and that affected members, former members or other persons may wish to obtain independent legal advice with respect to the application and the proposed surplus distribution agreement (the "Agreement") before they give any consent.
11. With respect to clause 28(5)(g) of the Regulation (i.e., notice concerning access

to copies of the wind up report), if the office or location where the members were employed is closed, the employer must make and communicate alternative arrangements for plan beneficiaries to review the wind up report filed with the Superintendent in support of the surplus request, either at a location close to the location(s) where business was conducted or through the provision of copies of the wind up report directly to plan beneficiaries.

12. If the Surplus Notice does not satisfy the requirements of the PBA and the Regulation, or the conditions identified in any policy, procedure or administrative practice of the former PCO or FSCO, or if there has not been complete, full and fair disclosure of all information that may be relevant, the Superintendent may give the employer the opportunity to re-transmit a modified Surplus Notice. The employer has a very high obligation of good faith to ensure that full and fair disclosure is given.
13. Subsection 28(5.1) of the Regulation requires that the employer file a copy of the Surplus Notice with the Superintendent before it is transmitted.

The Surplus Notice should be filed with the Superintendent by sending one (1) copy to:

Superintendent of Financial Services  
Financial Services Commission of Ontario  
5160 Yonge Street, 17th Floor  
Box 85  
North York ON M2N 6L9

14. With respect to paragraph 8, paragraph 18(d) and paragraph 30(j) of this policy, a copy of any written representations filed with the Superintendent will be forwarded to the employer.

#### **Transmitting the Notice of the Surplus Application**

15. After the employer files its Surplus Notice with the Superintendent, the employer is required to transmit the Surplus Notice to all persons listed in subsection 78(2) of the PBA. The employer must satisfy the Superintendent that full and fair notice has been given to those persons.
16. Transmittal must be by personal delivery or first class mail in accordance with subsection 112(1) of the PBA (see also paragraphs 17 and 18 of this policy).

#### **Public Advertisement**

17. The Superintendent may authorize delivery of the Surplus Notice by public advertisement or otherwise in accordance with subsection 112(3) of the PBA if the Superintendent is satisfied that it is not reasonable to give individual notice to all persons in accordance with paragraphs 15 and 16 of this policy.
18. Where an applicant requests the Superintendent's authorization to deliver the Surplus Notice by public advertisement, the information provided in the draft public advertisement submitted with the request to the Superintendent must clearly indicate the following:



- (a) to whom the Surplus Notice is addressed (e.g., former members and other persons entitled to payments from the wound up plan or any applicable predecessor plan(s));
- (b) the reason that these persons are being contacted (i.e., wind up of the pension plan in a surplus position and the surplus application);
- (c) where the details of the surplus application will be made available; and
- (d) information that persons to whom the Surplus Notice has been transmitted may make written representations to the Superintendent with respect to the surplus application within thirty (30) days after receiving the Surplus Notice and that the Superintendent will provide copies of all submissions to the employer.

#### **WRITTEN AGREEMENT (SURPLUS APPLICATIONS PURSUANT TO CLAUSE 8(1)(b) OF THE REGULATION)**

##### **Content**

19. When considering the surplus application, the Superintendent must be satisfied that the employer has:

- (a) provided the affected members, former members and other persons with full and fair disclosure in the copy of the Surplus Notice and the copy of the Agreement which have been provided to these persons;

- (b) provided the affected members, former members and other persons who are not currently represented by independent legal counsel with a reasonable opportunity to obtain independent legal advice with respect to the Surplus Notice and the Agreement;
- (c) given these persons sufficient time to consider the surplus application and the Agreement, before the employer obtains the written consent of these persons; and
- (d) obtained the number of executed Agreements (the "Written Agreements") required from affected members and others under the Regulation.

20. The Agreement must provide for:

- (a) the name and registration number of the pension plan;
- (b) the name of the individual;
- (c) the signature of the individual;
- (d) the date on which it is signed; and
- (e) the signature of the employer.

Where the Agreement is provided to a collective bargaining agent in respect of a group of individuals, the required name and signature are those of the bargaining agent. In addition, the document must include provision for a clear statement as to the individuals or group in respect

of whom the collective bargaining agent is executing the document.

### **Transmitting the Agreements**

21. In order to obtain the Written Agreements required under clause 8(1)(b) of the Regulation, a copy of each of the Surplus Notice and the Agreement must be given to all persons listed in subsection 78(2) of the PBA. In accordance with subsection 112(1) of the PBA, transmittal must be by personal delivery or first class mail.

### **Written Agreements**

22. To satisfy subclause 8(1)(b)(ii) of the Regulation, an applicant should obtain the Written Agreements of at least two-thirds of the members affected by the wind up, or, where some or all of the members are represented by any collective bargaining agent(s), the Written Agreement of the bargaining agent(s).
23. Normally, to satisfy subclause 8(1)(b)(iii) of the Regulation, an applicant should obtain the Written Agreements of at least two-thirds of the aggregate of those former members and other persons who are entitled to payments under the pension plan at the date of wind up. This requirement is subject to the Superintendent's discretion following a review of the circumstances of each surplus application.
24. If a pension plan is provided for both unionized and non-unionized members, in addition to the Written Agreement of

the relevant collective bargaining agent(s), Written Agreements must be obtained from at least two-thirds of those members not represented by the bargaining agent(s).

25. Legal counsel may sign the Agreement on behalf of the individuals they represent at the time the Agreement is signed, provided such representation arrangement satisfies the requirements of policy S900-503 ("Surplus Distribution - The Role of Legal Counsel in Obtaining Written Consent - Section 8 of Regulation 909").
26. The appropriate collective bargaining agent(s) for the purposes of subclause 8(1)(b)(ii) of the Regulation is the bargaining agent(s) who represents any members at the date the bargaining agent(s) signs the Agreement on behalf of those members.

No Written Agreement is required from any collective bargaining agent(s) who, at the date of the wind up, does not represent affected members nor from any bargaining agent(s) representing former members.

27. A collective bargaining agent may execute a Written Agreement only on behalf of those members who are represented by the bargaining agent. Therefore, if a pension plan involves more than one collective bargaining agent, a Written Agreement is required of each bargaining agent who represents any affected member.
28. The Written Agreement of a collective bargaining agent who represents any members of the pension plan must be obtained, even where the bargaining agent does not bargain the pension plan.

## THE SURPLUS APPLICATION

29. The format and content of the surplus application should be consistent with Schedule I to this policy.
30. All material required by the PBA and Regulation must be attached to the surplus application, including:
  - (a) A list, by class, of the names of members, former members or other persons who are affected by the wind up.
  - (b) A certified copy of the Surplus Notice referred to in subsection 28(5) of the Regulation, pursuant to subsection 28(6) of the Regulation.
  - (c) A statement that the employer has complied with subsection 78(2) of the PBA.
  - (d) A list, by class, of the names of members, former members or any other persons who received the Surplus Notice, the date the last Surplus Notice was transmitted and the form of delivery of the Surplus Notice.
  - (e) Complete copies of all plan and trust documentation from inception, including all current and prior plan texts, trust agreements, insurance contracts, employee booklets, employee notices, collective bargaining agreements, information brochures and any other documents that may be relevant to surplus entitlement. The applicant should highlight the parts of the plan and trust documentation that the applicant believes

may be relevant to surplus entitlement. Full documents should be arranged in chronological order and clearly labelled.

- (f) Copies of the title page and the balance sheet (or any updated balance sheet) of the wind up report as of the effective date of the wind up giving rise to the surplus application and the actuary's certification from the wind up report or any supplemental wind up report.

A supplement to a wind up report will be required if the distribution of surplus was not addressed in the initial wind up report or the initial wind up report does not reflect the surplus distribution proposals outlined in the surplus application.

- (g) Information required to be submitted to FSCO staff in accordance with policy S900-801 ("Surplus Attributable to Employer and Employee Contributions on Plan Wind Up").
- (h) The approval by the Superintendent of the payment of basic benefits based on the wind up report and any supplementary report.
- (i) A copy of the most recent collective agreement(s) if some or all of the affected members are represented by any collective bargaining agent(s).
- (j) Any written representations objecting to the surplus application received by the applicant directly or



through the Superintendent, as well as any response(s) by the applicant.

(k) Disclosure as to whether or not the surplus application affects members, former members or other persons with employment in a jurisdiction other than Ontario. Where the surplus application affects members, former members or other persons with employment in a jurisdiction other than Ontario (the “non-Ontario members”), the applicant must provide:

- (i) a table indicating the number of members, former members or other persons affected by the surplus application in each jurisdiction, including Ontario; and
- (ii) certification in the form set out in Schedule II to this policy that the applicant has complied with the requirements for surplus distribution of those other jurisdictions with respect to the non-Ontario members.

The Superintendent reserves the right to review the certification and to require additional information or explanation of the contents of the certification before proceeding with the review of the surplus application.

(l) Any submissions which may be relevant to the surplus application.

Where other materials or information which may be relevant are discovered

after the surplus application has been filed, such materials or information must be filed as an addendum to the initial surplus application (see paragraph 32 of this policy).

(m) Where the surplus application is made pursuant to clause 8(1)(b) of the Regulation,

- (i) a copy of the Agreement;
- (ii) a list, by class, of the names of members, former members or other persons who received a copy of the Agreement, the last date the Agreement was transmitted and the form of delivery of the Agreement;
- (iii) copies of the Written Agreements documenting the consent of a member, former member or other person with respect to the Agreement;
- (iv) copies of the Written Agreement(s) between the employer and any collective bargaining agent(s) that pertain to the Agreement; and
- (v) a list of the members, former members or other persons who did not agree or did not respond to the Agreement.

(n) Where the surplus application is made pursuant to subsection 8(2) of the Regulation, the applicant should

refer to policy S900-600 ("Making Application Under ss. 7a(2)(c)"). If the applicant has already obtained a court order concerning entitlement to surplus and distribution of funds from surplus, a copy of the court order must be attached to the surplus application.

## FILING THE SURPLUS APPLICATION

31. (a) The general procedure is outlined in policy S850-200 ("Filing Applications with the Superintendent of Financial Services").

(b) The surplus application, including attachments, should be submitted on 8-1/2" x 11" paper (subject to legibility).

32. The surplus application is filed with the Superintendent by sending four (4) copies to:

Superintendent of Financial Services  
Financial Services Commission of Ontario  
5160 Yonge Street, 17th Floor  
Box 85  
North York ON M2N 6L9

Four (4) copies of any information or materials which are supplemental to the initial filing and which are required in order to complete the surplus application should be filed with the Superintendent.

33. Upon receipt, the surplus application will be acknowledged.

34. The Superintendent will not complete his consideration of the surplus application until the Superintendent has

approved the payment of basic benefits on the basis of the wind up report.

35. The applicant must forward a copy of the surplus application to the plan administrator.

36. For surplus applications made pursuant to clause 8(1)(b) of the Regulation, a copy of the Agreement should be included in each of the four (4) copies submitted to the Superintendent. As well, two full sets of all of the Written Agreements obtained from members, former members, and other persons must be filed with the Superintendent. One set should include all of the signed original Written Agreements.

## Review Process

37. (a) If staff believe that an application is incomplete, they will advise the applicant in writing. The applicant must submit four (4) copies of the documentation required to complete the application.

(b) The review of a surplus application will not proceed until the earlier of the date when:

(i) staff receive all of the information requested;

(ii) the applicant submits a written request asking that the surplus application proceed as is (i.e., without submitting the additional information that staff have requested); or

(iii) the time period for a response, as set out in the letter from staff, expires.

38. Staff will then review the surplus application and all other filed materials for compliance. If any compliance concerns are identified, staff will send a letter outlining their concerns to the applicant, the collective bargaining agent(s) of the members (if applicable), and any person who has made written representations under subsection 78(3) of the PBA.
39. Staff's letter will specify the time period in which the applicant, the collective bargaining agent(s) of the members (if applicable) or any person who has made written representations under subsection 78(3) of the PBA must provide a written response to the compliance concerns, if they wish to have the response considered in the Superintendent's decision-making.

Four (4) copies of the written response must be submitted to the Superintendent.

40. The Superintendent's proposed decision will be served on the applicant and on any person who has made written representations under subsection 78(3) of the PBA, by way of a notice of proposal with written reasons.
41. A person on whom the notice of proposal is served is entitled to a hearing before the Financial Services Tribunal under subsection 89(6) of the PBA if the person delivers to the Tribunal written notice requiring a hearing

- within thirty (30) days after being served with the notice of proposal.
42. If no notice requiring a hearing is received within the specified time frame, the Superintendent may carry out the proposed decision.
43. Applicants should refer to policy S850-100 ("Delegation of the Superintendent's Authorities") for additional information on the decision-making process.

## MEMBER STATEMENT

44. If there is surplus on the wind up of a plan, the administrator shall provide, within the prescribed period, statements to all persons affected by the wind up containing the prescribed information about surplus, as set out in section 28.1 of the Regulation. These statements are to be provided after the Superintendent has approved the wind up report, including the disposition of surplus. Applicants should ensure that the requirements of this section have been satisfied.



## SCHEDULE I

### FORMAT AND CONTENT OF THE APPLICATION TO THE SUPERINTENDENT FOR CONSENT TO THE REFUND OF SURPLUS TO AN EMPLOYER

- Date:** *Provide the date of the surplus application.*
- Employer:** *Provide the correct legal name of the employer, or receiver or trustee in bankruptcy as appropriate, making the surplus application.*
- Pension Plan:** *Provide the full registered name of the pension plan and the registration number.*
- Applicant:** *Provide the name, title and business address of the corporate officer authorized to act on the employer's behalf. (Unless otherwise indicated in the surplus application, all communication from the Superintendent and staff of FSCO will be directed to the agent or counsel who files the surplus application on the applicant's behalf.)*

#### Nature of the Surplus Application:

*Provide a full description of the surplus application to the Superintendent with reference to the specific section(s) of the PBA and Regulation pursuant to which the surplus application is being made. For example:*

Application for the Superintendent's consent pursuant to subsection 78(1) of the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended, and clause 8(1)(b) of Regulation 909, R.R.O. 1990, as amended, to a payment of surplus to (provide full legal name of the employer) in the amount of \$ (show the amount sought at the effective date of wind up) as at (show the effective date of wind up) plus investment earnings thereon to the date of payment (add reference if

employer is seeking any other adjustment in its request for the surplus refund).

This application includes a surplus distribution agreement whereby (x) per cent of the surplus as of the effective date of wind up will be distributed to the members, former members and other persons entitled to benefits as of the effective date of wind up.

*Appropriate modifications will be required for surplus applications based on a court order pursuant to subsection 8(2) of the Regulation.*

#### Actuary/Counsel/Agent:

*Provide the name of any person acting as the agent or counsel for the employer making the surplus application, or acting on behalf of the members,*

*former members or other persons. If there are no such agent or counsel, please indicate “None”.*

Actuary for the Applicant (and name of firm):

Counsel for the Applicant (and name of firm):

Actuary for the Members/Former Members/Union/etc. (and name of firm):

Counsel for the Members/Former Members/Union/etc. (and name of firm):

**Plan Administrator:**

*Provide the name and address of the person designated to act as plan administrator, if different from the corporate officer acting for the applicant employer.*

**Collective Bargaining Agent:**

*Provide the name of the Collective Bargaining Agent(s) who represent any members or former members affected by the wind up of the pension plan.*

**Background:**

*Provide a brief summary of the background of the plan leading up to the surplus application including:*

- *the effective date of the plan;*
- *the classes of members covered by the plan;*
- *the basic benefit structure (e.g., “non-contributory”, “flat benefit plan”);*
- *a brief chronology of the plan and prior versions thereof, including any pension plan*

*from which assets of the wound up pension plan can be traced (include references to asset transfers to or from the pension fund of another pension plan, plan conversions and partial wind ups that may have occurred prior to the date of wind up);*

- *the corporate history relevant to the plan and any predecessor plans, including the background to any changes in the name of the employer associated with the pension plan;*
- *the effective date and reasons for the wind up of the pension plan; and*
- *any other information which will assist in understanding the surplus application.*

**Subsection 78(2) of the PBA - Surplus Notice Requirements:**

*The applicant must satisfy the Superintendent that the persons listed in subsection 78(2) have received full and fair notice and that the requirements of the PBA and Regulation have been satisfied.*

**(a) Subsections 28(5) and 28(5.1) of the Regulation:**

*Provide information indicating how the applicant has complied with:*

- *subsection 28(5) and any related policies, procedures or administrative practices setting out the minimum content to be included in the Surplus Notice required under subsection 78(2) of the PBA. This minimum content does not alter the applicant’s obligation to ensure that full and fair notice is given.*
- *subsection 28(5.1), which requires that a copy of the Surplus Notice be filed with the*

*Superintendent prior to transmittal to the members, former members and other persons.*

### **(b) Subsection 28(6) of the Regulation:**

*Provide information demonstrating compliance with subsection 28(6) of the Regulation, which requires that the surplus application be accompanied by a certified copy of the Surplus Notice signed by the corporate officer authorized to act for the applicant, a statement signed by that corporate officer that subsection 78(2) of the PBA has been complied with, the date the last Surplus Notice was distributed and details as to the classes of persons who received the Surplus Notice. Include reference to the attachment or tab at which the certified copy of the Surplus Notice may be found.*

### **Subsection 112(3) of the PBA - Alternate Service:**

*If, in lieu of individual notice, the Surplus Notice is transmitted by public advertisement, indicate the classes or groups who were served by the public advertisement, the dates and newspapers in which the advertisement ran and provide a copy of the advertisement.*

*If, in lieu of individual notice, the Surplus Notice is transmitted by an alternative form of notice other than public advertisement, indicate the classes or groups who were served by the alternative form of notice, the dates and method by which the alternative form of notice was served and provide a copy of the alternative form of notice.*

*Refer to the attachment or tab in the surplus application where a copy of the public*

*advertisement or alternative form of notice and the Superintendent's authorization for alternative service are found.*

### **Subsection 79(3) of the PBA - Conditions Precedent to a Proposal to Consent**

*In the following sections, the applicant must satisfy the Superintendent that all the conditions in the PBA and Regulation have been met.*

#### **(a) Clause 79(3)(a) - The Plan has a Surplus:**

*The applicant must demonstrate that the plan has a surplus.*

*Provide the date of the letter from the Superintendent approving the distribution of the members' and former members' basic benefits. Refer to the attachment or tab at which extracts of the wind up report and supplemental report and a copy of the Superintendent's letter may be found. Include in the surplus application a brief summary of the balance sheet for the plan as at the effective date of wind up along with an updated balance sheet if there has been any significant change in the figures. For example:*



## Balance Sheet

	As at effective date of wind up	As of (current date)
<b>Assets</b>		
Market value of assets	\$ 0.00	\$ 0.00
Less: Provision for Expenses	<u>\$ 0.00</u>	<u>\$ 0.00</u>
<b>Available assets</b>	\$ 0.00	\$ 0.00
<b>Liabilities</b>		
Basic benefits	\$ 0.00	\$ 0.00
Benefit enhancements, if applicable	<u>\$ 0.00</u>	<u>\$ 0.00</u>
<b>Liabilities for benefits</b>	\$ 0.00	\$ 0.00
<b>Surplus (Deficit)</b>	\$ 0.00	\$ 0.00

## Surplus distribution agreement as of (date):

To members, former members and other persons	\$ 0.00 ( %)
To employer	\$ 0.00 ( %)

### (b) Clause 79(3)(b) of the PBA - The Plan Provides for the Payment of Surplus to the Employer on the Wind up of the Pension Plan:

The applicant employer must satisfy the Superintendent that the plan provides for the payment of surplus to the employer on wind up. Therefore, the surplus application must establish that the employer is legally entitled to the payment of surplus on wind up. The employer must provide a complete chronological history of the plan, and any predecessor or prior plans that may be relevant, and complete copies of all plan and trust documentation since inception,

including all current and prior plan texts, trust agreements, insurance contracts, employee booklets, employee notices, collective bargaining agreements, information brochures and any other documents that may be relevant to the Superintendent's determination of whether a plan provides for the payment of surplus to the employer on wind up. The employer must also provide a full analysis showing how it reaches the conclusion that it, and not the plan beneficiaries, is entitled to the surplus.

Where there are prior pension plans from which the current plan assets can be traced, or that may otherwise be relevant, the history must take into account the prior plan texts, trust agreements, insurance contracts, employee booklets, employee notices, collective bargaining agreements,

*information brochures and any other documents that may be relevant to the Superintendent's determination of whether a plan provides for the payment of surplus to the employer on wind up.*

*Where any plan or trust documentation that may be relevant has been amended since its inception, the history must spell out the authority under the plan or trust to amend the provision or document. The history must also refer to all provisions or documents that do not support the surplus application. The applicant should highlight the portions of the documents that may be relevant to the Superintendent's decision on surplus entitlement, including those provisions that do not support the applicant's claim to surplus. Complete documents must be included as attachment(s) to the surplus application and must be clearly labelled.*

*All documents must be complete, arranged in chronological order and clearly labelled. All portions of the documents that may be relevant, whether or not they support the applicant's claim to surplus, must be highlighted.*

*As of January 1, 1998, if the pension plan did not provide for the distribution of surplus on wind up, the applicant must refer to subsection 79(4) of the PBA and its consequences for the surplus application.*

**(c) Clause 79(3)(c) of the PBA - Provision has been made for the Payment of All Liabilities of the Pension Plan:**

*Outline the status of the distribution of basic benefits and the proposals for the distribution of surplus to members, former members and*

*any other persons entitled to payments. If the Superintendent is not satisfied that adequate provision has been made for the payment of all liabilities of the pension plan, the Superintendent may propose to refuse the surplus application.*

## Clause 8(1)(b) of the Regulation - Written Agreement

*Provide a summary, by jurisdiction, of the Surplus Notices issued and Written Agreements provided. For example:*

	Total Number	Surplus Notices Issued	Written Agreements	(%)	Written Refusals
Employer	_____	_____	_____	_____	_____
Collective Bargaining Agent(s)	_____	_____	_____	_____	_____
Members (Not represented above)	_____	_____	_____	_____	_____
Former Members/ Other Persons (Not represented above)	_____	_____	_____	_____	_____

## Subsection 8(2) of the Regulation - The Court Order

### (a) Clause 8(2)(b) of the Regulation - Eligibility as a "Grandparented Plan":

*Provide information supporting the applicant's position that the surplus application is eligible to proceed under subsection 8(2), the "grandparenting provision". For example:*

The applicant makes application pursuant to clause 7a(2)(c) of O. Reg. 708/87 as that section read immediately before

December 18, 1991, as (enter the reason why the plan is a "grandparented plan", i.e., "the notice of proposal to wind up was filed prior to December 18, 1991" - enter the date the notice of proposal to wind up the plan was given to the Superintendent).

### (b) Clause 8(2)(a) of the Regulation - The Status of the Application to Court:

*Provide information concerning the status of the application to the court. Refer to the attachment which indicates the applicant's intention or where the copy of the order is located. For example:*



The applicant has applied to the court for an order pursuant to clause 7a(2)(c) of O. Reg. 708/87 as that section read immediately before December 18, 1991, (enter “and has obtained” or “and is to obtain”) an order for payment of the surplus assets to the applicant on wind up of the Plan.

### Other Jurisdictions

*The applicant must disclose whether or not the plan has members, former members or other persons with benefits resulting from employment in a jurisdiction other than Ontario. Applicants should refer to paragraph 30(k) under “The Surplus Application”, part of this policy and complete the attached certification (Schedule II).*

### Representations

*The employer must specify whether or not it received any objections or representations and attach to the surplus application copies of those objections or representations and any response(s) by the employer.*

### Attachments

*Provide an index of all attachments to the surplus application. The attachments should be listed in the order that corresponds to the order of the subject matter under this Schedule and, where applicable, in chronological order. Where a surplus application is bound, the relevant tab numbers and their contents should also be included in the index.*

### Signature

*The application must be signed by the applicant, or the authorized officer or agent of the applicant. The person signing the application should print their name below their signature and should indicate the capacity in which they have signed the application (i.e., applicant or agent or authorized signing officer of the applicant).*

## SCHEDULE II

### CERTIFICATION OF COMPLIANCE WITH SURPLUS REQUIREMENTS OF OTHER JURISDICTIONS

- Date:** *Provide the date of the surplus application.*
- Employer:** *Provide the correct legal name of the employer, or receiver or trustee in bankruptcy as appropriate, making the surplus application.*
- Pension Plan:** *Provide the full registered name of the pension plan and the registration number.*
- Applicant:** *Provide the name, title and business address of the corporate officer authorized to act on the employer's behalf. (Unless otherwise indicated in the surplus application, all communication from the Superintendent and staff of FSCO will be directed to the agent or counsel who files the surplus application on the applicant's behalf.)*

#### I CERTIFY TO THE SUPERINTENDENT OF FINANCIAL SERVICES THAT:

- (a) I, the individual making this certification, am the applicant or the agent or authorized officer of the applicant;
- (b) The application affects members, former members or other persons with employment in a jurisdiction other than Ontario (the "non-Ontario members");
- (c) I am aware of, or have consulted with professionals who have advised me of, the requirements of the laws applicable to surplus distribution of the jurisdictions of the non-Ontario members, and I have reviewed the application in order to determine whether it complies with such laws;
- (d) I certify that, to the best of my knowledge and belief, based on the information and advice provided me, including that referred to herein, this application complies with the requirements for surplus distribution of those jurisdictions outside of Ontario with respect to non-Ontario members.



DATED this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.  
(day) (month) (year)

\_\_\_\_\_  
Signature of Applicant or Applicant's Agent or Authorized Signing Officer

\_\_\_\_\_  
Name of Applicant or Applicant's Agent or Authorized Signing Officer (Printed)

\_\_\_\_\_  
Address of Applicant or Applicant's Agent or Authorized Signing Officer (Printed)

*It is an offence under the Criminal Code, R.S.C. 1985, c. C-46, as amended, for anyone to knowingly make a false document with the intent that it be acted on as genuine.*





Financial Services Commission of Ontario  
Commission des services financiers de l'Ontario

<b>SECTION:</b>	Surplus
<b>INDEX NO.:</b>	S900-511
<b>TITLE:</b>	Application by Employer for Payment of Surplus on Partial Wind Up of a Pension Plan - PBA ss. 78 and 79 - Regulation 909 s. 8
<b>APPROVED BY:</b>	Superintendent of Financial Services
<b>PUBLISHED:</b>	FSCO website (September 2004)
<b>EFFECTIVE DATE:</b>	September 30, 2004
<b>REPLACES:</b>	S900-509

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*This policy replaces S900-509 with respect to the distribution of surplus to an employer on the partial wind up of a pension plan. Policy S900-510 replaces S900-509 with respect to the distribution of surplus to an employer on the full wind up of a pension plan.*

*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 Regulation 909, R.R.O. 1990 ("Regulation"), the FSCO Act, PBA or Regulation govern.*

This policy sets out the procedure for filing an application to distribute surplus to an employer ("surplus application") with the Superintendent of Financial Services ("Superintendent") on a partial plan wind up pursuant to section 78 of the PBA and section 8 of the Regulation. This policy and the application procedure set out here only apply where any of the surplus related to the wound up portion of the plan is distributed to the employer. While compliance with this policy is intended to facilitate the application process, the Superintendent has the ultimate authority to decide whether to consent to or reject an application, and the Superintendent is not bound by this policy.

Subsection 78(1) of the PBA provides that surplus may not be paid to an employer unless the Superintendent consents to the payment. The Superintendent shall not consent to a surplus application until specific requirements and conditions have been satisfied. Statements and documents supporting the applicant's assertion that the requirements and conditions have been satisfied should be included in the surplus application to the Superintendent. In reviewing a surplus application, it is the Superintendent's position that the employer must demonstrate entitlement to the surplus and must afford the same rights respecting surplus, as if the plan were fully wound up on the effective date of the partial wind up, to the affected members, former members and other persons who are entitled to receive payment from the pension plan as a result of the event which gave rise to the partial wind up.

### General

The onus is on the applicant to satisfy the Superintendent that the surplus application meets the requirements of the PBA and the Regulation. The applicant should also demonstrate compliance with all relevant policies, procedures and administrative practices.

Policy S850-200 ("Filing Applications with the Superintendent of Financial Services") outlines the general procedure for filing those applications, including surplus applications, that were made to the Pension Commission of Ontario (the "PCO") in the first instance before the full proclamation of the FSCO Act.

It is the applicant's responsibility to decide whether plan-specific circumstances warrant the inclusion of additional information or documentation to support the surplus application. For example, additional information about members or former members or additional plan documentation may be relevant in the following circumstances:

- the source of all or a portion of the assets of the pension fund can be traced to the pension fund of another pension plan;
- all or a portion of the liabilities of a pension plan were converted to liabilities determined on another basis (a plan conversion);
- there was a partial wind up at any time prior to the date of the current partial wind up; or
- all or a portion of the liabilities of a pension plan relate to members, former members or other persons with employment in a jurisdiction other than Ontario.

If information necessary for the Superintendent to approve a surplus application is missing, the Superintendent will not be able to consent.

**The content of this policy is set up under the following sections and headings:**

### **DISTRIBUTION OF SURPLUS TO AN EMPLOYER ON PARTIAL WIND UP**

General Principles

Notice of the Surplus Application

Written Agreement  
The Surplus Application  
Filing the Surplus Application  
Member Statement

## **SCHEDULE I**

Surplus Application Format  
and Explanatory Notes

## **SCHEDULE II**

Certification of Compliance with Surplus  
Requirements of Other Jurisdictions  
DISTRIBUTION OF SURPLUS TO AN  
EMPLOYER ON PARTIAL WIND UP

### **GENERAL PRINCIPLES**

1. Where an employer wants to receive a surplus distribution on partial plan wind up, section 78 of the PBA provides that the employer must apply to the Superintendent. No payment or distribution to the employer may be made without the Superintendent's prior consent. Before the Superintendent can propose to consent to a surplus application, the applicant must satisfy the requirements of subsection 78(2) of the PBA concerning notice and disclosure of all plan provisions relevant to surplus entitlement on partial wind up. In addition, the requirements of subsections 79(3) and (4) of the PBA must be satisfied, as well as all the requirements of the Regulation.
2. Where the partial wind up results from an event affecting the employment of

the members, such as a plant closure, all members participating in the plan on or after the date notice of the event is given who are affected by the event ("PWU members") must be included as members for purposes of the partial wind up, including the surplus distribution. This requirement applies even if a PWU member terminates or is terminated after the notice date but prior to the event actually occurring.

3. In order to expedite the payment of basic benefits, an employer would generally not file a surplus application in respect of a partial wind up until after the payment of basic benefits from the plan has been approved to the PWU members, former members and other persons who are entitled to receive payment from the pension plan as a result of the event which gave rise to the partial wind up (the "PWU group"). Payment of basic benefits may be through a transfer of the basic benefits as provided under subsection 73(2) of the PBA, or the purchase of annuities.

The distribution of surplus to the PWU group may be provided by benefit enhancements or in cash. The employer should complete the distribution of benefits and surplus to the PWU group and the distribution of surplus to the employer, where a surplus sharing agreement provides for such distribution, as expeditiously as possible. FSCO must be notified when all assets in the wound up portion of the plan have been distributed.



4. Compliance with the requirements of the FSCO Act, PBA, Regulation and conditions identified in any policy, procedure and administrative practice of the former PCO or of FSCO which affects the surplus application, is the responsibility of the applicant.
5. Applicants are responsible for ensuring that the information contained in the surplus application and any supporting documents is complete and accurate.

## NOTICE OF THE SURPLUS APPLICATION

### Content

6. The notice of the surplus application required by subsection 78(2) of the PBA (the “Surplus Notice”) must include the information prescribed under subsection 28(5) of the Regulation.
7. With respect to clause 28(5)(c) of the Regulation (i.e., surplus attributable to employee and employer contributions), the methodology used to determine the surplus attributable to employee and employer contributions should be consistent with policy S900-801 (“Surplus Attributable to Employer and Employee Contributions on Plan Wind Up”).
8. With respect to clause 28(5)(e) of the Regulation (i.e., the statement that written submissions may be made to the Superintendent within 30 days of receipt of the Surplus Notice), the Surplus Notice must state that written submissions are to be directed to the Superintendent. In addition, the Surplus Notice should state

- that the Superintendent will provide copies of all submissions to the employer.
9. With respect to clause 28(5)(f) of the Regulation (i.e., authority for surplus reversion), there must be full and complete disclosure of all provisions of the plan and trust documentation from inception that may be relevant in determining entitlement to the payment of surplus on partial wind up, including provisions in all current and prior plan texts, trust agreements, insurance contracts, employee booklets, employee notices, collective bargaining agreements, information brochures and any other documents that may be relevant.

The actual wording of all the provisions from the plan and trust documentation from inception that may be relevant to surplus entitlement and to the question of authority to make plan amendments must be cited in the Surplus Notice, along with a full analysis of their implications. The Surplus Notice must also include a complete historical analysis of all the plan, trust and other documentation that may be relevant to determine whether the plan constitutes a trust. If the plan at any time constituted a trust, the historical analysis must demonstrate that any amendment to the trust that has a bearing on surplus entitlement was valid.

Where the plan and trust documentation do not contain explicit provisions addressing surplus entitlement, this fact must also be disclosed in the Surplus Notice. As provided under

subsection 47(10) of the Regulation, as of January 1, 1998, if the pension plan did not provide for the distribution of surplus on wind up, the applicant must refer to subsection 79(4) of the PBA and its consequences for the surplus application.

If a surplus application requires a court order pursuant to subsection 8(2) of the Regulation, the applicant should refer to the procedure under policy S900-600 ("Making Application Under ss. 7a(2)(c)").

10. The Surplus Notice must state that the application and the analysis of the plan documents were prepared by the applicant, and that those in the PWU group may wish to obtain independent legal advice with respect to the application and the proposed surplus distribution agreement (the "Agreement") before they give any consent.
11. With respect to clause 28(5)(g) of the Regulation (i.e., notice concerning access to copies of the partial wind up report), if the office or location where the PWU members were employed is closed, the employer must make and communicate alternative arrangements for the PWU group to review the partial wind up report filed with the Superintendent in support of the surplus request, either at a location close to the location(s) where business was conducted or through the provision of copies of the partial wind up report directly to the PWU group.
12. If the Surplus Notice does not satisfy the requirements of the PBA and the Regulation, or the conditions identified in any policy, procedure or administrative

practice of the former PCO or FSCO, or if there has not been complete, full and fair disclosure of all information that may be relevant, the Superintendent may give the employer the opportunity to re-transmit a modified Surplus Notice. The employer has a very high obligation of good faith to ensure that full and fair disclosure is given.

13. Subsection 28(5.1) of the Regulation requires that the employer file a copy of the Surplus Notice with the Superintendent before it is transmitted.

The Surplus Notice should be filed with the Superintendent by sending one (1) copy to:

Superintendent of Financial Services  
Financial Services Commission of Ontario  
5160 Yonge Street, 17th Floor  
Box 85  
North York ON M2N 6L9

14. With respect to paragraph 8, paragraph 18(d) and paragraph 30(j) of this policy, a copy of any written representations filed with the Superintendent will be forwarded to the employer.

#### **Transmitting the Notice of the Surplus Application**

15. After the employer files its Surplus Notice with the Superintendent, the employer is required to transmit the Surplus Notice to all persons listed in subsection 78(2) of the PBA. The employer must satisfy

the Superintendent that full and fair notice has been given to those persons.

16. Transmittal must be by personal delivery or first class mail in accordance with subsection 112(1) of the PBA (see also paragraphs 17 and 18 of this policy).

### **Public Advertisement**

17. The Superintendent may authorize delivery of the Surplus Notice by public advertisement or otherwise in accordance with subsection 112(3) of the PBA if the Superintendent is satisfied that it is not reasonable to give individual notice to all persons in accordance with paragraphs 15 and 16 of this policy.
18. Where an applicant requests the Superintendent's authorization to deliver the Surplus Notice by public advertisement, the information provided in the draft public advertisement submitted with the request to the Superintendent must clearly indicate the following:

(a) to whom the Surplus Notice is addressed (e.g., former members and other persons entitled to payments from the partially wound up plan or any applicable predecessor plan(s));

(b) the reason that these persons are being contacted (i.e., partial wind up of the pension plan in a surplus position and the surplus application);

(c) where the details of the surplus application will be made available; and

(d) information that persons to whom the Surplus Notice has been transmitted may make written representations to the Superintendent with respect to the surplus application within thirty (30) days after receiving the Surplus Notice and that the Superintendent will provide copies of all submissions to the employer.

### **WRITTEN AGREEMENT (SURPLUS APPLICATIONS PURSUANT TO CLAUSE 8(1)(b) OF THE REGULATION)**

#### **Content**

19. When considering the surplus application, the Superintendent must be satisfied that the employer has:

(a) provided the PWU group with full and fair disclosure in the copy of the Surplus Notice and the copy of the Agreement which have been provided to these persons;

(b) provided the individuals in the PWU group who are not currently represented by independent legal counsel with a reasonable opportunity to obtain independent legal advice with respect to the Surplus Notice and the Agreement;

(c) given the PWU group sufficient time to consider the surplus application and the Agreement, before the employer obtains the written consent of these persons; and

(d) obtained the number of executed Agreements (the "Written Agreements")



required from PWU members and others under the Regulation.

20. The Agreement must provide for:

- (a) the name and registration number of the pension plan;
- (b) the name of the individual;
- (c) the signature of the individual;
- (d) the date on which it is signed; and
- (e) the signature of the employer.

Where the Agreement is provided to a collective bargaining agent in respect of a group of individuals, the required name and signature are those of the bargaining agent. In addition, the document must include provision for a clear statement as to the individuals or group in respect of whom the collective bargaining agent is executing the document.

### **Transmitting the Agreements**

21. In order to obtain the Written Agreements required under clause 8(1)(b) of the Regulation, a copy of each of the Surplus Notice and the Agreement must be given by personal delivery or first class mail, in accordance with subsection 112(1) of the PBA, to the following persons as required by subsection 78(2) of the PBA:

- (a) the PWU group;

(b) each collective bargaining agent that represents any PWU member under the plan at the date of the partial wind up; and

(c) the advisory committee established in respect of the pension fund.

### **Written Agreements**

- 22. To satisfy subclause 8(1)(b)(ii) of the Regulation, an applicant should obtain the Written Agreements of at least two-thirds of the PWU members, or, where some or all of the PWU members are represented by any collective bargaining agent(s), the Written Agreement of the bargaining agent(s).
- 23. Normally, to satisfy subclause 8(1)(b)(iii) of the Regulation, an applicant should obtain the Written Agreements of at least two-thirds of the aggregate of those former members and other persons affected by the partial wind up and who are entitled to payments under the pension plan at the date of the partial wind up. This requirement is subject to the Superintendent's discretion following a review of the circumstances of each surplus application.
- 24. If a pension plan is provided for both unionized and non-unionized members, in addition to the Written Agreement of the relevant collective bargaining agent(s), Written Agreements must be obtained from at least two-thirds of those PWU members not represented by the bargaining agent(s).
- 25. Legal counsel may sign the Agreement on behalf of the individuals they represent

at the time the Agreement is signed, provided such representation arrangement satisfies the requirements of policy S900-503 ("Surplus Distribution - The Role of Legal Counsel in Obtaining Written Consent - Section 8 of Regulation 909").

26. The appropriate collective bargaining agent(s) for the purposes of subclause 8(1)(b)(ii) of the Regulation is the bargaining agent(s) who represents any PWU members at the date the bargaining agent(s) signs the Agreement on behalf of those members.

No Written Agreement is required from any collective bargaining agent(s) who, at the date of the partial wind up, does not represent PWU members nor from any bargaining agent(s) representing former members.

27. A collective bargaining agent may execute a Written Agreement only on behalf of those PWU members who are represented by the bargaining agent. Therefore, if a pension plan involves more than one collective bargaining agent, a Written Agreement is required of each bargaining agent who represents any PWU member.
28. The Written Agreement of a collective bargaining agent who represents any PWU member must be obtained, even where the bargaining agent does not bargain the pension plan.

## THE SURPLUS APPLICATION

29. The format and content of the surplus application should be consistent with Schedule I to this policy.
30. All material required by the PBA and Regulation must be attached to the surplus application, including:
- (a) A list, by class, of the names of all individuals in the PWU group.
  - (b) A certified copy of the Surplus Notice referred to in subsection 28(5) of the Regulation, pursuant to subsection 28(6) of the Regulation.
  - (c) A statement that the employer has complied with subsection 78(2) of the PBA.
  - (d) A list, by class, of the names of members, former members or any other persons who received the Surplus Notice, the date the last Surplus Notice was transmitted and the form of delivery of the Surplus Notice.
  - (e) Complete copies of all plan and trust documentation from inception, including all current and prior plan texts, trust agreements, insurance contracts, employee booklets, employee notices, collective bargaining agreements, information brochures and any other documents that may be relevant to surplus entitlement. The applicant should highlight the parts of the plan and trust documentation that the applicant believes may be relevant to surplus entitlement.

Full documents should be arranged in chronological order and clearly labelled.

(f) Copies of the title page and the balance sheet (or any updated balance sheet) of the partial wind up report as of the effective date of the partial wind up giving rise to the surplus application and the actuary's certification from the partial wind up report or any supplemental report.

A supplement to a partial wind up report will be required if the distribution of surplus was not addressed in the initial partial wind up report or the initial partial wind up report does not reflect the surplus distribution proposals outlined in the surplus application.

(g) Information required to be submitted to FSCO staff in accordance with policy S900-801 ("Surplus Attributable to Employer and Employee Contributions on Plan Wind Up").

(h) The approval by the Superintendent of the payment of basic benefits based on the partial wind up report and any supplementary report.

(i) A copy of the most recent collective agreement(s) if some or all of the PWU members are represented by any collective bargaining agent(s).

(j) Any written representations objecting to the surplus application received by the applicant directly or

through the Superintendent, as well as any response(s) by the applicant.

(k) Disclosure as to whether or not the surplus application affects members, former members or other persons with employment in a jurisdiction other than Ontario. Where the surplus application affects members, former members or other persons with employment in a jurisdiction other than Ontario (the "non-Ontario members"), the applicant must provide:

(i) a table indicating the number of members, former members or other persons affected by the surplus application in each jurisdiction, including Ontario; and

(ii) certification in the form set out in Schedule II to this policy that the applicant has complied with the requirements for surplus distribution of those other jurisdictions with respect to the non-Ontario members.

The Superintendent reserves the right to review the certification and to require additional information or explanation of the contents of the certification before proceeding with the review of the surplus application.

(l) Any submissions which may be relevant to the surplus application.



Where other materials or information which may be relevant are discovered after the surplus application has been filed, such materials or information must be filed as an addendum to the initial surplus application (see paragraph 32 of this policy).

(m) Where the surplus application is made pursuant to clause 8(1)(b) of the Regulation,

- (i) a copy of the Agreement;
- (ii) a list, by class, of the names of members, former members or other persons who received a copy of the Agreement, the last date the Agreement was transmitted and the form of delivery of the Agreement;
- (iii) copies of the Written Agreements documenting the consent of individuals in the PWU group with respect to the Agreement;
- (iv) copies of the Written Agreement(s) between the employer and any collective bargaining agent(s) that pertain to the Agreement; and
- (v) a list of the individuals in the PWU group who did not agree or did not respond to the Agreement.

(n) Where the surplus application is made pursuant to subsection 8(2) of

the Regulation, the applicant should refer to policy S900-600 ("Making Application Under ss. 7a(2)(c)"). If the applicant has already obtained a court order concerning entitlement to surplus and distribution of funds from surplus, a copy of the court order must be attached to the surplus application.

## FILING THE SURPLUS APPLICATION

31. (a) The general procedure is outlined in policy S850-200 ("Filing Applications with the Superintendent of Financial Services").

(b) The surplus application, including attachments, should be submitted on 8-1/2" x 11" paper (subject to legibility).

32. The surplus application is filed with the Superintendent by sending four (4) copies to:

Superintendent of Financial Services  
Financial Services Commission of Ontario  
5160 Yonge Street, 17th Floor  
Box 85  
North York ON M2N 6L9

Four (4) copies of any information or materials which are supplemental to the initial filing and which are required in order to complete the surplus application should be filed with the Superintendent.

33. Upon receipt, the surplus application will be acknowledged.

34. The Superintendent will not complete his consideration of the surplus application

until the Superintendent has approved the payment of basic benefits on the basis of the partial wind up report.

35. The applicant must forward a copy of the surplus application to the plan administrator.
36. For surplus applications made pursuant to clause 8(1)(b) of the Regulation, a copy of the Agreement should be included in each of the four (4) copies submitted to the Superintendent. As well, two full sets of all of the Written Agreements obtained from members, former members, and other persons must be filed with the Superintendent. One set should include all of the signed original Written Agreements.

#### Review Process

37. (a) If staff believe that an application is incomplete, they will advise the applicant in writing. The applicant must submit four (4) copies of the documentation required to complete the application.
- (b) The review of a surplus application will not proceed until the earlier of the date when:

(i) staff receive all of the information requested;

(ii) the applicant submits a written request asking that the surplus application proceed as is (i.e., without submitting the additional information that staff have requested); or

(iii) the time period for a response, as set out in the letter from staff, expires.

38. Staff will then review the surplus application and all other filed materials for compliance. If any compliance concerns are identified, staff will send a letter outlining their concerns to the applicant, the collective bargaining agent(s) of the PWU members (if applicable), and any person who has made written representations under subsection 78(3) of the PBA.
39. Staff's letter will specify the time period in which the applicant, the collective bargaining agent(s) of the PWU members (if applicable) or any person who has made written representations under subsection 78(3) of the PBA must provide a written response to the compliance concerns, if they wish to have the response considered in the Superintendent's decision-making.

Four (4) copies of the written response must be submitted to the Superintendent.

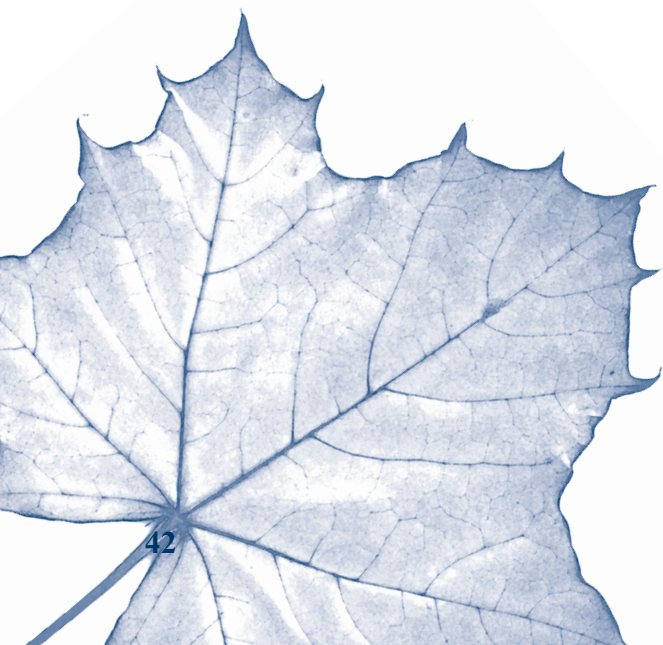
40. The Superintendent's proposed decision will be served on the applicant and on any person who has made written representations under subsection 78(3) of the PBA, by way of a notice of proposal with written reasons.
41. A person on whom the notice of proposal is served is entitled to a hearing before the Financial Services Tribunal under subsection 89(6) of the PBA if the person delivers to the Tribunal

written notice requiring a hearing within thirty (30) days after being served with the notice of proposal.

42. If no notice requiring a hearing is received within the specified time frame, the Superintendent may carry out the proposed decision.
43. Applicants should refer to policy S850-100 ("Delegation of the Superintendent's Authorities") for additional information on the decision-making process.

## MEMBER STATEMENT

44. If there is surplus on the partial wind up of a plan, the administrator shall provide, within the prescribed period, statements to the PWU group containing the prescribed information about surplus, as set out in section 28.1 of the Regulation. These statements are to be provided after the Superintendent has approved the partial wind up report, including the disposition of surplus. Applicants should ensure that the requirements of this section have been satisfied.





## SCHEDULE I

### FORMAT AND CONTENT OF THE APPLICATION TO THE SUPERINTENDENT FOR CONSENT TO THE REFUND OF SURPLUS TO AN EMPLOYER

- Date:** *Provide the date of the surplus application.*
- Employer:** *Provide the correct legal name of the employer making the surplus application.*
- Pension Plan:** *Provide the full registered name of the pension plan and the registration number.*
- Applicant:** *Provide the name, title and business address of the corporate officer authorized to act on the employer's behalf. (Unless otherwise indicated in the surplus application, all communication from the Superintendent and staff of FSCO will be directed to the agent or counsel who files the surplus application on the applicant's behalf.)*

#### Nature of the Surplus Application:

*Provide a full description of the surplus application to the Superintendent with reference to the specific section(s) of the PBA and Regulation pursuant to which the surplus application is being made. For example:*

Application for the Superintendent's consent pursuant to subsection 78(1) of the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended, and clause 8(1)(b) of Regulation 909, R.R.O. 1990, as amended, to a payment of surplus to (provide full legal name of the employer) in the amount of \$ (show the amount sought at the effective date of the partial wind up) as at (show the effective date of partial wind up) plus investment earnings thereon to the date of payment (add reference

if employer is seeking any other adjustment in its request for the surplus refund).

This application includes a surplus distribution agreement whereby (x) per cent of the surplus as of the effective date of partial wind up will be distributed to the members, former members and other persons entitled to benefits as of the effective date of partial wind up.

*Appropriate modifications will be required for surplus applications based on a court order pursuant to subsection 8(2) of the Regulation.*

#### Actuary/Counsel/Agent:

*Provide the name of any person acting as the agent or counsel for the employer making the surplus application, or acting on behalf of the persons*

*affected by the partial wind up. If there are no such agent or counsel, please indicate "None".*

Actuary for the Applicant (and name of firm):

Counsel for the Applicant (and name of firm):

Actuary for the Members/Former Members/Union/etc. (and name of firm):

Counsel for the Members/Former Members/Union/etc. (and name of firm):

#### **Plan Administrator:**

*Provide the name and address of the person designated to act as plan administrator, if different from the corporate officer acting for the applicant employer.*

#### **Collective Bargaining Agent:**

*Provide the name of the Collective Bargaining Agent(s) who represent any members or former members affected by the partial wind up of the pension plan.*

#### **Background:**

Provide a brief summary of the background of the plan leading up to the surplus application including:

- the effective date of the plan;
- the classes of members covered by the plan;
- a clear description of those members, former members and other persons entitled to payments as a result of

the event that gives rise to the partial wind up (the "PWU group");

- the basic benefit structure (e.g., "non-contributory", "flat benefit plan");
- a brief chronology of the plan and prior versions thereof, including any pension plan from which assets of the pension plan can be traced (include references to asset transfers to or from the pension fund of another pension plan, plan conversions and partial wind ups that may have occurred prior to the date of the current partial wind up);
- the corporate history relevant to the plan and any predecessor plans, including the background to any changes in the name of the employer associated with the pension plan;
- the effective date and reasons for the partial wind up of the pension plan; and
- any other information which will assist in understanding the surplus application.

#### **Subsection 78(2) of the PBA - Surplus Notice Requirements:**

*The applicant must satisfy the Superintendent that the persons listed in subsection 78(2) have received full and fair notice and that the requirements of the PBA and Regulation have been satisfied.*

#### **(a) Subsections 28(5) and 28(5.1) of the Regulation:**

*Provide information indicating how the applicant has complied with:*

- subsection 28(5) and any related policies, procedures or administrative practices setting

out the minimum content to be included in the Surplus Notice required under subsection 78(2) of the PBA. This minimum content does not alter the applicant's obligation to ensure that full and fair notice is given.

- subsection 28(5.1), which requires that a copy of the Surplus Notice be filed with the Superintendent prior to transmittal to the members, former members and other persons.

### **(b) Subsection 28(6) of the Regulation:**

*Provide information demonstrating compliance with subsection 28(6) of the Regulation, which requires that the surplus application be accompanied by a certified copy of the Surplus Notice signed by the corporate officer authorized to act for the applicant, a statement signed by that corporate officer that subsection 78(2) of the PBA has been complied with, the date the last Surplus Notice was distributed and details as to the classes of persons who received the Surplus Notice. Include reference to the attachment or tab at which the certified copy of the Surplus Notice may be found.*

### **Subsection 112(3) of the PBA - Alternate Service:**

*If, in lieu of individual notice, the Surplus Notice is transmitted by public advertisement, indicate the classes or groups who were served by the public advertisement, the dates and newspapers in which the advertisement ran and provide a copy of the advertisement.*

*If, in lieu of individual notice, the Surplus Notice is transmitted by an alternative form of notice other than public advertisement, indicate the classes*

*or groups who were served by the alternative form of notice, the dates and method by which the alternative form of notice was served and provide a copy of the alternative form of notice.*

*Refer to the attachment or tab in the surplus application where a copy of the public advertisement or alternative form of notice and the Superintendent's authorization for alternative service are found.*

### **Subsection 79(3) of the PBA - Conditions Precedent to a Proposal to Consent**

*In the following sections, the applicant must satisfy the Superintendent that all the conditions in the PBA and Regulation have been met.*

#### **(a) Clause 79(3)(a) - The Plan has a Surplus:**

*The applicant must demonstrate that the plan has a surplus.*

*Provide the date of the letter from the Superintendent approving the distribution of the members' and former members' basic benefits. Refer to the attachment or tab at which extracts of the partial wind up report and supplemental report and a copy of the Superintendent's letter may be found. Include in the surplus application a brief summary of the balance sheet for the plan as at the effective date of partial wind up along with an updated balance sheet if there has been any significant change in the figures. For example:*



## Balance Sheet in respect of Members Affected by the Partial Wind Up

	As at effective date of partial wind up	As of (current date)
<b>Assets</b>		
Market value of assets	\$ 0.00	\$ 0.00
Less: Provision for Partial Wind Up Expenses	<u>\$ 0.00</u>	<u>\$ 0.00</u>
<b>Available assets</b>	\$ 0.00	\$ 0.00
<b>Liabilities</b>		
Basic benefits	\$ 0.00	\$ 0.00
Benefit enhancements, if applicable	<u>\$ 0.00</u>	<u>\$ 0.00</u>
<b>Liabilities for benefits</b>	\$ 0.00	\$ 0.00
<b>Surplus (Deficit)</b>	\$ 0.00	\$ 0.00

### Surplus distribution agreement as of (date):

To PWU group	\$ 0.00 ( %)
To employer	\$ 0.00 ( %)

### (b) Clause 79(3)(b) of the PBA - The Plan Provides for the Payment of Surplus to the Employer on the Wind up of the Pension Plan:

*The applicant employer must satisfy the Superintendent that the plan provides for the payment of surplus to the employer on wind up. Therefore, the surplus application must establish that the employer is legally entitled to the payment of surplus on wind up. The employer must provide a complete chronological history of the plan, and any predecessor or prior plans that may be relevant, and complete copies of all plan and trust documentation since inception,*

*including all current and prior plan texts, trust agreements, insurance contracts, employee booklets, employee notices, collective bargaining agreements, information brochures and any other documents that may be relevant to the Superintendent's determination of whether a plan provides for the payment of surplus to the employer on wind up. The employer must also provide a full analysis showing how it reaches the conclusion that it, and not the plan beneficiaries, is entitled to the surplus.*

*Where there are prior pension plans from which the current plan assets can be traced, or that may otherwise be relevant, the history must take into account the prior plan texts, trust agreements, insurance contracts, employee booklets, employee*

*notices, collective bargaining agreements, information brochures and any other documents that may be relevant to the Superintendent's determination of whether a plan provides for the payment of surplus to the employer on wind up.*

*Where any plan or trust documentation that may be relevant has been amended since its inception, the history must spell out the authority under the plan or trust to amend the provision or document. The history must also refer to all provisions or documents that do not support the surplus application.*

*The applicant should highlight the portions of the documents that may be relevant to the Superintendent's decision on surplus entitlement, including those provisions that do **not** support the applicant's claim to surplus. Complete documents must be included as attachment(s) to the surplus application and must be clearly labelled.*

*All documents must be complete, arranged in chronological order and clearly labelled. All portions of the documents that may be relevant, whether or not they support the applicant's claim to surplus, must be highlighted.*

*As of January 1, 1998, if the pension plan did not provide for the distribution of surplus on wind up, the applicant must refer to subsection 79(4) of the PBA and its consequences for the surplus application.*

**(c) Clause 79(3)(c) of the PBA - Provision has been made for the Payment of All Partial Wind Up Liabilities of the Pension Plan:**

*Outline the status of the distributions of basic benefits and the proposals for the distribution of surplus to PWU members, former members and any other persons entitled to payments as a result of the partial wind up. If the Superintendent is not satisfied that adequate provision has been made for the payment of all liabilities of the wound up portion of the pension plan, the Superintendent may propose to refuse the surplus application.*

### Clause 8(1)(b) of the Regulation - Written Agreement

*Provide a summary, by jurisdiction, of the Surplus Notices issued and Written Agreements provided. For example:*

	Total Number Issued	Surplus Notices	Written Agreements	(%)	Written Refusals
Employer	_____	_____	_____	_____	_____
Collective Bargaining Agent(s)	_____	_____	_____	_____	_____
Members (Not represented above)	_____	_____	_____	_____	_____
Former Members/ Other Persons (Not represented above)	_____	_____	_____	_____	_____

### Subsection 8(2) of the Regulation - The Court Order

#### (a) Clause 8(2)(b) of the Regulation - Eligibility as a "Grandparented Plan":

*Provide information supporting the applicant's position that the surplus application is eligible to proceed under subsection 8(2), the "grandparenting provision". For example:*

The applicant makes application pursuant to clause 7a(2)(c) of O. Reg. 708/87 as that section read immediately before December 18, 1991, as (enter the reason why the plan is a

"grandparented plan", i.e., "the notice of proposal to partially wind up was filed prior to December 18, 1991" - enter the date the notice of proposal to partially wind up the plan was given to the Superintendent).

#### (b) Clause 8(2)(a) of the Regulation - The Status of the Application to Court:

*Provide information concerning the status of the application to the court. Refer to the attachment which indicates the applicant's intention or where the copy of the order is located. For example:*

The applicant has applied to the court for an order pursuant to clause 7a(2)(c)



of O. Reg. 708/87 as that section read immediately before December 18, 1991, (enter “and has obtained” or “and is to obtain”) an order for payment of the surplus assets to the applicant on partial wind up of the Plan.

### Other Jurisdictions

*The applicant must disclose whether or not the plan has members, former members or other persons affected by the partial wind up with benefits resulting from employment in a jurisdiction other than Ontario. Applicants should refer to paragraph 30(k) under “The Surplus Application” part of this policy and complete the attached certification (Schedule II).*

### Representations

*The employer must specify whether or not it received any objections or representations and attach to the surplus application copies of those objections or representations and any response(s) by the employer.*

### Attachments

*Provide an index of all attachments to the surplus application. The attachments should be listed in the order that corresponds to the order of the subject matter under this Schedule and, where applicable, in chronological order. Where a surplus application is bound, the relevant tab numbers and their contents should also be included in the index.*

### Signature

*The application must be signed by the applicant, or the authorized officer or agent of the applicant.*

*The person signing the application should print their name below their signature and should indicate the capacity in which they have signed the application (i.e., applicant or agent or authorized signing officer of the applicant).*

## SCHEDULE II

### CERTIFICATION OF COMPLIANCE WITH SURPLUS REQUIREMENTS OF OTHER JURISDICTIONS

- Date:** *Provide the date of the surplus application.*
- Employer:** *Provide the correct legal name of the employer making the surplus application.*
- Pension Plan:** *Provide the full registered name of the pension plan and the registration number.*
- Applicant:** *Provide the name, title and business address of the corporate officer authorized to act on the employer's behalf. (Unless otherwise indicated in the surplus application, all communication from the Superintendent and staff of FSCO will be directed to the agent or counsel who files the surplus application on the applicant's behalf.)*

#### I CERTIFY TO THE SUPERINTENDENT OF FINANCIAL SERVICES THAT:

- (a) I, the individual making this certification, am the applicant or the agent or authorized officer of the applicant;
- (b) The application affects members, former members or other persons with employment in a jurisdiction other than Ontario (the "non-Ontario members");
- (c) I am aware of, or have consulted with professionals who have advised me of, the requirements of the laws applicable to surplus distribution of the jurisdictions of the non-Ontario members, and I have reviewed the application in order to determine whether it complies with such laws;
- (d) I certify that, to the best of my knowledge and belief, based on the information and advice provided me, including that referred to herein, this application complies with the requirements for surplus distribution of those jurisdictions outside of Ontario with respect to non-Ontario members.



DATED this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.  
(day) (month) (year)

\_\_\_\_\_  
Signature of Applicant or Applicant's Agent or Authorized Signing Officer

\_\_\_\_\_  
Name of Applicant or Applicant's Agent or Authorized Signing Officer (Printed)

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Address of Applicant or Applicant's Agent or Authorized Signing Officer (Printed)

*It is an offence under the Criminal Code, R.S.C. 1985, c. C-46, as amended, for anyone to knowingly make a false document with the intent that it be acted on as genuine.*





Financial Services Commission of Ontario  
Commission des services financiers de l'Ontario

**SECTION:** Wind Up

**INDEX NO.:** W100-102

**TITLE:** Filing Requirements and Procedure  
on Full or Partial Wind Up of a Pension Plan  
- PBA ss. 52, 68, 70, 72-75, 77 and 81  
- Regulation 909 ss. 15, 16, 28 and 29

**APPROVED BY:** Superintendent of Financial Services

**PUBLISHED:** FSCO Website (December 2004)

**EFFECTIVE DATE:** December 9, 2004

**REPLACES:** W100-101

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This policy replaces W100-101 ("Filing Requirements and Procedure") 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 Regulation 909, R.R.O. 1990 ("Regulation"), the FSCO Act, PBA or Regulation govern.*

### **Pension Plan Wind Up - Filing Requirements and Procedure**

This policy identifies the filing requirements and procedure to be followed on the full or partial wind up of a pension plan. The considerations involved and the procedure followed for the partial wind up of a defined benefit pension plan are substantially similar to those applied to a full plan wind up. Unless specifically noted otherwise, use of the term "wind up" refers to both the full and the partial wind up of a pension plan.

The material which follows deals with key wind up requirements and procedure. Readers are reminded that the provisions of each pension plan are unique and the circumstances that trigger the wind up of a pension plan are various. Therefore, it is not possible to identify all issues that may be relevant to every plan situation in this policy. It should further be noted

that the purpose of the administrative and actuarial guidelines set out in this policy is to assist administrators and their agents in the preparation of required wind up filings and FSCO staff in the review of the filings. These guidelines do not preclude the use of other bases if deemed appropriate in the circumstances. It is the responsibility of the administrators and/or their agents to demonstrate that the bases chosen are in compliance with the PBA and Regulation.

If administrators and their agents have questions about plan wind ups, they should refer to the relevant sections of the PBA and Regulation. Additional information may be obtained from other policies published by FSCO that deal with related wind up issues. Policies are intended to clarify how the PBA and Regulation are interpreted in certain situations and to assist administrators and their agents in understanding the requirements of the PBA, Regulation and FSCO's practices so that full compliance can be achieved.

### Plans Excluded

This policy does not address multi-employer pension plans, defined benefit pension plans where the obligation of an employer to contribute is limited to a fixed amount set out in a collective agreement or situations involving a claim against the Pension Benefits Guarantee Fund ("PBGF"). Surplus matters are only briefly referenced in this policy, as other policies on this subject have been issued by FSCO.

*While every attempt has been made to be thorough, it is not possible to anticipate and address all wind up situations. Administrators, therefore, are reminded that the application of the PBA and Regulation is subject to the facts of each case. Accordingly, the contents of this policy should not be construed as legal, actuarial or professional advice. Independent professional advice should be obtained if there is a particular interest in any of the matters addressed in this policy.*

### Table of Contents

*Administrators and consultants for pension plans that provide only defined contribution benefits need only reference sections I and IV (4.1 through 4.3 inclusive) and subsection 3.1 of this policy. Unless otherwise specified, this policy applies to partial plan wind ups as well as to full plan wind ups.*

#### SECTION I Wind Up Process

- 1.1 An Overview of the Process
- 1.2 Legislative Requirements and Current FSCO Practice

#### SECTION II Preparing the Wind Up Report

- 2.1 Compliance Items
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## APPENDIX A Specific Guidelines on Actuarial Assumptions and Methods for the Calculation of the Commuted Value of Individual Benefit Entitlements on Plan Wind Up

### SECTION I Wind Up Process

For all pension plans, the wind up process consists of five stages. There is a sixth stage if a surplus remains after basic benefits have been distributed. For most stages, some specific action is required by either the administrator or the employer. Administrators should become familiar with this process in order to avoid delays which occur when a wind up report or other required filings do not comply with the PBA, Regulation and applicable FSCO policies.

#### 1.1 An Overview of the Process

*Stage 1 - The employer decides to wind up a pension plan or the Superintendent of Financial Services ("Superintendent") so orders.*

The administrator is required to give notice of proposal to wind up the pension plan as identified under section 1.2 (Legislative Requirements and Current FSCO Practice) of this policy.

*Stage 2 - The administrator files a wind up report and other wind up documentation.*

The wind up report is a key document, which should include information about the funded status of the pension plan and the proposed methods of allocating and distributing assets.

FSCO staff review the submitted wind up documents. If the documentation is incomplete or deficient (e.g., documentation not certified or not signed), staff will write to the administrator or the administrator's agent to request the additional documents or information. Upon receipt and review of the additional documents or information, staff will make a recommendation to the Superintendent as to whether the wind up report complies with the requirements of the PBA and Regulation.

*Stage 3 - The administrator issues benefit statements.*

The administrator provides a statement setting out the benefits and options (including deemed election) available to each person entitled to a benefit or refund on the wind up of the plan. Depending on the situation, the administrator may decide to wait until after the Superintendent's approval of the wind up report to issue benefit statements (see also stage 4 described below).



*Stage 4 - The Superintendent approves the wind up report or approves only the payment of basic benefits.*

Where a wind up report complies with the requirements of the PBA and Regulation:

- if there is a surplus issue to be addressed, the Superintendent will approve only the payment of basic benefits until the disposition of the surplus has been determined. Once the disposition of surplus has been addressed in accordance with the PBA and Regulation, the Superintendent will approve the wind up report.
- if the pension plan has a funding deficit on a wind up date and the employer intends to fund the deficit in accordance with section 75 of the PBA, the Superintendent will approve the wind up report. However, the administrator is required to file annual reports as required by section 32 of the Regulation. In addition, until the Superintendent receives a report certifying that no further amounts are to be funded under section 75 of the PBA, the pension plan is prohibited under subsection 29(8) of the Regulation from using its assets to purchase single premium life annuities or paying out the commuted value of the pension benefits of any person affected by the wind up, except for the current value of any additional voluntary and/or required contributions made by the employee prior to the wind up date.

Where a wind up report does not comply with the requirements of the PBA and Regulation, the Superintendent will refuse to approve it.

*Stage 5 - The administrator distributes benefits.*

When the administrator receives the Superintendent's approval of the wind up report or approval of only the payment of basic benefits pursuant to subsection 70(3) of the PBA, the distribution of benefits can take place in accordance with the wind up report and the options elected, subject to any restrictions imposed by the Superintendent or prescribed by the PBA and Regulation.

*Stage 6 - The administrator distributes surplus.*

If a decision has been made to distribute all surplus available on wind up among plan members, former members or other eligible persons, the formula for distribution should be included in the wind up documentation.

If the employer intends to withdraw or share the surplus with the members, a surplus application is required to be made to the Superintendent. See policy S900-510 ("Application by Employer for Payment of Surplus on Full Wind Up of a Pension Plan") or policy S900-511 ("Application by Employer for Payment of Surplus on Partial Wind Up of a Pension Plan"), as appropriate, for information on the surplus application process.

### 1.1.1. Other Considerations

#### **1) When a Notice of Proposal to Wind Up a Pension Plan Has Been Given**

Subsection 70(2) of the PBA requires that once a notice of proposal to wind up a plan has been given, no payments or expenses can be paid out of the pension fund until the Superintendent has approved the wind up report. This restriction would not, however, interfere with the continuation of the payment of a pension or any other benefit if the payment began before the notice of proposal to wind up was issued. Also, the administrator or an agent of the administrator may request that the Superintendent authorize payment of other benefits or expenses pursuant to subsection 70(3) of the PBA prior to the approval of the wind up report.

#### **2) Wind Up of Defined Benefit/Defined Contribution Hybrid Plans**

On the wind up of a pension plan that provides benefits on both a defined benefit and defined contribution basis, the two parts are generally seen as separate. Once all contributions for the defined contribution part required up to the date of the wind up are received by the pension fund, the defined contribution part of the plan is fully funded. The defined benefit part would have a surplus or deficit, as the case may be, based on the assets and liabilities of the defined benefit part of the plan.

#### **3) Split of Assets and Liabilities on Partial Wind Up**

As at the effective date of a partial wind up, the liabilities and assets related to the members, former members and other persons affected by the partial wind up must be identified. The split of the pension plan assets between the wound up portion and the on-going portion of the plan must be determined as if the total pension plan were wound up on the partial wind up date. Section 2.5.2 of this policy describes how the asset split should be determined.

#### **4) Approval of the Wind Up Report and Distribution of Assets**

Once a wind up report is approved by the Superintendent, assets must be distributed in accordance with the wind up report, subject to the payment of any deficit in accordance with section 75 of the PBA. A pension plan wind up is not complete until all assets in the pension fund, or in the case of a partial wind up all assets related to the wound up portion of the pension fund, have been distributed in accordance with the wind up report approved by the Superintendent.

## **1.2 Legislative Requirements and Current FSCO Practice**

### **1.2.1 Effective Date of Wind Up**

Subsection 68(5) of the PBA provides that the effective date of wind up cannot be earlier than the date member contributions, if any, cease to be deducted, in the case of contributory pension plans, or in any other case, on the date the notice of wind up is given to members. Where a wind up results

from a specific event such as plant closure, bankruptcy or purchase and sale, the effective date may not be earlier than the date of the specific event precipitating the wind up unless the requirements of subsection 68(5) of the PBA have been met prior to that date.

The Superintendent may change the effective date of wind up by order, if in the Superintendent's view there are reasonable grounds for such a change (subsection 68(6) of the PBA). The effective date of wind up may not be obvious in some circumstances, such as where there are a series of terminations of employment related to a downsizing. In such situations, the administrator or agent is encouraged to submit a written proposal supporting the selection of both the effective date of wind up and the time period during which the termination of a member will result in the member being included in the wind up. FSCO staff will consider the proposal in light of legislative requirements.

### **1.2.2 Notice of Proposal to Wind Up a Pension Plan**

An employer who intends to wind up a pension plan in whole or in part must give notice of proposal, as required under subsections 68(2) and (3) of the PBA, to each of the following:

- the Superintendent;
- all members who are affected by the proposed wind up;
- all former members who are affected by the proposed wind up;

- any trade union(s) representing such members;
- the advisory committee (if any); and
- any other person entitled to a payment from the pension fund who is affected by the proposed wind up.

The notice must contain the information prescribed in subsection 28(1) of the Regulation.

At a minimum, the administrator should provide FSCO staff with:

- a certified copy of the wind up notice;
- a statement outlining who (including any union, if applicable) received the notice; and
- the date the last notice was distributed.

In the event an employer declares bankruptcy, is placed in receivership or otherwise ceases operations, the administrator or the administrator's agent should notify FSCO staff immediately.

### **1.2.3 Persons Who Must be Included in the Wind Up**

When a pension plan is being fully wound up, all members, former members and other persons entitled to payments from the plan on the effective date of wind up must be included in the wind up. In circumstances where a plan is partially wound up, only those members, former members and other persons affected by the partial plan wind up are included.



Where a wind up results from an event affecting the employment of the members, such as a plant closure, all members affected by the event who are participating in the plan on or after the date notice of the event is given must be included as members for the purposes of the wind up. This requirement applies even if a member terminates or is terminated after the notice date but prior to the event actually occurring.

If there has been a series of staggered layoffs prior to and/or after the wind up date, the administrator or the administrator's agent should submit a written proposal to identify which group of employees, including those who may have terminated prior to the wind up date and/or may terminate after the wind up date, will be entitled to be included in the wind up.

For more information relating to partial wind ups, please refer to policy W100-301 ("Notice of Proposal for Partial Wind Up").

#### 1.2.4 Wind Up Documentation

In addition to the notice of proposal to wind up the plan, the following documentation must be filed.

##### Wind Up Report

Subsection 29(3) of the Regulation requires that, within six months following the effective date of the wind up, the administrator must file a wind up report pursuant to subsection 70(1) of the PBA. Pursuant to section 15 and subsection 29(1)

of the Regulation, the report must be prepared by an actuary (i.e., a Fellow of the Canadian Institute of Actuaries), except with respect to the following plan types:

- a plan that provides only defined contribution benefits;
- a fully insured pension plan established prior to January 1, 1987, underwritten by a contract with an insurance company and that does not require employee contributions; or
- a pension plan underwritten by a contract issued under the *Government Annuities Act* (Canada).

The report required for these plan types may also be prepared by an accountant or a person authorized by an insurance company, a trust corporation or the Annuities Branch of the Government of Canada, responsible for administering the pension plan or pension fund.

Specific items to be included in a wind up report are set out under subsection 70(1) of the PBA. Section II of this policy provides further detail to assist actuaries in preparing wind up reports on pension plans that provide defined benefits.

##### Amendments, Resolutions and Form 1.1

Appropriate plan amendments and resolutions, which affect the wind up, should be filed in conjunction with the wind up report. The proposals in the wind up report must conform with the provisions of the plan and amendments.

If an amendment is required (e.g., where there are benefit improvements in conjunction with the wind up), an application for the registration of a plan amendment using FSCO pension Form 1.1 should be included with the wind up documentation. Form 1.1 is available on the FSCO website at [www.fSCO.gov.on.ca](http://www.fSCO.gov.on.ca).

### **Superintendent's Checklist for Compliance on Plan Wind Up for Defined Benefit Plans**

The administrator should file a completed Superintendent's Checklist for Compliance on Plan Wind Up for Defined Benefit Plans, which is available on the FSCO website at [www.fSCO.gov.on.ca](http://www.fSCO.gov.on.ca). This checklist is designed to assist administrators and their agents in compiling the required submissions. It also aids FSCO staff in their review of the wind up. Poorly completed checklists may result in delay of the wind up process.

### **Wind Up Report for Defined Contribution Pension Plans**

The administrator of a defined contribution pension plan that is to be wound up may wish to complete and file the Wind Up Report for Defined Contribution Pension Plans. This standardized report is available on the FSCO website at [www.fSCO.gov.on.ca](http://www.fSCO.gov.on.ca). The report sets out the information required by FSCO staff and expedites the review of defined contribution plan wind ups.

### **Other Required Filings in Respect of a Full Wind Up**

Pursuant to section 29.1 of the Regulation, the administrator must file the following documents within six months after the effective date of wind up for the period from the most recent plan year end to the effective date of wind up:

- an Annual Information Return ("AIR"), including the Pension Benefits Guarantee Fund Assessment Certificate
- financial statements for the pension plan or fund

The administrator is responsible for ensuring that all AIRs required up to the effective date of full wind up are filed and that all prescribed and outstanding fees and assessments are paid (subsection 29(4) of the Regulation).

#### **1.2.5 Distribution of Benefits**

The administrator is required, under section 72 of the PBA, to provide each person entitled to a benefit or refund from the plan on wind up with a statement setting out the person's benefits under the plan, the options available and other information as prescribed under subsection 28(2) of the Regulation. The statement should indicate, in accordance with clause 28(2)(t) of the Regulation, that the benefits and options are subject to the approval of the Superintendent and the Canada Revenue Agency, and may be subject to adjustment.

The statement containing the information prescribed under subsection 28(2) of the Regulation must be given to the specified persons within 60 days after the earlier of the administrator receiving notice that the Superintendent has approved the wind up report, or the payment of benefits under subsection 70(3) of the PBA.

A recipient of a statement issued in accordance with section 28 of the Regulation has 90 days after receipt of the statement to make an election and forward it to the administrator. If the recipient has an election to make and fails to do so within 90 days, that person shall be deemed to have elected to receive an immediate pension, if eligible. If the recipient is not eligible to receive an immediate pension, that person shall be deemed to have elected to receive a deferred pension commencing at the earliest date mentioned in clause 74(1)(b) of the PBA. Information pertaining to a deemed election should be specified in the statement in accordance with subsection 72(2) of the PBA and clause 28(2)(o) of the Regulation.

The administrator has 60 days to make payment in accordance with an election made (or deemed to have been made) by a person on wind up. The administrator must make payment within 60 days after the later of the day the administrator:

- receives the person's election (or if no election has been made, the day the person is deemed to have made the election), or
- receives notice that the wind up report has been approved by the Superintendent.

However, where the Superintendent approves the payment of benefits under subsection 70(3) of the PBA before approving the wind up report, the administrator must make payment in relation to an election resulting from such a statement within 60 days after the later of the day the administrator:

- receives the person's election (or if no election has been made, the day the person is deemed to have made the election), or
- receives notice of the Superintendent's approval to pay basic benefits under subsection 70(3) of the PBA.

If the plan has a deficit, payment of basic benefits described in statements given in accordance with section 28 of the Regulation are also subject to the requirements of subsections 29(7) and (8) of the Regulation and may be delayed due to these requirements.

### 1.2.6 Distribution of Surplus

Where there is surplus on the full or partial wind up of the plan, the administrator is also required to provide each person entitled to a benefit or refund from the plan on wind up with a statement setting out information and options respecting the distribution of the surplus as prescribed under subsection 28.1(2) of the Regulation. The statement must be given to the specified persons within 60 days after the administrator receives notice that the Superintendent has approved the wind up report.



A recipient of a statement issued in accordance with section 28.1 of the Regulation has 90 days after receipt of the statement to make an election (if the recipient has an election to make) and forward it to the administrator. If the recipient fails to make an election within 90 days, that person shall be deemed to have elected the method of distribution specified in the statement in accordance with subsection 28.1(4) of the Regulation.

The administrator must make payment within 60 days after the later of the day the administrator:

- receives the person's election (or if no election has been made, the day the person is deemed to have made the election), or
- receives notice that the wind up report has been approved by the Superintendent.

Depending on when the basic benefits are to be distributed relative to the distribution of surplus, it may be possible for the administrator to combine the statement requirements for the wind up and the surplus distribution in a single document.

### **1.2.7 Final Distribution of Assets and Confirmation of Distribution**

Within 30 days after final distribution of the assets of the pension plan, or the assets of the wound up portion of the plan in the case of a partial wind up, the administrator must give the Superintendent written notice that all assets of the plan or the wound up portion

of the plan have been distributed, as required under subsection 29.1(4) of the Regulation.

## **SECTION II**

### **Preparing the Wind Up Report**

A wind up report filed under subsection 70(1) of the PBA must comply with the prescribed requirements of the PBA and Regulation. As well, in preparing a wind up report for a defined benefit plan, subsection 16(1) of the Regulation requires that an actuary "Y..shall use methods and actuarial assumptions that are consistent with accepted actuarial practice and with the requirements of the Act and this Regulation." As at the date of publication of this policy, applicable professional standards are set out in the document titled Consolidated Standards of Practice - Practice-Specific Standards for Pension Plans issued in May 2002 by the Canadian Institute of Actuaries (the "CIA Standards").

Under subsection 70(1) of the PBA, the wind up report must set out at least the following:

- the assets and liabilities of the pension plan;
- the benefits to be provided under the pension plan to members, former members and other persons;
- the methods of allocating and distributing the assets (including any surplus) of the pension plan and determining the priorities for payment of benefits; and
- such other information as is prescribed.

## 2.1 Compliance Items

Where an actuary is required to prepare a wind up report, the actuary should confirm compliance with respect to the following legislative requirements, where applicable:

- Minimum value of employee contributions with interest for pre-1987 benefits PBA ss. 39(1) & (2)
- Minimum 50% cost rule for post-1986 contributions PBA ss. 39(3) & (4)
- Early retirement options PBA s. 41
- Joint and 60% survivor option PBA s. 44
- Full vesting PBA s. 73(1)(b)
- Grow in rights PBA s. 74
- Notice period under *Employment Standards Act*, 2000 PBA s. 74(5)
- Deemed consent of ancillary benefits PBA s. 74(7)
- Benefits accrued under all prior plans included in the report PBA s. 81(2)
- Minimum credited interest from date of wind up to date of payment Regulation s. 24(12)
- Minimum commuted value of a pension, deferred pension or ancillary benefit Regulation s. 29(2)

## 2.2 Membership Data

Among the CIA Standards, the following requirements are included:

- The report should be detailed enough to enable another actuary to examine the reasonableness of the valuation.”
- The data are the responsibility of the plan administrator. The actuary would,

however, report on the sufficiency and reliability of the data, including specifically the capitalized values included in the valuation whether or not the plan administrator was the calculator thereof.”

- The finality of wind-up calls for the actuary to obtain precise data.” [The balance of the paragraph goes on to address the situation where precise data on membership is not available.]
- The reported membership data would include details of the amount and terms of payment of each member’s benefits.”

The following information is required by FSCO staff in order to complete their review of a wind up report. Such information should be provided in an anonymous form (i.e., no names, social insurance numbers or other personal identifiers should be provided).

### For members and deferred vested former members:

- age or date of birth
- sex
- years of continuous service, or date of hire (members only)
- years of credited service (pre-1987 and post-1986; members only)
- years of membership, or date of plan entry (members only)
- date of termination (if different than the effective date of wind up)
- accumulated (pre-1987 and post-1986) employee contributions with interest, if any
- salary upon which the benefits are based (members only), if applicable

- accrued (pre-1987 and post-1986) pension
- bridging benefit (pre-1987 and post-1986), if any
- any other benefits provided under the plan
- commuted values of accrued (pre-1987 and post-1986) pension, bridging (pre-1987 and post-1986) and other benefits
- excess contributions due to 50% cost rule
- additional voluntary contributions with interest, if any

For former members in receipt of pension payments and other beneficiaries:

- age or date of birth
- spousal age or spousal date of birth
- sex
- date of retirement
- amount of pension payable
- bridging benefit, if any
- any other benefits provided under the plan
- form of pension payment
- wind up liabilities or commuted values of pension, bridging and other benefits

The report should include a reconciliation of plan membership from the valuation date of the last filed actuarial report to the effective date of the wind up.

In the case of a partial wind up, a summary of the statistics pertaining to members who are remaining in the on-going portion of the plan should also be provided. However, if there have not been significant changes in membership since the valuation date of the last filed actuarial report, a reference to that report with respect to the remaining members is acceptable.

## 2.3 Plan Provisions

The report must include a summary of plan provisions that were reflected in the wind up valuation. The actuary should ensure that the summary is consistent with the plan documents filed with FSCO.

## 2.4 Commuted Values of Benefit Entitlements

Appendix A sets out the actuarial guidelines that are currently followed by FSCO staff in their review of the determination of the commuted values of members' benefit entitlements on wind up. These guidelines do not preclude the use of any other actuarial basis if deemed appropriate by the actuary. However, the actuary should justify the basis used and demonstrate that the commuted values calculated using such a basis would comply with the Act and Regulation.

## 2.5 Financial Position of the Plan on Wind Up

In addition to the determination of the commuted values of the benefit entitlements of the individual members, the wind up report must provide information on the financial position of the pension plan as a result of the wind up. Determination and reporting of the financial position of a defined benefit pension plan must comply with the CIA Standards.



### 2.5.1 Valuation Balance Sheet in Respect of a Full Wind Up

In the case of a full wind up, the wind up report should provide a valuation balance sheet including the assets and the wind up liability of the plan as of the effective date of wind up.

#### Assets

Assets should be valued at market, with adjustments for receivables or payables at the effective date of wind up. The actuary should describe in detail any estimates that were made of market values. In particular, if the actuary has reason to believe that there may be items which might adversely affect the quality of assets, the actuary should disclose this information and quantify the impact, to the extent possible. In making this determination, the actuary may rely on or use the opinion of another person if such reliance or use is justified in the circumstances. Cash out value should be used for insurance company guaranteed annuity contracts and general fund deposit administration contracts.

If expenses are expected to be paid from the fund and the payment of these expenses is permitted under the plan, a reasonable allowance for wind up expenses should be identified and deducted from the value of plan assets. In determining the wind up funded ratio of the plan, this net asset value is taken as the numerator in the funded ratio formula.

The report should include a reconciliation of plan assets from the valuation date of the last filed actuarial report.

#### Wind Up Liability

The wind up liability must reflect all benefits provided under the plan and the applicable legislation on wind up and should be separately summarized for each major category of membership. For members and former members who are expected to receive a commuted value, the wind up liability must be consistent with the individual commuted values of the benefit entitlements determined in accordance with subsection 29(2) of the Regulation. For members and former members who are receiving or are expected to receive a pension benefit, the wind up liability should reflect the estimated cost of purchasing the pension benefits. The assumptions should indicate the percentage or category of members/former members for whom benefits will be settled by annuity purchase.

### 2.5.2 Valuation Balance Sheet in Respect of a Partial Wind Up

The partial wind up report should provide a valuation balance sheet in respect of each of the wound up and on-going portions of the plan as of the effective date of wind up.

Where a plan covers only members with Ontario employment, FSCO staff will accept, as a matter of practice, the splitting of assets between the wound up portion and the on-going portion of the plan in proportion to the

wind up liabilities as of the effective date of wind up (the “standard method”). Splitting of assets on another method may also be accepted if the actuary can confirm that, in his or her opinion, such a split would not result in an asset allocation that is materially different than that under the standard method. If the actuary uses a method other than the standard method, comments supporting the appropriateness of the method used should be included in the report.

For the on-going portion of the plan, the actuary should confirm whether the funding requirements as set out in the last filed funding actuarial report would continue to apply or otherwise set out the new funding requirements in a separate actuarial cost certificate or funding actuarial report.

## 2.6 Actuary’s Statements of Opinion

The actuary must provide statements of opinion in accordance with the CIA Standards.

### SECTION III Treatment of Surplus/Deficit

The term “wind up” is defined in the PBA to mean the termination of a pension plan and the distribution of the assets of the pension fund. Therefore, in addition to establishing the benefits to be provided to affected members and former members, the wind up report should identify any excess or shortfall of assets existing after satisfying the liabilities (i.e., the surplus or deficit).

## 3.1 Surplus

If the pension plan is in a surplus position on full wind up, or the wound up portion of the pension plan is in a surplus position on partial wind up, the administrator should indicate how the surplus assets will be dealt with. Distribution of the assets must conform with the proposals set out in the wind up report approved by the Superintendent. If the wind up report does not indicate how the surplus will be dealt with, a supplement to the wind up report dealing with the surplus assets will be required.

## 3.2 Deficit

If the wind up report reveals that the plan does not have sufficient assets to pay the liabilities on wind up, the employer must pay into the pension fund amounts required under section 75 of the PBA.

The amount of deficit to be funded pursuant to clause 75(1)(b) of the PBA is the amount by which the Ontario wind up liability, exclusive of the unfunded portion of non-plan-vested benefits, exceeds the value of plan assets allocated for payment of pension benefits accrued with respect to employment in Ontario. Pursuant to clause 29(9)(a) of the Regulation, where payments are being made in accordance with section 75 of the PBA, the employer is not liable to pay the unfunded portion (based on the wind up funded ratio) of non-plan-vested benefits.

Where the employer funds the deficit by a lump sum payment and the actuary files

a certification that the obligations under section 75 of the PBA have been fully funded, the benefits can be paid. As a minimum, the deficit must be funded in accordance with section 31 of the Regulation by annual special payments, payable annually in advance, over a maximum period of five years commencing at the effective date of wind up (for qualifying plans, by monthly special payments over one year).

The administrator is required under section 32 of the Regulation to file a report annually until the employer's obligation under section 75 of the PBA has been fulfilled. This annual report must be prepared by an actuary and must satisfy all standards normally applicable to a valuation report. In addition, the report should provide a gain and loss analysis since the last report filed and specify the special payments required to liquidate the remaining liability obligation under section 75 of the PBA. Where a report shows that no further amount is to be funded, subsection 32(4) of the Regulation provides that any surplus may revert to the employer, subject to the requirements of section 79 of the PBA.

Subsections 29(7) and (8) of the Regulation set out the restrictions on cash out, transfers and annuity purchases prior to the plan being fully funded. For more information, see policy W100-440 ("Restrictions on Payments in Deficit Situations").

## SECTION IV

### Specific Issues Related to Wind Up

In this Section, a few specific issues related to wind ups are discussed, along with current FSCO practice with respect to these issues.

#### 4.1 Payments Approved by the Superintendent

Prior to FSCO's review of a wind up report, the Superintendent may approve, under subsection 70(3) of the PBA, various kinds of payments, including the payment of expenses, commencement of monthly pension payments to retirees under a defined benefit plan and purchase of immediate annuities for eligible retirees under a defined contribution plan. Death benefits will also generally be approved if FSCO staff are satisfied that the plan would be fully funded.

The administrator may obtain approval from the Superintendent for a payment of expenses out of the plan fund. However, the administrator must ensure that such payment would not contravene section 22 of the PBA. See also policy A200-801 ("Costs for Wind Up and Surplus Applications").

Approvals under subsection 70(3) of the PBA will also be given by the Superintendent for payment of all benefit entitlements once FSCO staff have reviewed the wind up report and are satisfied that all benefits have been provided for properly. However, an outstanding issue related to surplus may remain: either the administrator has not determined how



the surplus is to be dealt with or there is a pending surplus refund proposal that requires the Superintendent's consent.

Once the wind up report is approved, all payments must be made in accordance with it.

#### 4.2 Prior Plans

Prior pension plans sponsored by the same employer are deemed to be benefits associated with the current plan whether or not the assets were consolidated as set out under subsection 81(3) of the PBA. To the extent these apply to members affected by the wind up, such prior plans must also be included for the purposes of the wind up.

#### 4.3 Notice of Termination of Employment

Pursuant to subsections 74(5) and (6) of the PBA, membership in a non-contributory plan should include the period of notice of termination of employment required under the *Employment Standards Act, 2000*. The notice period is included for both benefit eligibility and benefit calculation purposes. For contributory plans the members must be given the option to make the required contributions in respect of the notice period in order to have the period included for benefit purposes.

#### 4.4 Grow In Under Section 74 of the PBA

In accordance with subsection 74(1) of the PBA, a member whose age plus service or plan membership equals 55 or more at

the effective date of wind up (the "rule of 55") will be eligible to receive:

- (a) an immediate pension, if eligible under the plan;
- (b) a pension beginning at the earlier of the normal retirement date under the plan, or the date on which the member would be entitled to an unreduced pension under the plan had the plan not been wound up and had the member's membership continued to that date;
- (c) a reduced pension in the amount payable under the plan beginning on the date on which the member would be entitled to the reduced pension under the plan as if the pension plan were not wound up and the member's membership had continued to that date.

The benefit entitlements for the "rule of 55" members must reflect this grow in provision.

Furthermore, pursuant to subsection 74(3) of the PBA, if a "rule of 55" member has at least 10 years of continuous service or membership at the date of wind up, the bridging benefits to which the member would have been entitled if the plan were not wound up and if the member's membership continued, subject to proration under subsection 74(4) of the PBA, must be reflected in the member's benefit entitlements.

#### 4.5 Treatment of Special Benefits

Certain special benefits require specific treatment on wind up. In addition, growth to these benefits should be provided in accordance with section 74 of the PBA, where applicable. The treatment of these special benefits is outlined below:

- Consent benefits must be provided on a plan wind up as required under subsection 74(7) of the PBA.
- Escalated adjustments or indexation (including adjustments that have not been made) are not considered to be ancillary benefits. They are part of the pension benefit under the plan, and thus must be included in the wind up benefits.
- Early retirement window benefits should be included to the extent that a member would have become eligible for the benefits prior to the close of the window, had the plan not been wound up and the member's membership continued.
- Plant closure benefits and permanent layoff benefits should be included for wind up purposes where the wind up is in conjunction with or accompanied by one of these events.
- Prospective benefit increases are not required to be included on plan wind up.

#### 4.6 Allocation of Assets for Multi-jurisdictional Plans

In the case of a wind up covering members in more than one jurisdiction in which there are insufficient assets to cover all liabilities, the method for allocating

assets among the various jurisdictions is prescribed in section 30 of the Regulation. The assets allocated to another jurisdiction should be dealt with in accordance with the requirements of that jurisdiction.

#### APPENDIX A: Specific Guidelines on Actuarial Assumptions and Methods for the Calculation of the Commuted Value of Individual Benefit Entitlements on Plan Wind Up

In their review of the commuted value calculations, FSCO staff use the following actuarial guidelines developed from the Recommendations for the Computation of Transfer Values from Registered Pension Plans issued by the Canadian Institute of Actuaries effective September 1, 1993 (the "CIA Recommendations") that are currently prescribed in subsection 29(2) of the Regulation. These guidelines will remain in effect until subsection 29(2) of the Regulation is amended to refer to any other basis.

##### A.1.1 Interest

For non-indexed pensions and fully indexed pensions, the assumed interest rates should not be higher than the respective rates determined in accordance with the CIA Recommendations.

Partially indexed pensions should be valued using the method prescribed in the CIA Recommendations.

### **A.1.2 Mortality**

The mortality assumption should not be weaker than the 1983 Group Annuity Mortality Table (GAM83) (including a level 10 per cent margin) as published on pages 880 and 881 of Volume XXXV of the Transactions of the Society of Actuaries.

#### **Pre-retirement Death Benefits**

If the only pre-retirement death benefit is the commuted value of the member's pension, it is appropriate to assume no mortality before retirement. Otherwise, a full description of how the pre-retirement death benefit, if any, is valued should be provided.

#### **Unisex Table**

In compliance with section 52 of the PBA, a unisex mortality table must be used to determine the commuted values of post-1986 benefits. The report should state clearly the mix of the male and female rates, and indicate the basis from which the mix is derived (for example, relative to the number of members or liabilities).

As a matter of practice, FSCO staff will also accept the use of unisex rates for pre-1987 benefits.

### **A.1.3 Retirement Age**

The report should explicitly state the retirement age assumption for each category of membership. FSCO staff will not accept

statements which simply state that there has been compliance with section 74 of the PBA.

Reference should be made to section 4.4 of this policy (Grow In Under Section 74 of the PBA). For the purpose of section 74 of the PBA, members meeting the "rule of 55" should be assumed to retire at the most favourable retirement age (i.e., the retirement age that produces the highest commuted value).

To be consistent with the CIA Recommendations, if a plan provides that a deferred vested former member has the right to elect an earlier commencement date with a subsidized early retirement pension (i.e., a pension that exceeds the amount which is of actuarial equivalent value to the pension payable at normal retirement age), then the assumed retirement age should reflect the full value of the subsidy for all members and deferred vested former members, and not just the "rule of 55" members.

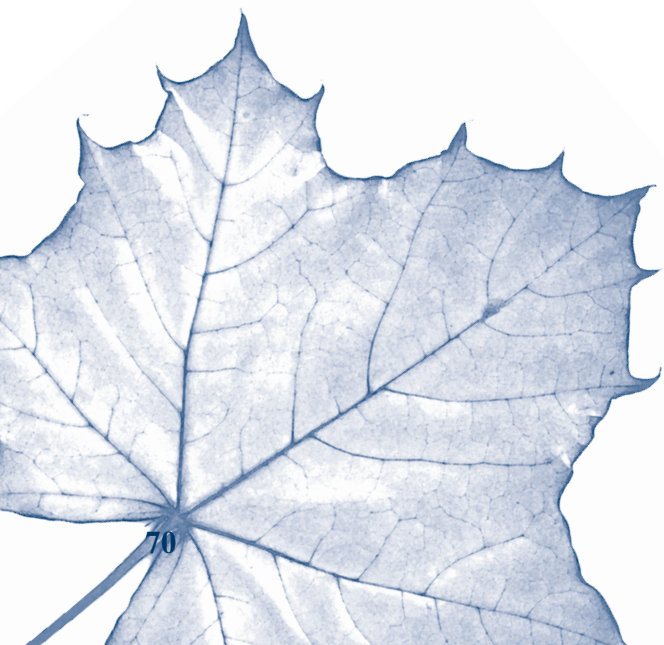
### **A.1.4 Marital Status**

The marital status assumptions should be determined in accordance with subsection 3(A) (Demographic Assumptions) of the CIA Recommendations.

### **A.1.5 Date of Computation**

Individual commuted values of benefit entitlements normally should be calculated as of the effective date of wind up using a basis in effect on that date. If warranted by the wind up circumstances, other computation date(s) may be used.





## SUPERINTENDENT OF FINANCIAL SERVICES

### Administrator Appointments - Section 71 of the *Pension Benefits Act*

1. Morneau Sobeco as the Administrator of the Salaried Employees Retirement Income Plan of The Imperial Home Decor Group (Canada) Inc. (Registration No. 1050426), effective immediately. **DATED** at Toronto, Ontario, this 8th day of July, 2004.
2. Morneau Sobeco as the Administrator of the Retirement Plan for Hourly Employees of The Imperial Home Decor Group (Canada) Inc. (Registration No. 596254), effective immediately. **DATED** at Toronto, Ontario, this 8th day of July, 2004.
3. Morneau Sobeco as the Administrator of the Pension Fund of The Imperial Home Decor Group (Canada) Inc. (Registration No. 1050434), effective immediately. **DATED** at Toronto, Ontario, this 8th day of July, 2004.
4. Morneau Sobeco as the Administrator of Pension Plan for Servifood Ltd (Registration No. 684225), effective immediately. **DATED** at Toronto, Ontario, this 8th day of July, 2004.
5. Morneau Sobeco as the Administrator of the Pension Plan for Bargaining Unit Employees of Slater Steel Inc. Hamilton Specialty Bar Division (Registration No. 308320), effective immediately. **DATED** at Toronto, Ontario, this 8th day of September, 2004.
6. Morneau Sobeco as the Administrator of the Slater Steel Inc. Pension Plan for Corporate and Salaried Employees of the Hamilton Bar Specialty Division (Registration No. 308338), effective immediately. **DATED** at Toronto, Ontario, this 8th day of September, 2004.
7. Morneau Sobeco as the Administrator of the Slater Steel Inc. Pension Plan for Salaried Employees of SLACAN Division (Registration No. 489310), effective immediately. **DATED** at Toronto, Ontario, this 8th day of September, 2004.
8. Morneau Sobeco as the Administrator of the Pension Plan for Slater Stainless Corp. Members of the United Steelworkers of America (local 7777) (Registration No. 561464), effective immediately. **DATED** at Toronto, Ontario, this 8th day of September, 2004.
9. Morneau Sobeco as the Administrator of the Pension Plan for Slater Stainless Corp. Members of National Automobile, Aerospace, Transportation and General Workers' (Registration No. 561456), effective immediately. **DATED** at Toronto, Ontario, this 8th day of September, 2004.

10. PricewaterhouseCoopers as the Administrator of the Oxford Automotive Canada Ltd. Hourly Pension Plan- Wallaceburg (Registration No. 364356), effective immediately.  
**DATED** at Toronto, Ontario, this 12th day of October, 2004.
11. PricewaterhouseCoopers as the Administrator of the Oxford Automotive Canada Ltd. Hourly Pension Plan- Chatham (Registration No. 386474), effective immediately.  
**DATED** at Toronto, Ontario, this 12th day of October, 2004.
12. PricewaterhouseCoopers as the Administrator of the Oxford Automotive Canada Ltd. Retirement Income Plan for Union - Cambridge (Registration No. 996926), effective immediately.  
**DATED** at Toronto, Ontario, this 12th day of October, 2004.
13. PricewaterhouseCoopers as the Administrator of the Oxford Automotive Canada Ltd. Salaried Pension Plan- Chatham and Wallaceburg (Registration No. 1063023), effective immediately.  
**DATED** at Toronto, Ontario, this 12th day of October, 2004.



## Notices of Proposal to Make an Order

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

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(4) of the Act, consenting to a payment out of the **Retirement Plan for Employees of Metso Automation Canada Ltd., Registration Number 543835;**

**TO:** Metso Automation  
Canada Limited  
32 Hymus Boulevard  
Pointe-Claire QC H9R 1C9

**Attention:** Carrol Lamarche  
Controller

### NOTICE OF PROPOSAL

**I PROPOSE TO MAKE AN ORDER** under s. 78(4) of the Act, consenting to the payment out of the Retirement Plan for Employees of Metso Automation Canada Ltd., Registration Number 543835 (the “Plan”), to Metso Automation Canada Limited in the amount of \$467,175 as at May 31, 2003, plus interest, at the fund rate of return thereon, to the date of payment.

### **I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:**

1. Metso Automation Canada Limited is the Employer as defined in the Plan (the “Employer”).

2. An amendment providing for conversion of the defined benefits to defined contribution benefits and supporting actuarial report were filed indicating that the Plan had a surplus of \$862,000 as at January 1, 2001. As at May 2003, the adjusted surplus is approximately \$485,000.
3. Sections 3.1 and 4.5 of the Plan provisions state that the surplus assets resulting from the conversion may be applied towards the Employer’s contribution under the defined contribution provisions.
4. Employer contributions were paid to the Plan in 2002 and 2003 pending FSCO’s registration of the amendment providing for the conversion of the Plan benefits.
5. FSCO registered the amendment January 16, 2003.
6. Evidence of the overpayment to the pension fund has been submitted to the Financial Services Commission of Ontario.
7. There were no member submissions made about the repayment to the Employer.
8. The application appears to comply with section 78(4) of the Act.
9. Such further and other reasons as come to my attention.

In accordance with subsection 105.(1) of the Act, an extension of the time limit under subsection 78(4) has been given.

**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the “Tribunal”) pursuant to subsection 89(6) of the Act if, within thirty (30) days after this Notice of Proposal is served on you,

you deliver to the Tribunal a written notice that you require a hearing.<sup>1</sup>

**YOUR WRITTEN NOTICE REQUIRING A HEARING** must be delivered to:

Financial Services Tribunal  
14th Floor, 5160 Yonge Street  
North York ON M2N 6L9

Attn: The Registrar

**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.**

**DATED** at Toronto, Ontario, this  
11th day of August, 2004.

K. David Gordon  
Deputy Superintendent, Pensions

<sup>1</sup> NOTE C PURSUANT to section 112 of the Act any notice, order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.

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

**AND IN THE MATTER OF** a Proposal  
of the Superintendent of Financial  
Services to Make an Order under section  
69 of the Act, respecting the **Pension  
Plan for Salaried Employees of Cold  
Metal Products Limited, Registration  
Number 0969188 (the “Pension Plan”)**;

**TO:** **Sun Life Assurance Company**  
227 King Street South  
PO Box 1601 STN Waterloo  
Waterloo ON  
N2J 4C5

**Attention:** Audrey Humphrey  
Finals Associate  
**Administrator  
of the Pension Plan**

**AND TO:** **Cold Metals Products Limited**  
P.O. Box 66 LCD 1  
65 Imperial Street  
Hamilton ON L8L 7V2

**Attention:** Soheil Monzavi  
General Manager  
**Employer**

**AND TO:** **Richter & Partners Inc.**  
200 King Street West  
Suite 1900, P.O. Box 48  
Toronto ON M5H 3T4

**Attention:** Peter Paul Farkas  
**Trustee in Bankruptcy  
for Cold Metal Products**

**NOTICE OF PROPOSAL TO  
MAKE AN ORDER**

**I PROPOSE TO MAKE AN ORDER** that  
the Pension Plan for Salaried Employees  
of Cold Metal Products Limited,  
Registration Number 0969188, be wound  
up in full effective March 15, 2003.

I propose to make this order pursuant  
to subsection 69(1) of the Act.

**I PROPOSE TO MAKE THIS ORDER  
FOR THE FOLLOWING REASONS:**

1. There was a cessation or suspension  
of Employer contributions  
to the pension fund.
2. The Employer is bankrupt within  
the meaning of the *Bankruptcy  
and Insolvency Act* (Canada).
3. All or a significant portion of the  
business carried on by the Employer  
at a specific location is discontinued.
4. Such further reasons as may  
come to my attention.

**YOU ARE ENTITLED TO A HEARING**  
by the Financial Services Tribunal (the  
“Tribunal”) pursuant to section 89(6) of  
the Act, if, within thirty (30) days after  
the Notice of Proposal is served on you,  
you deliver to the Tribunal a written  
notice that you require a hearing.<sup>1</sup>

<sup>1</sup> NOTE - Pursuant to section 112 of the Act any Notice, Order or other document is sufficiently given,  
served or delivered if delivered personally or sent by first class mail and any document sent by first class  
mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.



**ANY NOTICE REQUIRING A HEARING** shall be delivered to:

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

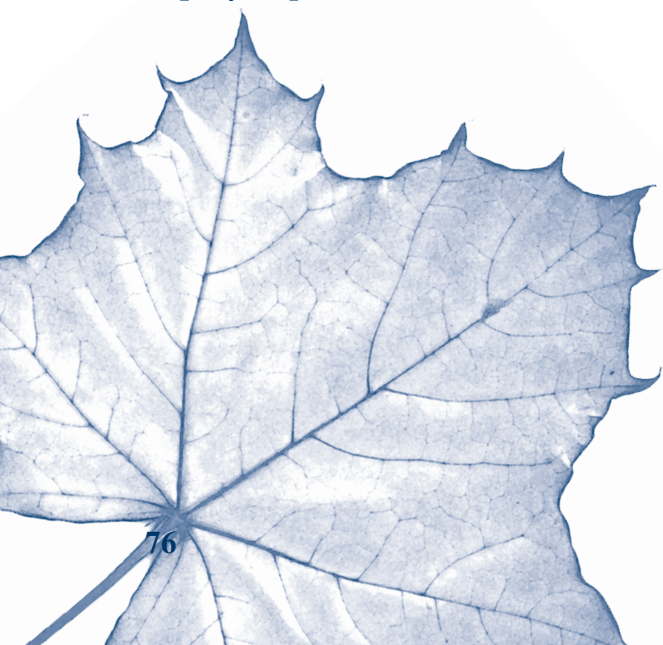
Attention: The Registrar

**FOR FURTHER INFORMATION**, contact the Registrar of the Tribunal by phone at: 416-226-7752, toll-free at: 1-800-668-0128, ext. 7752, or by fax at: 416-226-7750.

**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE OF THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.**

**DATED** at Toronto, Ontario, this 27th day of August, 2004.

K. David Gordon  
Deputy Superintendent, Pensions



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

**AND IN THE MATTER OF** a Proposal of  
the Superintendent of Financial Services to  
Make an Order under section 69 of the Act  
relating to the **Employees’ Retirement Plan  
of Hoskins Alloys of Canada Limited,**  
**Registration Number 557868 (the “Plan”);**

**TO:** **PricewaterhouseCoopers Inc.**  
1 Robert Speck Parkway  
Suite 1100  
Mississauga ON L4Z 3M3

**Attention:** Mr. Tony Karkheck  
Human Resource Services  
**Appointed  
Administrator**

**AND TO:** **Hoskins Manufacturing Co.**  
39500 High Pointe  
Boulevard, Suite 300  
Novi MI 48375

**Attention:** Phillip Varvatos  
Controller  
**Employer**

### **NOTICE OF PROPOSAL**

**I PROPOSE TO MAKE AN  
ORDER** in respect of the Plan  
under section 69(1) of the Act.

### **PROPOSED ORDER:**

That the Plan be wound up in  
whole effective April 30, 2001.

<sup>1</sup> NOTE - Pursuant to section 112 of the Act any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.

### **REASONS:**

1. Cessation or suspension of Employer contributions to the pension fund, pursuant to clause 69(1)(a) of the Act.
2. Failure of the Employer to make contributions to the pension fund as required by the Act or the regulations, pursuant to clause 69(1)(b) of the Act.
3. A significant number of members have ceased to be employed by the Employer as the result of the discontinuance or reorganization of all of part of business of the Employer, pursuant to clause 69(1)(d) of the Act.
4. Such further reasons as may come to my attention.

**YOU ARE ENTITLED TO A HEARING**  
by the Financial Services Tribunal (the  
“Tribunal”) pursuant to s. 89(6) of the Act.  
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 Proposal is served on you.<sup>1</sup>

**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**, contact  
the Registrar of the Tribunal by phone at:

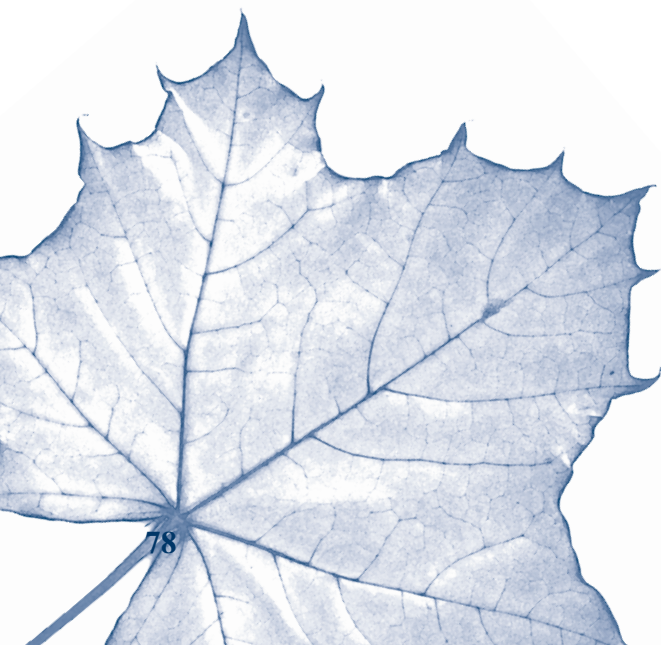


416-226-7752, toll-free at: 1-800-668-0128,  
ext. 7752, or by fax at: 416-226-7750.

**IF YOU FAIL TO REQUEST A  
HEARING WITHIN THIRTY (30)  
DAYS, I MAY MAKE THE ORDER  
PROPOSED IN THIS NOTICE.**

**DATED** at North York, Ontario, this 27th  
day of August, 2004.

K. David Gordon  
Deputy Superintendent, Pensions







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

**AND IN THE MATTER OF** a Proposal of  
the Superintendent of Financial Services to  
Make an Order under section 69 of the Act,  
respecting the **Pension Plan for Salaried  
Employees of Canadian Tack and Nail  
Ltd., Registration Number 0581306;**

**TO:** **Morneau Sobeco**  
895 Don Mills Road  
Suite 700  
One Morneau  
Sobeco Centre  
Toronto ON  
M3C 1W3

**Attention:** David Kearney  
Senior Consultant  
**Administrator  
of the Pension Plan**

**AND TO:** **Canadian Tack and Nail Ltd.**  
431 Dundas Street  
P.O. Box 754  
Cambridge ON N1R 5W6

**Attention:** Gary Ayers  
Vice President & General  
Manager  
**Employer**

**AND TO:** **KPMG Inc.**  
20 Erb Street West  
Marsland Centre, 3rd Floor  
Waterloo ON MN2L 1T2

**Attention:** Robert J. Bradley  
Senior Manager  
**Trustee in Bankruptcy  
for Canadian  
Tack and Nail Ltd.**

**NOTICE OF PROPOSAL TO  
MAKE AN ORDER**

**I PROPOSE TO MAKE AN ORDER** that  
the Pension Plan for Salaried Employees of  
Canadian Tack and Nail Ltd., Registration  
Number 0581306 (the “Pension Plan”), be  
wound up in full for those members who  
ceased to be employed effective between  
March 20, 2003 and April 1, 2003.

I propose to make this order pursuant  
to subsection 69(1) of the Act.

**I PROPOSE TO MAKE THIS ORDER  
FOR THE FOLLOWING REASONS:**

1. there was a cessation or suspension  
of Employer contributions to  
the pension fund;
2. the Employer failed to make  
contributions to the pension fund as  
required by the Act or regulations.
3. the Employer is bankrupt within  
the meaning of the *Bankruptcy  
and Insolvency Act* (Canada);
4. a significant number of members  
of the Pension Plan ceased to be  
employed by the Employer as a result  
of the discontinuance of all or part  
of the business of the Employer or  
as a result of the reorganization of  
the business of the Employer;



5. all or a significant portion of the business carried on by the Employer at a specific location was discontinued;
6. such further reasons as may come to my attention.

**DATED** at Toronto, Ontario, this 3rd day of September, 2004.

K. David Gordon  
Deputy Superintendent, Pensions

**YOU ARE ENTITLED TO A HEARING**

by the Financial Services Tribunal (the "Tribunal") pursuant to section 89(6) of the Act, if, within thirty (30) days after the Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.<sup>1</sup>

**ANY NOTICE REQUIRING A HEARING** shall be delivered to:

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

Attention: The Registrar

**FOR FURTHER INFORMATION**, contact the Registrar of the Tribunal by phone at: 416-226-7752, toll-free at: 1-800-668-0128, ext. 7752, or by fax at: 416-226-7750.

**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE OF THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.**

<sup>1</sup> NOTE - Pursuant to section 112 of the Act any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.

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

**AND IN THE MATTER OF** a Proposal  
of the Superintendent of Financial  
Services (the “Superintendent”) to Make  
an Order under section 69 of the Act,  
respecting the **Pension Plan for Hourly  
Employees of Canadian Tack and Nail  
Ltd., Registration Number 0241968;**

**TO:** **Morneau Sobeco**  
895 Don Mills Road  
Suite 700  
One Morneau  
Sobeco Centre  
Toronto ON  
M3C 1W3

**Attention:** David Kearney  
Senior Consultant  
**Administrator  
of the Pension Plan**

**AND TO:** **Canadian Tack and Nail Ltd.**  
431 Dundas Street  
P.O. Box 754  
Cambridge ON N1R 5W6

**Attention:** Gary Ayers  
Vice President & General  
Manager  
**Employer**

**AND TO:** **KPMG Inc.**  
20 Erb Street West  
Marsland Centre, 3rd Floor  
Waterloo ON MN2L 1T2

Attention: Robert J. Bradley  
Senior Manager  
**Trustee in Bankruptcy  
for Canadian  
Tack and Nail Ltd.**

**NOTICE OF PROPOSAL TO  
MAKE AN ORDER**

**I PROPOSE TO MAKE AN ORDER** that  
the Pension Plan for Hourly Employees of  
Canadian Tack and Nail Ltd., Registration  
Number 0241968 (the “Pension Plan”), be  
wound up in full for those members who  
ceased to be employed effective between  
March 20, 2003 and April 1, 2003.

I propose to make this order pursuant  
to subsection 69(1) of the Act.

**I PROPOSE TO MAKE THIS ORDER  
FOR THE FOLLOWING REASONS:**

1. the Employer is bankrupt within  
the meaning of the *Bankruptcy and  
Insolvency Act* (Canada);
2. a significant number of members  
of the Pension Plan ceased to be  
employed by the Employer as a result  
of the discontinuance of all or part  
of the business of the Employer or  
as a result of the reorganization of  
the business of the Employer;
3. all or a significant portion of the  
business carried on by the Employer at  
a specific location was discontinued;
4. such further reasons as may  
come to my attention.





## **YOU ARE ENTITLED TO A HEARING**

by the Financial Services Tribunal (the "Tribunal") pursuant to section 89(6) of the Act, if, within thirty (30) days after the Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.<sup>1</sup>

## **ANY NOTICE REQUIRING A HEARING** shall be delivered to:

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

Attention: The Registrar

**FOR FURTHER INFORMATION**, contact the Registrar of the Tribunal by phone at: 416- 226-7752, toll-free at: 1-800-668-0128, ext. 7752, or by fax at: 416-226-7750.

**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE OF THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.**

**DATED** at Toronto, Ontario, this 15th day of September, 2004.

K. David Gordon  
Deputy Superintendent, Pensions

<sup>1</sup> NOTE - Pursuant to section 112 of the Act any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.



## Notices of Proposal to Make a Declaration

**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c.P. 8, as amended by the *Financial Services Commission of Ontario Act*, 1997, R.S.O. 1997, c. 28;

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to Make a Declaration under Section 83 of the *Pension Benefits Act*, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28, respecting the **Retirement Plan for the Employees of Alloy Wheels International (Canada) Ltd., Registration Number 1036029 (the "Pension Plan")**;

**TO:** **Morneau Sobeco**  
895 Don Mills Road, Suite 700  
One Morneau Sobeco Centre  
Toronto ON M2C 1W3

**Attention:** David R. Kearney  
Senior Consultant  
**Administrator  
of the Pension Plan**

**AND TO:** **Alloy Wheels  
International (Canada) Ltd.**  
49 Truman Road  
Box 13000  
Barrie ON L4M 6E7

**Attention:** Joan Oickle  
Compensation  
and Benefits Coordinator  
**Employer**

**AND TO:** **Deloitte & Touche Inc.**  
BCE Place  
Suite 1400  
181 Bay Street  
Toronto ON M5J 2V1

**Attention:** David Murray  
Partner  
**Trustee in Bankruptcy for  
Alloy Wheels  
International (Canada) Ltd.**

**AND TO:** **CAW Canada - Local 1991**  
178 Dunlap Street  
Barrie ON L4M 4S6

**Attention:** Ed Little  
**President, Skill Trades Rep.  
Union**

### **NOTICE OF PROPOSAL TO MAKE A DECLARATION**

#### **WHEREAS:**

1. The Retirement Plan for the Employees of Alloy Wheels International (Canada) Ltd., (the "Pension Plan") Registration Number 1036029, is registered under the *Pension Benefits Act*, R.S.O. 1990, c. P. 8 as amended by the *Financial Services Commission of Ontario Act*, 1997, c. 28, (the "Act"); and
2. The Pension Plan provides defined benefits that are not exempt from the application of
3. the Pension Benefits Guarantee Fund (the "Guarantee Fund") by the Act or the regulations made thereunder; and



4. The Pension Plan was wound up effective January 19, 2001; and
5. The Superintendent of Pensions initially appointed Arthur Andersen Inc. as the Administrator (the "Administrator") of the Pension Plan on February 2, 2001 and on July 10, 2002, appointed Morneau Sobeco as Administrator to replace Deloitte & Touche; and

**NOW THEREFORE TAKE NOTICE I** propose to consider to make a declaration pursuant to section 83 of the Act that the Guarantee Fund applies to the Pension Plan for the following reasons:

1. The revised Actuarial Valuation Report filed by the Administrator indicates an estimated funding deficiency of \$2,097,300 as at January 19, 2001 and an estimated claim against the Guarantee Fund as at January 19, 2001 of \$1,258,296.
2. Deloitte & Touche Inc. was appointed Trustee in Bankruptcy of Alloy Wheels International (Canada) Ltd. on January 19, 2001.
3. Apart from a proof of claim of in the amount \$16,920 from the Trustee in Bankruptcy, there are no other funds available from the bankrupt estate of Alloy Wheels International (Canada) Ltd. to make payments to the Pension Plan.
4. The Administrator has advised that they are reasonable and probable grounds for considering that the funding requirements of the Act and Regulation cannot be satisfied.

**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the Act, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.<sup>1</sup>

**ANY NOTICE REQUIRING A HEARING** shall be delivered to:

Financial Services Tribunal  
5160 Yonge Street  
14th Floor  
North York ON M2N 6L9

Attention: The Registrar

**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE DECLARATION PROPOSED HEREIN.**

**DATED** at North York, Ontario,  
this 14th day of July, 2004.

K. David Gordon  
Deputy Superintendent, Pensions

<sup>1</sup> PURSUANT TO section 112 of the Act, any Notice, Order or other document is sufficiently given, served or delivered personally or sent by first class mail and any documents sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the day of mailing.





**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c.P. 8, as amended by the *Financial Services Commission of Ontario Act*, 1997, R.S.O. 1997, c. 28;

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to make a Declaration under Section 83 of the *Pension Benefits Act*, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28, respecting the **Pension Plan for Hourly Employees of Fantom Technologies Inc., Registration Number 0348995 (the "Pension Plan")**;

**TO:** **Morneau Sobeco**  
895 Don Mills Road, Suite 700  
One Morneau Sobeco Centre  
Toronto ON M2C 1W3

**Attention:** David R. Kearney  
Senior Consultant  
**Administrator  
of the Pension Plan**

**AND TO:** **Fantom Technologies Inc.**  
PO Box 1004  
Welland ON L3B 5S1

**Attention:** Norm Wotherspoon  
Treasurer  
**Employer**

**AND TO:** **PricewaterhouseCoopers Inc.**  
145 King Street West  
Toronto ON M5H 1V8

**Attention:** Catherine Hristow  
Vice President  
**Interim Receiver and Trustee  
in Bankruptcy for  
Fantom Technologies Inc.**

**AND TO:** **The United Steelworkers**  
of America Local 6444, District 6  
234 Eglinton Avenue East  
Toronto ON M4P 1K5

**Attention:** Robert Heally  
and Brian Greenaway  
**Union**

**NOTICE OF PROPOSAL TO  
MAKE A DECLARATION**

**WHEREAS:**

1. Pension Plan for Hourly Employees of Fantom Technologies Inc., (the "Pension Plan") Registration Number 0348995 is registered under the *Pension Benefits Act*, R.S.O. 1990, c. P. 8 as amended by the *Financial Services Commission of Ontario Act*, 1997, c. 28, (the "Act"); and
2. The Pension Plan provides defined benefits that are not exempt from the application of
3. the Pension Benefits Guarantee Fund (the "Guarantee Fund") by the Act or the regulations made thereunder; and
4. The Pension Plan was wound up in full for those members who ceased to be employed effective between November 20, 2000 and October 5, 2001; and
5. The Superintendent of Pensions initially appointed Deloitte & Touche Inc. as the Administrator (the "Administrator")



of the Pension Plan on April 25, 2002 and on July 11, 2002, appointed Morneau Sobeco as Administrator to replace Deloitte & Touche; and

### **NOW THEREFORE TAKE NOTICE I**

propose to consider to make a declaration pursuant to section 83 of the Act that the Guarantee Fund applies to the Pension Plan for the following reasons:

1. The most recent actuarial valuation performed as at December 31, 1999, had a solvency deficiency of \$952,000 and a transfer ratio of 80%. Further, the Administrator had its actuary performed a preliminary valuation as at March 22, 2002, and the results of that review determined that the wind up funded ratio had deteriorated from 80% as at December 31, 1999 to approximately 59% as at March 22, 2002, and that the wind up deficit had increased to \$2,727,000 from \$952,000.
2. On October 25, 2001, Fantom Technologies Inc.'s request to obtain creditor protection for a temporary period under the *Companies' Creditors Arrangement Act* ("CCAA") was approved by an Order of the Ontario Superior Court of Justice. The Court appointed PricewaterhouseCoopers Inc. as the Monitor, as required under the CCAA proceedings and also appointed PricewaterhouseCoopers Inc. as Interim Receiver of the Fantom Technologies Inc.

On March 22, 2002, the Court issued an Order terminating the CCAA proceedings and discharged PricewaterhouseCoopers Inc. as Monitor but directed it to continue

in its role as Interim Receiver. On the same day, PricewaterhouseCoopers Inc. was appointed Trustee in Bankruptcy.

3. The Administrator has filed a proof of claim in respect of the estimated \$2,727,000, deficit with the Trustee in Bankruptcy. The Administrator advises that the Trustee in Bankruptcy has not completed their administration of the bankruptcy but have advised them that it is unlikely there will be any proceeds from the bankrupt estate of Fantom Technologies Inc. to make payments to the Pension Plan.
4. The Administrator has advised that they are reasonable and probable grounds for considering that the funding requirements of the Act and Regulation cannot be satisfied.

**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the Act, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.<sup>1</sup>

**ANY NOTICE REQUIRING A HEARING** shall be delivered to:

Financial Services Tribunal  
5160 Yonge Street  
14th Floor  
North York ON M2N 6L9

Attention: The Registrar

<sup>1</sup> PURSUANT TO section 112 of the Act, any Notice, Order or other document is sufficiently given, served or delivered personally or sent by first class mail and any documents sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the day of mailing.



**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE DECLARATION PROPOSED HEREIN.**

**DATED** at North York, Ontario,  
this 16th day of August, 2004.

K. David Gordon  
Deputy Superintendent, Pensions







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

**AND IN THE MATTER OF** a Proposal  
of the Superintendent of Financial  
Services to Make a Declaration under  
section 83 of the Act, relating to the **Forest  
City International Trucks Ltd. Non-  
Contributory Retirement Plan (for Non-  
Managerial Employees of U.A.W., Local 27)  
Registration Number 405506 (the “Plan”);**

**TO:** Ernst & Young Inc.  
222 Bay Street  
P. O. Box 251  
Toronto-Dominion Centre  
Toronto ON M5K 1J7

**Attention:** Philip Kan  
Manager  
**Administrator**

**AND TO:** Forest City  
International Trucks Ltd.  
3003 Page Street  
London ON N5V 4J1

**Attention:** John Parliament  
Controller  
**Employer**

**AND TO:** C.A.W. Canada, Local 27  
310 Wellington Road South  
London ON N6C 4P4

**Attention:** John Parliament  
Controller  
**Union Representative**

**NOTICE OF PROPOSAL TO  
MAKE A DECLARATION**

**WHEREAS:**

1. The Forest City International Trucks Ltd. Non-Contributory Retirement Plan (for Non-Managerial Employees of U.A.W., Local 27) is registered under the Act as Registration Number 405506 (the “Plan”); and
2. The Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the “Guarantee Fund”) by the Act or the regulations made thereunder; and
3. Peat Marwick Thorne was appointed Receiver of the Employer on May 23, 1991 and on or soon thereafter appointed trustee in bankruptcy for the Employer; and
4. On October 6, 1993, the said receiver and trustee in bankruptcy was discharged; and
5. On February 5, 1992 the Superintendent of Pensions appointed Ernst & Young Inc. Administrator of the Plan; and
6. On March 5, 1997, the Superintendent of Pensions issued an order that the plan be wound up effective May 25, 1991; and
7. On December 2, 1999, the Superintendent of Financial Services approved a wind up report filed by the Administrator for the Plan; and
8. On September 21, 2001, the Administrator filed an application for a declaration that the Guarantee Fund applies to the Plan, and for an allocation of funds in the amount of \$136,800 from

the Guarantee Fund determined as of October 31, 2001; and

9. On November 26, 2001, the Administrator filed a supplement to the wind up report disclosing a revised claim against the Guarantee Fund as of October 31, 2001 of \$148,300; and
10. Additional liabilities are to be included in the allocation amount requested from the Guarantee Fund in respect of benefits under the Plan for which the employer's consent is deemed to have been given in accordance with subsection 74(7) of the Act;

**NOW THEREFORE TAKE NOTICE I PROPOSE TO CONSIDER MAKING A DECLARATION** in respect of the Plan under section 83 of the Act that the Guarantee Fund applies to the Plan for the following reasons:

**REASONS FOR THE PROPOSED DECLARATION:**

1. The Employer, Forest City International Trucks Ltd., was adjudged bankrupt on May 23, 1991 or soon thereafter.
2. The Administrator has estimated the deficit in the plan as of as at October 31, 2001 to be \$151,200 and the claim against the Guarantee Fund to be \$148,300.
3. The trustee in bankruptcy has been discharged.
4. The Administrator is of the view that there are reasonable and probable grounds for concluding that the funding requirements of the Act and regulation cannot be met.
5. Such further reasons as may come to my attention.

<sup>1</sup> NOTE B PURSUANT TO section 112 of the Act, any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any documents sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the day of mailing.

**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the Act, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.<sup>1</sup>

Any notice requiring a hearing shall be delivered to:

Financial Services Tribunal  
5160 Yonge Street  
14th Floor  
North York ON M2N 6L9

Attention: The Registrar

**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE DECLARATION PROPOSED HEREIN.**

**DATED** at North York, Ontario  
this 16th day of August, 2004.

K. David Gordon  
Deputy Superintendent, Pensions



**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c.P. 8, as amended by the *Financial Services Commission of Ontario Act*, 1997, R.S.O. 1997, c. 28;

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to Make a Declaration under Section 83 of the *Pension Benefits Act*, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28, respecting the **Pension Plan for Employees of General Publishing Co. Limited, Registration Number 0563148 (the "Pension Plan")**;

**TO:** **Morneau Sobeco**  
895 Don Mills Road, Suite 700  
One Morneau Sobeco Centre  
Toronto ON  
M3C 1W3

**Attention:** David Kearney  
Senior Consultant  
**Administrator  
of the Pension Plan**

**AND TO:** **General  
Publishing Co. Limited**  
895 Don Mills Road  
400-2 Park Centre  
Toronto ON M3C 1W3

**Attention:** Mary Halney  
Manager Human  
Resources  
**Employer**

**AND TO:** **Deloitte & Touche Inc.**  
79 Wellington Street West  
Maritime Life Tower  
Toronto Dominion  
Centre, P.O. Box 29  
Toronto ON M5K 1B9

**Attention:** Paul Denton  
Director, Financial  
Advisory Services  
**Trustee in Bankruptcy  
for General  
Publishing Co. Limited**

**AND TO:** **Graphic  
Communications  
International  
Union Local 500M**  
324 Prince Edward Drive  
Suite 10  
Toronto ON M8Y 3Z5

**Attention:** John Bickford  
Office Manager  
**Union**

**NOTICE OF PROPOSAL TO  
MAKE A DECLARATION**

**WHEREAS:**

1. The Pension Plan for Employees of General Publishing Co. Limited, Registration Number 0563148 (the "Pension Plan"), is registered under the *Pension Benefits Act*, R.S.O. 1990, c. P. 8 as amended by the *Financial Services Commission of Ontario Act*, 1997, c. 28, (the "Act"); and



2. The Pension Plan provides defined benefits that are not exempt from the application of
3. the Pension Benefits Guarantee Fund (the "Guarantee Fund") by the Act or the regulations made thereunder; and
4. The Pension Plan was wound up in full for those members who ceased to be employed effective between April 30, 2002 and August 19, 2002; and
5. The Superintendent of Financial Services Commission appointed Morneau Sobeco as the Administrator (the "Administrator") of the Pension Plan on September 5, 2002.

**NOW THEREFORE TAKE NOTICE I** propose to consider making a declaration pursuant to section 83 of the Act that the Guarantee Fund applies to the Pension Plan for the following reasons:

1. The most recent Actuarial Valuation Report for this Pension Plan was produced by the plan actuary as of June 30, 2001. The Pension Plan was reported to have a 96.4% transfer ratio at that date and a solvency deficiency of \$75,000.

Following its appointment, the Administrator requested the actuary prepare a preliminary estimate of the wind up liabilities of the Pension Plan as of August 19, 2002. The actuary estimated the wind up funded ratio as 72.6% and a solvency deficiency of \$723,800.

2. Deloitte & Touche Inc. was appointed Trustee in Bankruptcy on August 20, 2002.

3. The Administrator has filed a proof of claim with the Trustee in Bankruptcy in respect of the deficiencies in the Pension Plan but has not received a response from the Trustee in Bankruptcy.
4. The Administrator has advised that they are reasonable and probable grounds for considering that the funding requirements of the Act and Regulation cannot be satisfied.

**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the Act, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.<sup>1</sup>

**ANY NOTICE REQUIRING A HEARING** shall be delivered to:

Financial Services Tribunal  
5160 Yonge Street  
14th Floor  
North York ON M2N 6L9

Attention: The Registrar

**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE DECLARATION PROPOSED HEREIN.**

<sup>1</sup> PURSUANT TO section 112 of the Act, any Notice, Order or other document is sufficiently given, served or delivered personally or sent by first class mail and any documents sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the day of mailing.



**DATED** at Toronto, Ontario this  
16th day of August, 2004.

K. David Gordon  
Deputy Superintendent, Pensions

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

**AND IN THE MATTER OF** a Proposal of  
the Superintendent of Financial Services  
to Make a Declaration under section 83  
of the Act relating to the **Pension Plan  
for Employees of Mimik Industries  
Inc., Registration Number 287490;**

**TO:** **Mimik Industries Inc.**  
131 Sheldon Drive, Units 12 - 13  
Cambridge ON N1R 6S2

**Attention:** Mr. Robert N. Fraser  
**Employer**

**AND TO:** **Cowan Wright Limited**  
100 Regina Street South,  
Suite 270  
P.O. Box 96  
Waterloo ON N2J 3Z8

**Attention:** Mr. Timothy Lawrence, F.S.A.,  
F.C.I.A.  
Principal  
**Administrator**

**NOTICE OF PROPOSAL TO  
MAKE A DECLARATION**

**WHEREAS:**

1. The Pension Plan for Employees of Mimik Industries Inc. (the “Plan”), is registered under the Act as Registration Number 287490; and
2. The Plan provides defined benefits that are not exempt from the application of

- the Pension Benefits Guarantee Fund (the “Guarantee Fund”) by the Act or the regulations made thereunder; and
3. The Plan was wound up by the employer effective September 13, 1996 with insufficient assets to pay out the wind up benefit entitlements of the Plan members and former members; and
4. The wind up proposals filed by the Employer were approved by the Superintendent of Financial Services on March 3, 1999, noting the intention of the Employer to fund the deficit in accordance with section 75 of the Act, and restricting the distribution of wind up benefits pending filing of a report under section 32 of the regulations to the Act showing no further part of the deficit to be funded; and
5. The Employer failed to comply with the funding requirements of section 75 of the Act; and did not comply with a court probation order issued in 1997 establishing a schedule of payments to be followed by the Employer for liquidating outstanding Employer contributions; and
6. The Employer failed to comply with a subsequent agreement made with the Financial Services Commission of Ontario on or about May 2000 to follow a modified schedule of payments to be made into the Plan to liquidate the balance of the outstanding employer contributions; and
7. A charge against the Employer was brought by Financial Services Commission of Ontario under section 75 of the Act for failing to make payment to the Plan in the manner prescribed under the Act; and





8. Sometime on or soon after March 22, 2004, the Employer ceased operations and closed its doors; and
9. The Employer's assets have been sold off to pay creditors; and
10. Pursuant to the charges brought by Financial Services Commission of Ontario, in a joint submission at trial on May 11, 2004 which was accepted by the Ontario Court of Justice, the Employer entered a guilty plea to the charges and was fined \$3,420. The court at the same time issued an order under ss.110(4) of the Act requiring the Employer to pay the \$342,000 then estimated as being owed to the Plan; and
11. The Financial Services Commission of Ontario will arrange to have the above restitution order converted to a judgement of the Superior Court of Justice as soon as possible. The Superintendent will then have the option of attempting to recover from the Employer the value of any payments made from the Guarantee Fund, although it is not expected that the firm will have any unsecured assets available; and
12. The Superintendent of Financial Services has a lien and charge on the assets of the Employer in accordance with section 86 of the Act in respect of any payment made out of the Guarantee Fund to the Plan; and
13. For purposes of section 33 of the regulations to the Act, the proposed declaration will require that the wind up funded ratio and the liability for benefits guaranteed by the Guarantee Fund be calculated as of September 13, 2000;

**NOW THEREFORE TAKE NOTICE I PROPOSE TO CONSIDER MAKING A DECLARATION** in respect of the Plan under section 83 of the Act that the Guarantee Fund applies to the Plan for the following reasons:

**REASONS FOR THE PROPOSED DECLARATION:**

1. There are currently insufficient assets in the Plan to provide for the benefit entitlements of the members on wind up. An actuarial evaluation of the Plan as at September 13, 2000 identified a deficit of \$100,954 in the Plan against which the Employer has made no further payment, and a funded ratio for the Plan of 86.3%.
2. The deficit in the Plan as at May 1, 2004 has been estimated by the administrator to be \$378,997 and the claim against the Guarantee Fund is estimated to be \$359,056.
3. There currently exist reasonable and probable grounds for concluding that the funding requirements of the Act and regulation cannot be satisfied, and
4. Such further reasons as may come to my attention.

**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the Act, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.<sup>1</sup>

<sup>1</sup>NOTE B PURSUANT TO section 112 of the Act, any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any documents sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the day of mailing.



**ANY NOTICE REQUIRING A HEARING** shall be delivered to:

Financial Services Tribunal  
5160 Yonge Street  
14th Floor  
North York ON M2N 6L9

Attention: The Registrar

**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE DECLARATION PROPOSED HEREIN.**

**DATED** at North York, Ontario,  
this 24th day of August, 2004.

K. David Gordon  
Deputy Superintendent, Pensions



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

**AND IN THE MATTER OF** a Proposal of the Superintendent of Financial Services to Make a Declaration under section 83 of the Act relating to the **Employees’ Retirement Plan of Hoskins Alloys of Canada Limited**, Registration Number 557868 (the “Plan”);

**TO:** **PricewaterhouseCoopers Inc.**  
1 Robert Speck Parkway  
Suite 1100  
Mississauga ON L4Z 3M3

**Attention:** Mr. Tony Karkheck  
Human Resource Services  
**Appointed  
Administrator**

**AND TO:** **Hoskins Manufacturing Co.**  
39500 High Pointe  
Boulevard, Suite 300  
Novi MI 48375

**Attention:** Phillip Varvatos  
Controller  
**Employer**

**NOTICE OF PROPOSAL TO  
MAKE A DECLARATION**

**WHEREAS:**

1. Employees’ Retirement Plan of Hoskins Alloys of Canada Limited is registered under the Act as Registration Number 557868 (the “Plan”); and

2. The Plan provides defined benefits that are not exempt from the application of the
3. Pension Benefits Guarantee Fund (the “Guarantee Fund”) by the Act or the regulations made thereunder; and
4. The Superintendent of Financial Services appointed PricewaterhouseCoopers Inc. Administrator of the Plan on May 7, 2004; and
5. On May 17, 2004, the Administrator filed an application for a Declaration that the Guarantee Fund applies to the Plan; and
6. The Administrator has indicated that the Employer had failed to remit required contributions to the Plan of \$117,880; and
7. The Administrator has indicated that the wind up funded ratio of the Plan is expected to be significantly lower than 80%; and
8. The Administrator is of the opinion that there are reasonable and probable grounds to conclude that the funding requirements of the Act cannot be met;

**NOW THEREFORE TAKE NOTICE I PROPOSE TO CONSIDER MAKING A DECLARATION** in respect of the Plan under section 83 of the Act that the Guarantee Fund applies to the Plan for the following reasons:

**REASONS FOR THE PROPOSED DECLARATION:**

1. The Employer, Hoskins Alloys of Canada Limited, no longer exists.
2. The former Administrator of the Plan, Hoskins Manufacturing Co., the parent company of the Employer, cannot be located.



3. The Administrator has estimated the wind up funded ratio of the Plan to be significantly less than 80%.
4. There are reasonable and probable grounds for concluding that the funding requirements of the Act and regulation cannot be satisfied.
5. Such further reasons as may come to my attention.

K. David Gordon  
Deputy Superintendent, Pensions

**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the Act, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.<sup>1</sup>

**ANY NOTICE REQUIRING A HEARING** shall be delivered to:

Financial Services Tribunal  
5160 Yonge Street  
14th Floor  
North York ON M2N 6L9

Attention: The Registrar

**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE DECLARATION PROPOSED HEREIN.**

**DATED** at North York, Ontario,  
this 27th day of August, 2004.

<sup>1</sup>NOTE B PURSUANT TO section 112 of the Act, any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any documents sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the day of mailing.



**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c.P. 8, as amended by the *Financial Services Commission of Ontario Act*, 1997, R.S.O. 1997, c. 28;

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services (the "Superintendent") to make a Declaration under Section 83 of the *Pension Benefits Act*, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28, respecting the **Pension Plan for Hourly Employees of Maksteel Hamilton - Division of Maksteel Inc., Registration Number 1059146;**

**TO:** **Morneau Sobeco**  
895 Don Mills Road, Suite 700  
One Morneau Sobeco Centre  
Toronto ON M2C 1W3

**Attention:** Pauline Frenette  
Associate Consultant  
**Administrator  
of the Pension Plan**

**AND TO:** **Maksteel Inc.**  
7615 Torbram Road  
Mississauga ON L4T 4A8

**Attention:** Jerry Sauer  
Manager Human  
Resources  
**Employer**

**AND TO:** **Ernst & Young Inc.**  
222 Bay Street, 16th Floor  
Toronto-Dominion Centre  
Toronto ON M5K 1J7

**Attention:** Sharon Hamilton  
Manager  
**Interim Receiver  
for Maksteel Inc.**

**AND TO:** **United Steelworkers  
of America Local 5958**  
1031 Barton Street East  
Hamilton ON L8L 3E3

**Attention:** Bryan Adamczyk  
Staff Representative  
**Union**

**NOTICE OF PROPOSAL TO  
MAKE A DECLARATION**

**WHEREAS:**

1. The Pension Plan for Hourly Employees of Maksteel Hamilton - Division of Maksteel Inc., Registration Number 1059146, (the "Pension Plan") is registered under the *Pension Benefits Act*, R.S.O. 1990, c. P. 8 as amended by the *Financial Services Commission of Ontario Act*, 1997, c. 28, (the "Act"); and
2. The Pension Plan provides defined benefits that are not exempt from the application of
3. the Pension Benefits Guarantee Fund (the "Guarantee Fund") by the Act or the regulations made thereunder; and
4. The Pension Plan was wound up in full for those members who ceased to be employed effective between July 10, 2001 and December 14, 2001; and
5. The Superintendent initially appointed Arthur Andersen Inc. as the Administrator (the "Administrator")

of the Pension Plan on April 18, 2002 and on July 10, 2002, appointed Morneau Sobeco as Administrator to replace Deloitte & Touche; and

**NOW THEREFORE TAKE NOTICE I** propose to consider to make a declaration pursuant to section 83 of the Act that the Guarantee Fund applies to the Pension Plan for the following reasons:

1. The most-recent actuarial report on the Pension Plan was the Supplemental Wind-Up Actuarial Report prepared as of July 31, 2001 by BCM Actuarial Consulting Ltd. That report showed a wind up deficiency of \$7,400 as at July 31, 2001. The Administrator had its actuary prepare a preliminary valuation of the Pension Plan as at December 31, 2001. The result of that review determined that the wind up deficiency had deteriorated to approximately \$283,075, and an estimated-funded ratio of 75% as at December 31, 2001.
2. Ernst & Young was appointed Interim Receiver of Maksteel Inc. on January 7, 2002.
3. The Administrator has advised that they have filed a Proof of Claim with the Interim Receiver in the amount of \$164,880 but was advised by the Interim Receiver that they are no funds are available for distribution to unsecured creditors.
4. The Administrator has advised that they are reasonable and probable grounds for considering that the funding requirements of the Act and Regulation cannot be satisfied.

<sup>1</sup> PURSUANT TO section 112 of the Act, any Notice, Order or other document is sufficiently given, served or delivered personally or sent by first class mail and any documents sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the day of mailing.

**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the Act, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.<sup>1</sup>

**ANY NOTICE REQUIRING A HEARING** shall be delivered to:

Financial Services Tribunal  
5160 Yonge Street  
14th Floor  
North York ON M2N 6L9

Attention: The Registrar

**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE DECLARATION PROPOSED HEREIN.**

**DATED** at North York, Ontario, this 3rd day of September, 2004.

K. David Gordon  
Deputy Superintendent, Pensions





**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c.P. 8, as amended by the *Financial Services Commission of Ontario Act*, 1997, R.S.O. 1997, c. 28;

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to Make a Declaration under Section 83 of the *Pension Benefits Act*, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28, respecting the **Fantom Technologies Inc. Salaried Employees Retirement Income Plan - Part A and Part B, Registration Number 0910810;**

**TO:** **Morneau Sobeco**  
895 Don Mills Road, Suite 700  
One Morneau Sobeco Centre  
Toronto ON M2C 1W3

**Attention:** David R. Kearney  
Senior Consultant  
**Administrator  
of the Pension Plan**

**AND TO:** **Fantom Technologies Inc.**  
PO Box 1004  
Welland ON L3B 5S1

**Attention:** Norm Wotherspoon  
Treasurer  
**Employer**

**AND TO:** **PricewaterhouseCoopers Inc.**  
145 King Street West  
Toronto ON M5H 1V8

**Attention:** Catherine Hristow  
Vice President  
**Interim Receiver and Trustee  
in Bankruptcy for  
Fantom Technologies Inc.**

**NOTICE OF PROPOSAL TO  
MAKE A DECLARATION**

**WHEREAS:**

1. Fantom Technologies Inc. Salaried Employees Retirement Income Plan - Part A and Part B, Registration Number 0910810 (the "Pension Plan"), is registered under the *Pension Benefits Act*, R.S.O. 1990, c. P. 8 as amended by the *Financial Services Commission of Ontario Act*, 1997, c. 28, (the "Act"); and
2. The Pension Plan provides defined benefits that are not exempt from the application of
3. the Pension Benefits Guarantee Fund (the "Guarantee Fund") by the Act or the regulations made thereunder; and
4. The Pension Plan was wound up in full for those members who ceased to be employed effective between October 12, 2001 and March 22, 2002; and
5. The Superintendent of Financial Services initially appointed Deloitte & Touche Inc. as the administrator (the "Administrator") of the Pension Plan on April 25, 2002, and on July 11, 2002, appointed Morneau Sobeco as Administrator to replace Deloitte & Touche; and

**NOW THEREFORE TAKE NOTICE I**  
propose to consider to make a declaration

pursuant to section 83 of the Act that the Guarantee Fund applies to the Pension Plan for the following reasons:

1. The most recent actuarial valuation performed as at December 31, 2000, had a solvency deficiency of \$784,300 and a transfer ratio of 63%. Further, the Administrator had its actuary performed a preliminary valuation as at March 22, 2002, and the results of that review determined that the wind up funded ratio had deteriorated from 63% as at December 31, 2000 to approximately 48% as at March 22, 2002, and that the wind up deficit had increased to \$1,228,200 from \$784,300.
2. On October 25, 2001, Fantom Technologies Inc.'s request to obtain creditor protection for a temporary period under the *Companies' Creditors Arrangement Act* ("CCAA") was approved by an Order of the Ontario Superior Court of Justice. The Court appointed PricewaterhouseCoopers Inc. as the Monitor, as required under the CCAA proceedings and also appointed PricewaterhouseCoopers Inc. as Interim Receiver of the Fantom Technologies Inc.

On March 22, 2002, the Court issued an Order terminating the CCAA proceedings and discharged PricewaterhouseCoopers Inc. as Monitor but directed it to continue in its role as Interim Receiver. On the same day, PricewaterhouseCoopers Inc. was appointed Trustee in Bankruptcy.

3. The Administrator has filed a proof of claim in respect of the estimated \$1,025,302, deficit with the Trustee in

Bankruptcy. The Administrator advises that the Trustee in Bankruptcy has not completed their administration of the bankruptcy but have advised them that it is unlikely there will be any proceeds from the bankrupt estate of Fantom Technologies Inc. to make payments to the Pension Plan.

4. The Administrator has advised that they are reasonable and probable grounds for considering that the funding requirements of the Act and Regulation cannot be satisfied.

**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the Act, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.<sup>1</sup>

**ANY NOTICE REQUIRING A HEARING** shall be delivered to:

Financial Services Tribunal  
5160 Yonge Street  
14th Floor  
North York ON M2N 6L9

Attention: The Registrar

**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU**

<sup>1</sup> PURSUANT TO section 112 of the Act, any Notice, Order or other document is sufficiently given, served or delivered personally or sent by first class mail and any documents sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the day of mailing.



**REQUIRE A HEARING, I MAY MAKE THE  
DECLARATION PROPOSED HEREIN.**

**DATED** at North York, Ontario, this  
15th day of September, 2004.

K. David Gordon  
Deputy Superintendent, Pensions





**IN THE MATTER OF** the Pension Benefits Act, R.S.O. 1990, c.P. 8, as amended by the *Financial Services Commission of Ontario Act*, 1997, R.S.O. 1997, c. 28;

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services (the "Superintendent") to Make a Declaration under Section 83 of the *Pension Benefits Act*, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28, respecting the **Pension Plan for Hourly Employees of Canadian Tack and Nail Ltd., Registration Number 0241968;**

**TO:** **Morneau Sobeco**  
895 Don Mills Road, Suite 700  
One Morneau Sobeco Centre  
Toronto ON M2C 1W3

**Attention:** David Kearney  
Senior Consultant  
**Administrator  
of the Pension Plan**

**AND TO:** **Canadian Tack and Nail Ltd.**  
431 Dundas Street  
P.O. Box 754  
Cambridge ON N1R 5W6

**Attention:** Gary Ayers  
Vice President & General  
Manager  
**Employer**

**AND TO:** **KPMG Inc.**  
20 Erb Street West  
Marsland Centre, 3rd Floor  
Waterloo ON N2L 1T2

**Attention:** Robert J. Bradley  
Senior Manager  
**Trustee in Bankruptcy  
for Canadian Tack and  
Nail Ltd.**

**NOTICE OF PROPOSAL TO  
MAKE A DECLARATION**

**WHEREAS:**

1. The Pension Plan for Pension Plan for Hourly Employees of Canadian Tack and Nail Ltd., Registration Number 0241968, (the "Pension Plan") is registered under the *Pension Benefits Act*, R.S.O. 1990, c. P. 8 as amended by the *Financial Services Commission of Ontario Act*, 1997, c. 28, (the "Act"); and
2. The Pension Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "Guarantee Fund") by the Act or the regulations made thereunder; and
3. The Deputy Superintendent, Pensions, has issued a Notice of Proposal dated September 15, 2004, to order the wind up of the Pension Plan in full for those members who ceased to be employed effective between March 20, 2003 and April 1, 2003 pursuant to section 69 of the Act, and
4. The Superintendent of Financial Services appointed Morneau Sobeco as the administrator (the "Administrator") of the Pension Plan on June 9, 2003.

**NOW THEREFORE TAKE NOTICE I**  
propose to consider to make a declaration



pursuant to section 83 of the Act that the Guarantee Fund applies to the Pension Plan for the following reasons:

1. The most-recent actuarial valuation report on the Pension Plan was prepared as of December 31, 2000 by Cowan Wright Limited. That report showed a solvency excess of \$84,900 as at December 31, 2000. The Administrator had its actuary prepare a preliminary valuation of the Pension Plan as at April 1, 2003. The result of that review determined that the wind up estimated-funded ratio had deteriorated to approximately 22% and that the Pension Plan now has a wind up deficit of \$118,200 as at April 1, 2003.
2. KPMG was appointed Trustee in Bankruptcy for Canadian Tack and Nail Ltd. on April 1, 2003.
3. The Administrator has advised that they have filed a Proof of Claim on behalf of the Pension Plan, with the Trustee in Bankruptcy but was advised by the Trustee in Bankruptcy that they are no funds are available for distribution to the Pension Plan.
4. The Administrator has advised that they are reasonable and probable grounds for considering that the funding requirements of the Act and Regulation cannot be satisfied.

**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the Act, if, within thirty (30) days after this Notice of Proposal is served on you,

<sup>1</sup> PURSUANT TO section 112 of the Act, any Notice, Order or other document is sufficiently given, served or delivered personally or sent by first class mail and any documents sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the day of mailing.

you deliver to the Tribunal a written notice that you require a hearing.<sup>1</sup>

**ANY NOTICE REQUIRING A HEARING** shall be delivered to:

Financial Services Tribunal  
5160 Yonge Street  
14th Floor  
North York ON M2N 6L9

Attention: The Registrar

**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE DECLARATION PROPOSED HEREIN.**

**DATED** at North York, Ontario,  
this 6th day of October, 2004.

K. David Gordon  
Deputy Superintendent, Pensions

**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c.P. 8, as amended by the *Financial Services Commission of Ontario Act*, 1997, R.S.O. 1997, c. 28;

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services (the "Superintendent") to make a Declaration under Section 83 of the *Pension Benefits Act*, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28, respecting the **Pension Plan for Salaried Employees of Canadian Tack and Nail Ltd., Registration Number 0581306;**

**TO:** **Morneau Sobeco**  
895 Don Mills Road, Suite 700  
One Morneau Sobeco Centre  
Toronto ON M2C 1W3

**Attention:** David Kearney  
Senior Consultant  
**Administrator  
of the Pension Plan**

**AND TO:** **Canadian Tack and Nail Ltd.**  
431 Dundas Street  
P.O. Box 754  
Cambridge ON N1R 5W6

**Attention:** Gary Ayers  
Vice President  
& General Manager  
**Employer**

**AND TO:** **KPMG Inc.**  
20 Erb Street West  
Marsland Centre, 3rd Floor  
Waterloo ON N2L 1T2

**Attention:** Robert J. Bradley  
Senior Manager  
**Trustee in Bankruptcy  
for Canadian Tack and  
Nail Ltd.**

**NOTICE OF PROPOSAL TO  
MAKE A DECLARATION**

**WHEREAS:**

1. The Pension Plan for Pension Plan for Salaried Employees of Canadian Tack and Nail Ltd., Registration Number 0581306 (the "Pension Plan"), is registered under the *Pension Benefits Act*, R.S.O. 1990, c. P. 8 as amended by the *Financial Services Commission of Ontario Act*, 1997, c. 28, (the "Act"); and
2. The Pension Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "Guarantee Fund") by the Act or the regulations made thereunder; and
3. The Deputy Superintendent, Pensions, has issued a Notice of Proposal dated September 3, 2004, to order the wind up of the Pension Plan in full for those members who ceased to be employed effective between March 20, 2003 and April 1, 2003 pursuant to section 69 of the Act, and
4. The Superintendent of Financial Services appointed Morneau Sobeco as the Administrator (the "Administrator") of the Pension Plan on June 9, 2003.

**NOW THEREFORE TAKE NOTICE I**  
propose to consider to make a declaration





pursuant to section 83 of the Act that the Guarantee Fund applies to the Pension Plan for the following reasons:

1. The most-recent actuarial valuation report on the Pension Plan was prepared as of December 31, 1999 by Wright Mogg & Associates Ltd. That report showed a wind up deficiency of \$65,000 as at December 31, 2001. The Administrator had its actuary prepare a preliminary valuation of the Pension Plan as at April 1, 2003. The result of that review determined that the wind up deficiency had deteriorated to approximately \$328,000 and an estimated-funded ratio of 14% as at April 1, 2003.
2. KPMG was appointed Trustee in Bankruptcy for Canadian Tack and Nail Ltd. on April 1, 2003.
3. The Administrator has advised that they have filed a Proof of Claim with the Trustee in Bankruptcy in the amount of \$163,756 but was advised by the Trustee in Bankruptcy that they are no funds are available for distribution to the Pension Plan.
4. The Administrator has advised that there are reasonable and probable grounds for considering that the funding requirements of the Act and Regulation cannot be satisfied.

**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the Act, if, within thirty (30) days after this Notice of Proposal is served on you,

you deliver to the Tribunal a written notice that you require a hearing.<sup>1</sup>

**ANY NOTICE REQUIRING A HEARING** shall be delivered to:

Financial Services Tribunal  
5160 Yonge Street  
14th Floor  
North York ON M2N 6L9

Attention: The Registrar

**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE DECLARATION PROPOSED HEREIN.**

**DATED** at North York, Ontario,  
this 6th day of October, 2004.

K. David Gordon  
Deputy Superintendent, Pensions

<sup>1</sup> PURSUANT TO section 112 of the Act, any Notice, Order or other document is sufficiently given, served or delivered personally or sent by first class mail and any documents sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the day of mailing.



**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c.P. 8, as amended by the *Financial Services Commission of Ontario Act*, 1997, R.S.O. 1997, c. 28;

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services (the "Superintendent") to Make a Declaration under Section 83 of the *Pension Benefits Act*, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28, respecting the **Commercial Aluminum (1993) Limited Hourly Employees Pension Plan**, Registration Number 1010289;

**TO:** **Thompson Actuarial Limited**  
87 Wolverleigh Blvd.  
Toronto ON M4J 1R8

**Attention:** Andre Choquet, FCIA, FSA  
Actuary  
**Administrator  
of the Pension Plan**

**AND TO:** **Commercial  
Aluminum Limited**  
240 Barton Road  
Weston ON M9M 2W6

**Attention:** Suzanne Lam-Fitzgibbon  
**Employer**

**AND TO:** **SF Partners Inc.  
(formerly Solursh  
Feldman Goldberg Inc.)**  
The Madison Centre  
4950 Yonge Street, Suite 400  
Toronto ON M2N 6K1

**Attention:** Brahm Rosen  
Senior Vice President  
**Trustee in Bankruptcy for  
Commercial Aluminum  
(1993) Limited**

**AND TO:** **United Steelworkers  
of America**  
115 Albert Street  
P.O. Box 946  
Oshawa ON L1H 7N1

**Attention:** Wess Dowsett  
**Staff Representative**

**NOTICE OF PROPOSAL TO  
MAKE A DECLARATION**

**WHEREAS:**

1. The Commercial Aluminum (1993) Limited Hourly Employees Pension Plan, Registration Number 1010289 (the "Pension Plan"), is registered under the *Pension Benefits Act*, R.S.O. 1990, c. P. 8 as amended by the *Financial Services Commission of Ontario Act*, 1997, c. 28, (the "Act"); and
2. The Pension Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "Guarantee Fund") by the Act or the regulations made thereunder; and
3. The Pension Plan was wound up in full effective December 31, 2001, and
4. The Superintendent of Financial Services appointed Thompson Actuarial Limited as the Administrator (the "Administrator") of the Pension Plan on October 4, 2002; and



**NOW THEREFORE TAKE NOTICE I**

propose to consider to make a declaration pursuant to section 83 of the Act that the Guarantee Fund applies to the Pension Plan for the following reasons:

1. The Wind-Up Valuation Report filed by the Administrator indicates an estimated funding deficiency of \$94,825 as at December 31, 2001 and an estimated claim against the Guarantee Fund as at December 31, 2001 of \$78,525.
2. SF Partners Inc. was appointed Trustee in Bankruptcy for Commercial Aluminum (1993) Limited on January 30, 2002.
3. The Administrator has advised that they have filed a Proof of Claim on behalf of the Pension Plan, with the Trustee in Bankruptcy but was advised by the Trustee in Bankruptcy that they are no funds are available for distribution to the Pension Plan.
4. The Administrator has advised that they are reasonable and probable grounds for considering that the funding requirements of the Act and Regulation cannot be satisfied.

**YOU ARE ENTITLED TO A**

**HEARING** by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the Act, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.<sup>1</sup>

<sup>1</sup> PURSUANT TO section 112 of the Act, any Notice, Order or other document is sufficiently given, served or delivered personally or sent by first class mail and any documents sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the day of mailing.

**ANY NOTICE REQUIRING A HEARING** shall be delivered to:

Financial Services Tribunal  
5160 Yonge Street  
14th Floor  
North York ON M2N 6L9

Attention: The Registrar

**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE DECLARATION PROPOSED HEREIN.**

**DATED** at North York, Ontario this 14th day of October, 2004.

K. David Gordon  
Deputy Superintendent, Pensions



## Notice of Proposal to Refuse to Approve a Wind Up Report

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

**AND IN THE MATTER OF** a Proposal of the Superintendent of Financial Services to Refuse to Approve a Wind Up Report under Section 70(5) of the Act, relating to the **Bioforest Technologies Inc. Employees Pension Plan, Registration No. 1034362;**

**TO:** **Bioforest Technologies Inc.**  
105 Bruce Street  
Sault Ste. Marie ON P6A 2X6

**Attention:** Mr. Craig Howard  
President  
**Administrator and Applicant**

### NOTICE OF PROPOSAL

**I PROPOSE TO REFUSE TO APPROVE** the wind up valuation report as at July 1, 2000 dated October, 2000 and filed October 3, 2001 (the “Report”) in respect of the full wind up of the Bioforest Technologies Inc. Employees Pension Plan, Registration No. 1034362 (the “Plan”).

### **REASONS:**

1. The Plan is a single employer pension plan administered by Bioforest Technologies Inc (“Bioforest”). In February 2001, Financial Services Commission of Ontario (“FSCO”) staff became aware through the review of a member termination election form that Bioforest had elected to wind up the Plan effective July 1, 2000.

2. In two letters dated February 14, 2001 to Bioforest, FSCO staff advised Bioforest of the requirements of the Act in respect of an employer-initiated wind up of a pension plan. Specifically, Bioforest was advised of the requirement in Section 29(3) of Regulation 909, R.R.O. 1990 (the “Regulation”) that a wind up report be filed within 6 months of the effective date of the wind up. An additional follow-up letter dated June 21, 2001 was sent by FSCO staff to Bioforest again requesting that Bioforest file a wind up report.
3. By letter dated September 21, 2001, Mr. Ashley Crozier, of Crozier Consultants Inc., the actuary, filed an unsigned Report with FSCO.
4. FSCO staff sent a letter to the actuary dated January 4, 2002. The letter listed the following items as areas of concern with the contents of the Report:

(1) The Report was not signed by the actuary and, therefore, did not comply with the requirements of Section 15(1) and Section 16 of the Regulation R.R.O. 1990, as amended (the “Regulation”).

(2) Staff requested confirmation that the bridge benefit set out in the Plan had been valued for those members whose age and service equal 55 or who have more than 10 years of service;

(3) Staff requested confirmation that the minimum value of employees’ contributions plus interest had been

provided for pre-1986 benefits as required by Section 39(1) of the Act;  
(4) Staff indicated that the proposal in the Report to pay interest on the transfer values from the date of the wind up to the actual transfer date only to the extent that there were sufficient assets in the Plan did not comply with Section 24(11.1) and (12) of the Regulation, the funding requirements for a pension plan that is being wound up, as set out in Section 75 of the Act;

(5) Staff advised that the proposed surplus distribution method failed to meet the requirements of FSCO Policy S900-900 because the proposed surplus distribution method did not involve a distribution in proportion to liabilities and there was no basis provided by the actuary to support the conclusion that the proposed method of surplus distribution protected the interests of members, former members and other persons, other than an employer, who are entitled to payments under the pension plan at the date of wind up.

5. Despite the fact that staff sent an additional follow up letter to the actuary dated May 29, 2002 and a fax to Bioforest on September 19, 2002, no response to the January 4, 2002 letter has been received by FSCO to date.
6. Section 70(5) of the Act states that the "Superintendent may refuse to approve a wind up report that does not meet the requirements of [the] Act and the regulations or that does not protect the interests of the members and former members of the pension plan."

7. The January 4, 2002 letter addressed compliance issues under Sections 74, 39(1), 75 and 70 of the Act and Section 24 of the Regulation, and since neither the actuary nor Bioforest provided the information and confirmations requested in the January 4, 2002 letter, the Superintendent is unable to conclude that the Report meets the requirements of the Act and regulations and that the Report protects the interests of the members, former members and other persons entitled to payments under the Plan.
8. The January 4, 2002 letter addressed compliance with Section 15(1) and Section 16 of the Regulation which requires the Report to be prepared by an actuary. The Superintendent is unable to confirm if the actuary prepared the Report because the actuary has not signed the Report adopting the opinions and certifications contained in the Report and purportedly provided by the actuary and neither the actuary nor Bioforest has provided any such confirmation. Thus the Superintendent is unable to confirm the Report meets the requirements of Section 15(1) and Section 16 of the Regulation.
9. Such further reasons as may come to my attention.

**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the "Tribunal") pursuant to s. 89(6) of the Act. 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 Proposal is served on you.<sup>1</sup>

<sup>1</sup> NOTE - PURSUANT TO section 112 of the Act any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.



## **YOUR WRITTEN NOTICE**

must be delivered to:

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

Attention: The Registrar

**FOR FURTHER INFORMATION**, contact the Registrar of the Tribunal by phone at: 416- 226-7752, toll-free at: 1-800-668-0128, ext. 7752, or by fax at: 416-226-7750.

**IF YOU FAIL TO REQUEST A HEARING WITHIN THIRTY (30) DAYS, I MAY REFUSE TO APPROVE THE REPORT, AS PROPOSED IN THIS NOTICE.**

**DATED** at North York, Ontario,  
September 15th, 2004.

K. David Gordon  
Deputy Superintendent, Pensions





## Notices of Proposal to Refuse to Make an Order

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

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to refuse to Make an Order under subsection 87(1) of the Act requiring Aviva Canada Inc. (known (i) during the period December 31, 1999 to May 4, 2003, as CGU Group Canada Ltd. and (ii) during the period January 1, 1998 to December 30, 1999, as General Accident Group (Canada) Ltd. and (iii) prior to January 1, 1998 as the General Accident Assurance Company of Canada) to make a payment out of the **Pension Plan for the Employees of the General Accident Assurance Company of Canada and Associated Companies, Registration No. 0264457;**

**TO:** Ms. L. Stojanovska  
35 Partizanska UL., 2/2  
7000 Bitola  
Republic of Macedonia  
**Applicant**

### NOTICE OF PROPOSAL

**I PROPOSE TO REFUSE TO MAKE THE ORDER** requested by Ms. L. Stojanovska on June 24, 2002, to require Aviva Canada Inc. to commence the payment of her pension benefits from the Pension Plan for the Employees of the General Accident Assurance Company of Canada and Associated Companies registration number 0264457 (the “Plan”), prior to the Applicant’s early retirement date.

### **I PROPOSE TO REFUSE TO MAKE THE REQUESTED ORDER FOR THE FOLLOWING REASONS:**

1. The Applicant has not provided evidence that the Act has been contravened.
2. The Plan, as in effect on the Applicant’s date of termination of employment, February 9, 1999, stated that a member who has terminated employment with the company may, during the ten years preceding his/her normal retirement date, retire for the purposes of the Plan and receive a reduced pension.
3. The Plan defines normal retirement date as age 65, which would indicate that the earliest date a member or former member may receive a pension from the Plan would be age 55. According to the information provided, the Applicant’s date of birth is December 2, 1953. Thus, the Applicant’s earliest retirement date is January 1, 2009.
4. The Plan also indicates that any member who is suffering from Total Disability, which is considered permanent, may retire from active service after attaining age 50 and having at least 15 years of service.
5. At the time of the Applicant’s termination of employment, the Applicant was 45 years and one month old and had completed 24 years and two months of service. Although, the service requirement was satisfied, the Applicant did not satisfy the age requirement to be eligible for early payment due to Total Disability.
6. Under the terms of the Act, the earliest retirement date required by

legislation is ten years prior to the normal retirement date. There is no provision under the Act or Regulation 909, R.R.O. 1990, as amended, which requires an employer to allow a member or former member to receive retirement benefits prior to this time.

7. Such further and other reasons as may come to my attention.

**YOU ARE ENTITLED TO A HEARING**

by the Financial Services Tribunal (the Tribunal) pursuant to subsection 89(6) of the Act if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.

**YOUR WRITTEN NOTICE REQUIRING A HEARING** must be delivered to:

Financial Services Tribunal  
14th Floor, 5160 Yonge Street  
North York ON M2N 6L9

Attn: The Registrar

**IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I WILL REFUSE TO MAKE THE REQUESTED ORDER.**

**DATED** at Toronto, Ontario, this  
21st day of September, 2004.

K. David Gordon  
Deputy Superintendent, Pensions

c.c. Nancy Sudbury, Aviva Canada Inc.



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

**AND IN THE MATTER OF** a Proposal of  
the Superintendent of Financial Services  
to Refuse to Make an Order under Section  
68(6) of the Act respecting the **SCI  
Brockville Corporation Pension Plan  
for Salaried Employees, Registration  
Number 0984146 (the “Plan”)**;

**TO:** Mr. John Pitt  
4381 Rainforest Drive  
Gloucester ON K1V 1L4  
**Applicant**

**AND TO:** SCI Brockville Corporation  
100 Strowger Blvd.  
Brockville ON K 6V 5W8  
**Employer and  
Administrator of the Plan**

### **NOTICE OF PROPOSAL**

**I PROPOSE TO REFUSE TO MAKE  
AN ORDER** under section 68(6) of the  
Act directing SCI Brockville Corporation  
(the “Company”), to change the  
effective wind up date of the Plan.

### **REASONS FOR THE REFUSAL:**

1. The Applicant was employed by the  
Company on May 10, 1982. On January  
5, 2001, the Applicant submitted a letter  
of resignation which indicated that  
he was resigning from the Company  
effective January 26, 2001. On February  
12, 2001, the Applicant was paid his

pension entitlement under the Plan  
for his years of service up to January  
26, 2001, in the sum of \$50,650.82.

2. The Company announced layoff of  
its employees on January 31, 2001.
3. In October 2002, the Company announced  
the closure of its operations in Brockville,  
Ontario and also the wind up the Plan  
effective October 25, 2002. The Wind  
Up Report, prepared by Hewitt and  
Associates (“Plan Actuary”) indicated that  
the Company began laying off employees  
starting on January 31, 2001, therefore, all  
members who were terminated on or after  
January 31, 2001 were included in the wind  
up and were entitled to wind up benefits.
4. The Applicant received a letter dated  
January 14, 2004 from the Company which  
confirmed that he received a pay out of  
\$50,650.82 from the Plan on February  
12, 2001 and advised him that the Plan  
was wound up and he was entitled to an  
additional wind up benefit of \$60,083.04.
5. However, by letter dated May 28, 2004,  
from the Plan Actuary, the Applicant was  
informed that subsequent to the mailing  
of the correspondence advising him that  
he was entitled to an additional wind up  
benefit, it was discovered that due to his  
termination of employment on January  
26, 2001, he was not eligible to receive the  
additional termination benefit from the  
Plan as a result of the wind up of the Plan.
6. The letter also stated that the reason  
for having made this change was that  
the Wind Up Report as approved by  
the Financial Services Commission of  
Ontario (“FSCO”), indicated that only  
former members who were terminated



on or after January 31, 2001 would be considered for eligibility for an additional benefit resulting from the wind up of the Plan. Since the Applicant terminated on January 26, 2001 he should not have been considered for additional benefits from the Plan. Accordingly the Plan Actuary concluded that the documentation sent to Applicant, which advised him of his entitlement to an additional wind up benefit, was done in error. As a result, the Applicant was not entitled to the additional benefits.

7. The Applicant in a letter to the Financial Services Commission of Ontario ("FSCO") dated June 22, 2004 confirmed that he submitted a letter of resignation on January 5, 2001 and that his last day of work was January 26, 2001. Although there was a final pay period with an ending date of February 2, 2001, the Record of Employment indicates that these amounts were vacation pay owing as at the time of termination of employment.
8. The Applicant is requesting that the Superintendent change the effective date for the wind up of the Plan. In support of his request the Applicant indicates that he terminated his employment with the Company in order to take up employment with another Employer. He said that some of the factors he took into consideration in terminating his services were that the Company's costs were going up, quality was decreasing and the Company had a surplus of plant capacity worldwide. Therefore, in his view plant closure was a definite possibility and it made sense to take up an offer from another Employer.

9. Under section 68(6) of the Act the Superintendent may change the effective date of wind up of a plan if the Superintendent is of the opinion that there are reasonable grounds for the change.
10. The Applicant voluntarily submitted a letter on January 5, 2001 terminating his employment on January 26, 2001. The reasons given for this termination were unrelated to the facts giving rise to the wind up.
11. There is no document to indicate that there was an announcement by the Company at or near the time of the Applicant's termination of employment, referring to a reorganization or potential closure of the operation.
12. The announcements of the closure of the operations were made in October 2002 well after the Applicant's date of termination of employment.
13. For the reasons set out above, the Superintendent is not of the opinion that there are reasonable grounds for changing the effective wind up date of the Plan.
14. Such further reasons as may come to my attention.

### **YOU ARE ENTITLED TO A HEARING**

by the Financial Services Tribunal (the "Tribunal") pursuant to s. 89(6) of the Act. 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 Proposal is served on you.<sup>1</sup>

<sup>1</sup>NOTE - PURSUANT TO section 112 of the Act any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.



## **YOUR WRITTEN NOTICE**

must be delivered to:

Financial Services Tribunal  
5160 Yonge Street  
14th Floor  
North York ON M2N 6L9

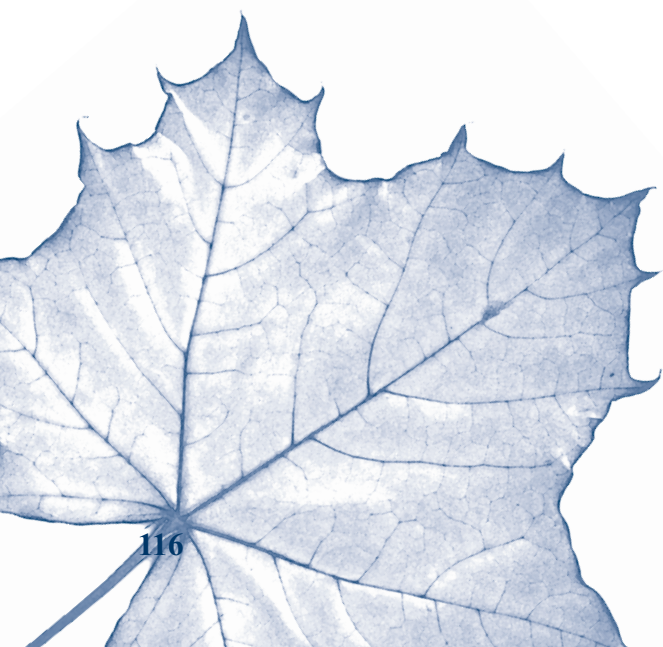
Attention: The Registrar

For further information, contact the registrar of the Tribunal by phone at: 416-226-7752 , toll-free at: 1-800-668-0128, ext. 7752, or by fax at: 416-226-7750.

**IF YOU FAIL TO REQUEST A HEARING  
WITHIN THIRTY (30) DAYS, I MAY  
REFUSE TO MAKE THE ORDER AS  
PROPOSED IN THIS NOTICE.**

**DATED** at North York, Ontario,  
this 6th day of October, 2004.

K. David Gordon  
Deputy Superintendent, Pension Division



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

**AND IN THE MATTER OF** a Proposal of  
the Superintendent of Financial Services,  
under section 89(5) of the Act, to Refuse  
to Make an Order pursuant to section 69  
of the Act, Respecting the **Pension Plan  
for AIG Assurance Canada Pension  
Plan for Salaried Employees (the  
“AIG Plan,” Registration 0284604);**

**TO:** Mary Sutton and  
other members and  
former members of the Plan  
as represented by the  
Law Firm Koskie Minsky LLP  
20 Queen Street West  
Suite 900, Box 52  
Toronto, Ont  
M5H 3R3

**Attention:** Lesa MacDonald  
Applicant

**AND TO:** AIG Life Insurance  
Company of Canada  
145 Wellington Street West  
14th Floor  
Toronto ON M5J 1H8

**Attention:** Peter McCarthy  
President and CEO  
Employer

## **NOTICE OF PROPOSAL**

**I PROPOSE TO REFUSE TO MAKE  
AN ORDER** that the Plan be wound  
up under s.69(1)(a) of the Act.

### **REASONS FOR THE ORDER:**

1. The Plan was established in 1960 as the Norwich Union Life Insurance Company (Canada) Pension Plan for Salaried Employees as a defined benefit plan. On May 1, 2001 the Norwich Union Life Insurance Company was acquired by a subsidiary of American International Group, Inc. (“AIG”), and the name of the Plan has been changed to AIG Assurance Canada Pension Plan for Salaried Employees.
2. As of May 1, 2001, all contributions to the Plan were discontinued and all members commenced participation in the Commerce and Industry Insurance Company of Canada Pension Plan, Registration # 0358911 (the “Commerce Plan”). The Commerce Plan is a defined contribution plan. Immediately prior to the transfer of members to the Commerce Plan, the Plan was converted to a defined contribution plan. Members were given the choice of converting their accrued defined benefits into a defined contribution account, or if they elected not to make to a conversion to have their defined benefit provided by way of annuities to the extent permitted by law.
3. The Employer has applied for an approval of the Superintendent for a transfer of assets of the Plan to Commerce Plan



under s.81 of the Act, and no transfer of assets can take place under section 81 without the consent of the Superintendent. Subsection 81(5) provides that the Superintendent shall refuse to consent to a transfer of assets that does not protect the pension benefits and other benefits of the members and former members of the original pension plan or that does not meet the prescribed requirements and qualifications.

4. The Applicant has requested the Superintendent to order the Plan be wound up under clause 69(1)(a) of the Act. Clause 69(1)(a) provides that the Superintendent may order a wind up of a plan where there is a cessation or suspension of Employer contributions to the pension fund.
5. The Applicant's position is that with the discontinuation of the Plan and the continuation of its members in the Commerce Plan the criteria for clause 69(1)(a) has been met in that there is a discontinuation of contributions to the Plan by the Employer. The Applicant is also arguing that a wind up of the Plan is required to prevent the assets of the Plan from being exposed to the liabilities of any other Plan. The Applicant notes that the conversion application indicates the Plan has a surplus of \$8,972,790, and that the Employer is including the surplus in the proposed transfer of assets. The Applicant submits that the decision of the Ontario Court of Appeal in *Aegon Canada Inc. and Transamerica Life Canada v. ING Canada Inc.* [2003] O.J. No. 4755 (C.A.) leave to appeal denied [2003]

O.J. No.4748 (S.C.J.). ( "Aegon") applies to this transfer and that the surplus in the Plan cannot be made available to fund Employer contribution obligations for other members of the Commerce Plan.

6. Sections 81 of the Act specifically contemplates that a transfer of assets may be made from one pension plan to another, subject to the consent of the Superintendent. Where contributions to a plan are being discontinued because the members and plan assets are being transferred to another plan and the Superintendent can approve the asset transfer under section 81, then clause 69(1)(a) can have no application to the pension plan.
7. The Plan was originally funded through an insurance policy provided by the Employer in its capacity as an insurer. The insurance policy is held under the terms of a trust executed in 1960 which has continued since that time subject to the replacement of individual trustees from time to time. Although the terms of the Plan in 1960 did not specifically provide for amalgamation with another plan, subsequent amendments made in 1988 did so provide.
8. The Aegon decision also involved a pension plan that was subject to trust. The Court of Appeal held the terms of that trust precluded the assets in that plan from being used to take contribution holidays in another plan when the two plans were merged. However, the trust in Aegon included restrictive provisions that are not present in the trust governing the Plan. Accordingly, the Employer was not

precluded from adding amendments to the Plan that authorized the amalgamation of the Plan with another registered pension plan and may consolidate the assets and liabilities of the Plan with any other plan without a requirement to maintain separate accounting.

9. As the consolidation of the assets of the Plan with another plan is now specifically authorized by the terms of the Plan itself, and there is no language in the trust governing the pension fund that either precludes the transfer of assets to another plan or precludes the Plan from being amended to so provide, Aegon is not a basis for the Superintendent to refuse to consent to the transfer of the Plan's assets under subsection 81(5) of the Act.
10. The Applicant has also argues that the court and tribunal decisions in *Bull Moose Tube Ltd. v. Ontario (Superintendent of Pensions)* [1994] O.J. No.626 (S.C); *LaHave Equipment Ltd. v. Nova Scotia (Superintendent of Pensions)* [N.S.J.] No.555 (C.A.); *The Corporation of the City of Kitchner v. Superintendent of Financial Services FST File No. P0172-2001 (FST)* are applicable to the trust governing the Plan to require the assets of the Plan to be held exclusively for the benefit of the members of the Plan and not to be consolidated with the assets of the Commerce Plan.
11. The three decisions referred to by the Applicant all considered trust provisions in the context of whether the Employer of the pension plan in question was entitled to surplus, not whether the trust included language which would preclude a consolidation of the assets with another plan. In addition, the plans in those decisions were all subject to trusts that included "exclusive benefit" language which is not present in the trust that is applicable to the Plan. Accordingly, they do not assist the applicant in establishing that the principles of Aegon apply to the Plan to prohibit the proposed transfer of assets.
12. The applicant has not identified any other basis upon which the Superintendent could conclude that the transfer of assets of the Plan would not "protect the pension benefits and any other benefits of the members and former members" of the Plan, and the transfer application otherwise complies with all FSCO policies governing asset transfers.
13. In accordance with the Ontario Court of Appeal's decision in *Huus v. Ontario (Superintendent of Pensions)* 58 O.R.(3rd ) 380 the Superintendent is deferring a final decision on the Employer's application to transfer the assets of the Plan to the Commerce Plan pending the final disposition of this Notice.
14. Such further and other grounds as may come to my attention.

### YOU ARE ENTITLED TO A HEARING

by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the Act. 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 Proposal is served on you.<sup>1</sup>

<sup>1</sup>NOTE - PURSUANT TO section 112 of the Act, any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the day of mailing.



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5160 Yonge Street  
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Toronto, Ontario  
M2N 6L9

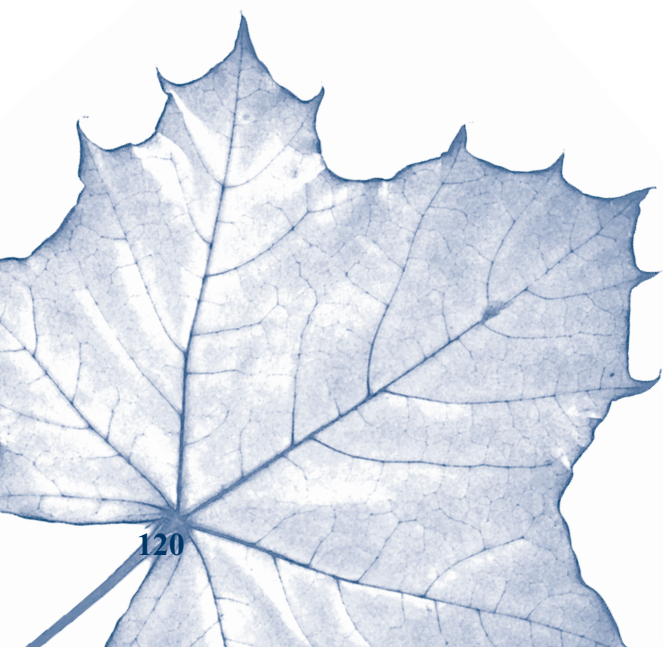
Attention: The Registrar

**FOR FURTHER INFORMATION**, contact the Registrar of the Tribunal by telephone at: 416-226-7752, toll-free at: 1-800-668-0128, ext. 7752, or by fax at: 416-226-7750.

**IF YOU FAIL TO REQUEST A HEARING WITHIN THIRTY (30) DAYS, I MAY MAKE THE ORDER PROPOSED IN THIS NOTICE.**

**DATED** at North York, Ontario,  
this 22nd day of October, 2004.

K. David Gordon  
Deputy Superintendent, Pensions





**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 Proposal of the  
Superintendent of Financial Services to Refuse  
to Make an Order under section 87 of the  
PBA respecting a request by Lloyd Stephens  
relating to the **Participating Co-operatives  
of Ontario Trusteed Revised Pension  
Plan, Registration No. 0345736**;

**TO:** **Lloyd Stephens**  
40 Quinella Drive, Unit #43  
London ON N6K 4K9  
Applicant

**AND TO:** **Trustees of the  
Participating Co-operatives  
of Ontario Trusteed  
Revised Pension Plan**  
6790 Century Avenue, Suite 201  
Mississauga ON L5N 2V8

**Attn:** Nancy Fletcher  
Director, Pension  
Administration  
**Administrator of the Plan**

### **NOTICE OF PROPOSAL**

**I PROPOSE TO REFUSE TO MAKE  
AN ORDER** requiring the Administrator  
to recalculate the pension benefits  
owing to the Applicant to take into  
account a period of military service.

### **REASONS:**

1. The Participating Co-operatives of Ontario Trusteed Revised Pension Plan, Registration No. 0345736 (the “Plan”) is a multi-Employer pension plan (“MEPP”) administered by the Trustees of the Participating Co-operatives of Ontario Trusteed Revised Pension Plan (the “Administrator”).
2. The Applicant is a former member of the Plan who is currently in receipt of pension benefits. The Applicant served with the Canadian Armed Forces from July 22, 1940 to October 17, 1945 during World War II.
3. The Applicant commenced employment with Gay Lea Foods Cooperative Limited (“Gay Lea”), an Employer participating in the Plan, on May 1, 1962 and commenced Plan membership on August 6, 1962. The Applicant’s employment with Gay Lea ended on April 30, 1979, although pension contributions were made on his behalf by Gay Lea until February 29, 1980.
4. The Applicant now seeks credit in the calculation of his pension for his years of military service occurring prior to the commencement of his employment with Gay Lea.
5. The Plan text as it read when the Applicant was hired defined the term “Years of Service” as follows:

“Years of Service” means continuous years and fractions thereof of employment with the Company from commencement to leaving or retirement date, provided that service in the armed forces of the country, periods of absence through

sickness, and other absences approved by the Board of Directors, shall be included.

6. The Plan text was revised on October 15, 1970 so that the definition of “Years of Service” read as follows:

“Years of Service” refers to the period of continuous employment as an employee from his last date of employment to his normal retirement date or earlier retirement, death or termination from service. Any periods of absence through sickness or injury shall be included in these years of service if the employee is receiving disability income under the terms of a group insurance policy issued to the Company. Service in the armed forces of the country and other absences, if approved by the Board of Directors, shall also be included in the years of service. (emphasis added)

7. The version of the Plan text dated May 28, 1973 and effective January 1, 1972, which was in effect at the date the Applicant’s employment ceased, stated in the definition of the term “Years of Service” that “[s]ervice in the armed forces of Canada and other absences shall, if approved by the Co-operative employing [the member] and agreed to by the Committee [of Administration], be included in his years of service.”
8. On April 7, 1982, a revised version of the Plan text was adopted (the “1982 Plan Text”) and made effective back to January 1, 1980. The definition of the

term “years of service” was amended to include the following sentence:

War service which occurs prior to the member’s date of employment shall be included in service only if the member makes the contributions required to be made in respect of such service.

9. Further, section 5(h) of the 1982 Plan Text states:

A period of war service occurring prior to the member’s date of employment shall be added to a member’s years of contributory service only if the member has:

- (i) submitted an application in writing to the Committee indicating his willingness to contribute the amount required in order to add his period of war service to his years of contributory service;
- (ii) submitted such application while he was an employee; and
- (iii) paid to the Fund the amount required to satisfy the increase in the obligations of the Fund as a result of such service being added. (emphasis added).

If such a member retires or otherwise ceases to be in the service of a Co-operative employing him, prior to the member paying in full the amount required to satisfy the increase in the obligations of the Fund, the member may elect to pay, in a lump sum, the remaining balance provided the amount

is paid prior to his retirement date or other date on which he ceases to be in service. If the member dies while he is an employee and prior to a member paying in full the amount required to satisfy the increase in the obligations of the Fund, the beneficiary or estate of the member may elect to pay in a lump sum, the remaining balance provided such amount is paid within 60 days of the member's date of death. If the total amount is not paid, the period of war service which qualifies as contributory service shall be the same percentage as the amount actually paid is to the total amount required to be paid.

The amount required to be paid to satisfy the increase in the obligations of the Fund shall be as determined by the Actuary.

10. At no time during his employment with Gay Lea did the Applicant raise with Gay Lea or the Administrator the issue of recognition of his military service. In fact, the Applicant did not request recognition of his military service from the Administrator until 1998. To date, neither the Administrator nor Gay Lea have approved recognition of the Applicant's military service and the Applicant has made no contributions to the fund for the Plan in respect of his military service.
11. Although a pension plan is free to recognize periods of military service, the *Pension Benefits Act*, R.S.O. 1990, c. P.8 (the "PBA") does not require that pension plans do so. Section 19 of the PBA does require that the administrator of a pension plan ensure that the

pension plan and the pension fund are administered in accordance with:

- (a) the filed documents in respect of which the Superintendent has issued an acknowledgment of application for registration or a certificate of registration, whichever is issued later; and
  - (b) the filed documents in respect of an application for registration of an amendment to the pension plan, if the application complies with this Act and the regulations and the amendment is not void under this Act.
12. In this case, the Plan text as it read throughout the period of the Applicant's employment and, thereafter, required that the Applicant request recognition of his military service and that approval be granted by the Employer and/or Administrator. The Applicant is, therefore, not entitled to recognition of his military service because he did not request recognition of his military service during his employment with Gay Lea and neither Gay Lea nor the Administrator approved the recognition of such service.
  13. Such further reasons as may come to my attention.

**YOU ARE ENTITLED TO A HEARING** by the Financial Services Tribunal (the "Tribunal") pursuant to s. 89(6) of the Act. 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 Proposal is served on you.<sup>1</sup>

<sup>1</sup> NOTE - PURSUANT TO section 112 of the Act any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.





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5160 Yonge Street  
14th Floor  
North York, Ontario  
M2N 6L9

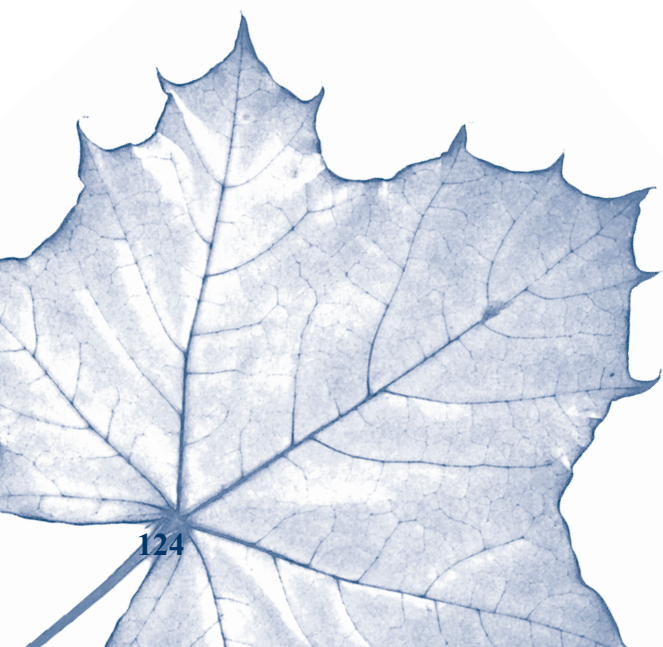
Attention: The Registrar

**FOR FURTHER INFORMATION**, contact the Registrar of the Tribunal by phone at: 416- 226-7752, toll-free at: 1-800-668-0128, ext. 7752, or by fax at: 416-226-7750.

**IF YOU FAIL TO REQUEST A HEARING WITHIN THIRTY (30) DAYS, I MAY REFUSE TO MAKE THE ORDER REQUESTED, AS PROPOSED IN THIS NOTICE.**

**DATED** at North York, Ontario,  
this 22nd day of October, 2004.

K. David Gordon  
Deputy Superintendent, Pensions



## Orders that Pension Plans be Wound Up

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

**AND IN THE MATTER OF** a Proposal of  
the Superintendent of Financial Services  
to Make an Order under section 69 of  
the Act relating to the **Pension Plan for  
Employees of Ryancon, Registration  
Number 298430 (the “Plan”)**;

**TO:** **PricewaterhouseCoopers Inc.**  
Royal Trust Tower, Suite 3000  
PO Box 82,  
Toronto Dominion Centre  
Toronto ON M5K 1G8

**Attention:** Mr. Tony Karkheck  
Appointed  
**Administrator**

**AND TO:** **Ryancon**  
144 Sharer Road  
Vaughan ON L4L 8P4

**Attention:** John D. Hains  
Chief Financial Officer  
**Employer**

**AND TO:** **BDO Dunwoody Limited**  
33 City Centre Drive, Suite 680  
Mississauga ON L5B 2N5

**Attention:** Mr. Darryl McConnell  
Senior Manager  
**Trustee in Bankruptcy/  
Receiver and Manager**

## ORDER

**ON** or about May 13, 2004, the Deputy  
Superintendent, Pensions, issued a Notice  
of Proposal dated May 13, 2004, to Make an  
Order that the Plan be wound up in whole  
effective March 31, 2003 through June 30,  
2003 pursuant to section 69(1) of the Act.

**NO REQUEST** for a hearing has been  
received by the Financial Services  
Tribunal in connection with this matter.

**I THEREFORE ORDER** that the Plan  
be wound up in whole effective March  
31, 2003 through June 30, 2003.

## **REASONS:**

1. Cessation or suspension of Employer contributions to the pension fund, pursuant to clause 69(1)(a) of the Act.
2. Failure of the Employer to make contributions to the pension fund as required by the Act or the regulations, pursuant to clause 69(1)(b) of the Act.
3. The Employer is bankrupt within the meaning of the *Bankruptcy & Insolvency Act*, pursuant to clause 69(1)(c) of the Act.
4. A significant number of members have ceased to be employed by the Employer as the result of the discontinuance or reorganization of all or part of business of the Employer, pursuant to clause 69(1)(d) of the Act.



**DATED** at North York, Ontario, this  
9th day of July, 2004.

Tom Golfetto  
Director, Pension Plans Branch  
Financial Services Commission of Ontario



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

**AND IN THE MATTER OF** a Proposal of the  
Superintendent of Financial Services to Make  
an Order under section 69 of the Act relating  
to the **Philip Services Inc. Pension Plan for  
Intermetco Senior Management Employees,**  
**Registration Number 687608 (the “Plan”);**

**TO:** **PricewaterhouseCoopers Inc.**  
1 Robert Speck Parkway  
Suite 1100, Mississauga  
ON L4Z 3M3

**Attention:** Mr. Tony Karkheck  
Appointed  
**Administrator**

**AND TO:** **Philip Services Inc.**  
c/o PSC Metals Inc.  
20521 Chagrin Boulevard  
Cleveland OH 44122

**Attention:** Ms. Linda Bogdanovic  
Director, Human Resources  
**Employer**

**AND TO:** **Ernst & Young Inc.**  
220 Bay Street, P.O. Box 251  
Ernst & Young Tower  
Toronto-Dominion Centre  
Toronto ON M5K 1J7

**Attention:** Ms. Leslea Gordon  
**Trustee in Bankruptcy**

## **ORDER**

**ON** or about June 22, 2004, the Deputy  
Superintendent, Pensions, issued a Notice  
of Proposal dated June 17, 2004, to Make  
an Order that the Plan be wound up  
in whole effective December 30, 2003,  
pursuant to section 69(1) of the Act.

**NO REQUEST** for a hearing has been  
received by the Financial Services  
Tribunal in connection with this matter.

**I THEREFORE ORDER** that  
the Plan be wound up in whole  
effective December 30, 2003.

## **REASONS:**

1. The Employer is bankrupt within the meaning of the Bankruptcy & Insolvency Act, pursuant to clause 69(1)(c) of the Act.
2. A significant number of members have ceased to be employed by the Employer as the result of the discontinuance or reorganization of all or part of business of the Employer, pursuant to clause 69(1)(d) of the Act.

**DATED** at North York, Ontario, this 26th  
day of August, 2004.

Tom Golfetto  
Director, Pension Plans Branch



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

**AND IN THE MATTER OF** an application pursuant to s. 78(1) of the Act submitted by City Of Kitchener in respect of the **Corporation of the City of Kitchener Pension Plan for Fire Department Employees Registration Number 239475;**

**TO:**                **City of Kitchener**  
City Hall, P.O. Box 1118  
200 King Street West  
Kitchener ON N2G 4G7

**Attention:**    Ms. Rosemary Upfold  
Director of Accounting  
**Employer and**  
**Administrator of the Plan**

## **ORDER**

**ON** or about August 23, 2001, the Superintendent of Financial Services issued a Notice of Proposal to Refuse to Consent to Application (the “NOP”) to The Corporation of the City of Kitchener (the “Employer”), in respect of the Employer’s application dated August 15, 2000 for the payment of surplus to the Employer in respect of the Corporation of the City of Kitchener Pension Plan for Fire Department Employees, Registration Number 239475 (the “Plan”).

**A REQUEST** for Hearing dated September 21, 2001, was received by the Financial Services Tribunal (the “Tribunal”) in connection with this matter and hearings were held on July 14, 2003 and May 14, 2004.

**THE TRIBUNAL** in its majority Reasons dated June 24, 2004 affirmed the NOP and directed the Superintendent to refuse to consent to the Application.

**NO APPEAL** has been taken from the decision of the Tribunal by the Employer and, therefore, the decision of the Tribunal is final.

**I THEREFORE REFUSE** to consent to the Application.

**DATED** at Toronto, Ontario, this 6th day of October, 2004.

K. David Gordon  
Deputy Superintendent, Pensions

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

**AND IN THE MATTER OF** a Proposal of  
the Superintendent of Financial Services to  
Make an Order under section 69 of the Act  
relating to the **Employees’ Retirement Plan  
of Hoskins Alloys of Canada Limited,  
Registration Number 557868 (the “Plan”);**

**TO:** **PricewaterhouseCoopers Inc.**  
1 Robert Speck Parkway  
Suite 1100  
Mississauga ON L4Z 3M3

**Attention:** Mr. Tony Karkheck  
Human Resource Services  
**Appointed  
Administrator**

**AND TO:** **Hoskins Manufacturing Co.**  
39500 High Pointe Boulevard,  
Suite 300  
Novi MI 48375

**Attention:** Phillip Varvatos  
Controller  
**Employer**

### **ORDER**

**ON** or about August 27, 2004, the Deputy  
Superintendent, Pensions, issued a Notice  
of Proposal dated August 27, 2004, to  
Make an Order that the Plan be wound  
up in whole effective April 30, 2001  
pursuant to section 69(1) of the Act.

**NO REQUEST** for a hearing has been  
received by the Financial Services  
Tribunal in connection with this matter.

**I THEREFORE ORDER** that the Plan be  
wound up in whole effective April 30, 2001.

### **REASONS:**

1. Cessation or suspension of Employer contributions to the pension fund, pursuant to clause 69(1)(a) of the Act.
2. Failure of the Employer to make contributions to the pension fund as required by the Act or the regulations, pursuant to clause 69(1)(b) of the Act.
3. A significant number of members have ceased to be employed by the Employer as the result of the discontinuance or reorganization of all or part of business of the Employer, pursuant to clause 69(1)(d) of the Act.

**DATED** at North York, Ontario,  
this 12th day of October, 2004.

Tom Golfetto  
Director, Pension Plans Branch





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

**AND IN THE MATTER OF** a Notice of Proposal issued by the Superintendent to Refuse to Approve a Partial Wind Up Report submitted by Monsanto Canada Inc. to the Superintendent of Financial Services respecting the **Pension Plan for Employees of Monsanto Canada Inc., Registration No. 341230;**

**TO:** **Pfizer Canada Inc.**  
17300 Trans-Canada Highway  
Kirkland, Québec  
H9J 2M5

**Attention:** André Dupras  
Director Total Compensation  
**Employer and Administrator  
of the Pension  
Plan for Employees  
of Monsanto Canada Inc.**

## ORDER

ON or about the 30th day of November, 1998, the Superintendent of Financial Services (the “Superintendent”) issued a Notice of Proposal to Refuse to Approve a Partial Wind up Report (the “Notice of Proposal”) to the Employer and Administrator of the Pension Plan for Employees of Monsanto Canada Inc. (Registration No. 341230) (the “Plan”) wherein she proposed to refuse to approve the Partial Plan Windup Report as at May 31, 1997 (the “Report”) in relation to the employees who ceased to be employed by Monsanto Canada Inc. (“Monsanto”) from

April 30, 1997 to December 31, 1998, as a result of the reorganization of the business of Monsanto including the closure of the Searle Canada location in Oakville, Ontario.

ON or about the 31st day of December, 1998, Monsanto Canada Inc. (“Monsanto”) requested a hearing before the Financial Services Tribunal (the “Tribunal”).

ON or about the 7th day of April, 1999, the Tribunal conducted a pre-hearing conference and amended the Notice of Proposal nunc pro tunc as a result of an agreement at the pre-hearing conference, consisting of corrections to the address of the Financial Services Commission, certain statutory requirements, and the deletion of an issue that was no longer relevant as at the date of the pre-hearing conference.

ON or about the 10th, 11th, and 12th days of January, 2000, and the 7th, 8th, 9th, 10th, and 11th days of February, 2000, the Tribunal conducted a hearing. The parties to the hearing were Monsanto as Applicant, the Superintendent as Respondent, the Association of Canadian Pension Management as an added party, and A Group of Certain Terminated Monsanto Employees as an added party.

ON or about the 14th day of April, 2000, the Tribunal issued its decision, in which the majority ordered the Superintendent to refrain from carrying out the Notice of Proposal and to approve the Report.

ON or about the 15th day of May, 2000, the Superintendent appealed the Tribunal's decision to the Superior Court of Justice - Ontario Divisional Court.

ON or about the 21st, 22nd, and 23rd days of November, 2000, the Superior Court of Justice - Ontario Divisional Court heard the appeal. The parties to the appeal were the Superintendent as Appellant in Appeal, Monsanto Canada Inc. and the Association of Canadian Pension Management as Respondents in Appeal, and National Trust Company and R.M. Smallhorn, D.G. Halsall and S.J. Galbraith as Interveners in Appeal.

ON or about the 19th day of March, 2001, the Superior Court of Justice - Ontario Divisional Court released its decision, setting aside the order of the Tribunal and directing the Superintendent to carry out the proposal to refuse to approve the Report.

ON or about the 5th day of April, 2001, Monsanto, the Association of Canadian Pension Management, and National Trust Company each applied for leave to appeal the decision of the Superior Court of Justice - Ontario Divisional Court to the Court of Appeal for Ontario.

ON or about the 28th day of June, 2001, the Court of Appeal for Ontario granted leave to appeal the decision of the Superior Court of Justice - Ontario Divisional Court.

ON or about the 29th and 30th days of April, 2002, the Court of Appeal for Ontario heard the appeal. The parties were

Monsanto, the Association of Canadian Pension Management, and National Trust Company as Appellants, the Superintendent as Respondent, and Smallhorn, Halsall, and Galbraith as Respondents.

ON or about the 22nd day of November, 2002, the Court of Appeal for Ontario released its decision, dismissing the appeal.

ON or about the 5th day of June, 2003, the Supreme Court of Canada granted leave to Monsanto and to the Association of Canadian Pension Management to appeal the decision of the Court of Appeal for Ontario.

ON or about the 16th day of February, 2004, the Supreme Court of Canada heard the appeal. The parties were Monsanto and the Association of Canadian Pension Management as Appellants, the Superintendent as Respondent, the Attorney General of Canada as Intervener, National Trust Company as Intervener, Nicole Lacroix as Intervener, R.W. Smallhorn, D.G. Halsall, S.J. Galbraith and S.W. (Bud) Wesley as Interveners, and Canadian Labour Congress and Ontario Federation of Labour as Interveners.

ON the 29th day of July, 2004, the Supreme Court of Canada dismissed the appeal and held that subsection 70(6) of the Act requires actual distribution of the pro rata share of actuarial surplus on partial plan wind up.

ON September 1, 2000, as a result of Monsanto undergoing a corporate split, the



Plan became sponsored and administered by Searle & Company Canada Inc. as employer. The name of the Plan was changed to the Pension Plan for Searle & Company Canada Inc. Employees.

ON January 1, 2001, Pharmacia & Upjohn Inc. amalgamated with Searle & Company Canada Inc. to form the amalgamated corporation Pharmacia Canada Inc., which became the Sponsor, Employer and Administrator of the Plan.

ON April 16, 2003, Pfizer Inc. acquired Pharmacia Inc., the parent company of Pharmacia Canada Inc. Pfizer Inc. is the parent company of Pfizer Canada Inc.

ON August 23, 2003, Pfizer Canada Inc. and Pharmacia Canada Inc. amalgamated to continue as Pfizer Canada Inc. Pfizer Canada Inc. became the Sponsor, Employer and Administrator of the Plan.

**THEREFORE** the Superintendent:

1. **REFUSES** to approve the Partial Plan Windup Report as at May 31, 1997 dated July 1997 (the "Report") in relation to the employees who ceased to be employed by Monsanto Canada Inc. ("Monsanto") from April 30, 1997 to December 31, 1998, as a result of the reorganization of the business of Monsanto including the closure of the Searle Canada location in Oakville, Ontario pursuant to clause 88(2)(c) of the Act; and

2. **ORDERS** Pfizer Canada Inc. as the Administrator of The Pension Plan for Searle & Company Inc., Ontario Registration No. 0341230, to file with the Superintendent within ninety (90) days of the date of this Order a revised partial wind up report that provides for the pro rata distribution of surplus to the members affected by the partial wind up, namely, the employees who ceased to be employed by Monsanto Canada Inc. from April 30, 1997 to December 31, 1998 as a result of the reorganization of the business of Monsanto including the closure of its Searle Canada location in Oakville, Ontario.

**DATED** at Toronto, Ontario, this 22nd day of October, 2004.

K. David Gordon  
Deputy Superintendent, Pensions





**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c.P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c.28;

**AND IN THE MATTER OF** a Proposal of the Superintendent of Financial Services to Make an Order pursuant to section 87 of the *Pension Benefits Act*, R.S.O. 1990, c.P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c.28, respecting the **Ontario Teachers' Pension Plan, Registration No. 0345785;**

**TO:** **Ontario Teachers' Pension Plan Board**  
5650 Yonge Street, 4th Floor  
Toronto ON M2M 4H5

**Attention:** Claude R. Lamoureux  
President &  
**Chief Executive Officer  
Administrator of the  
Ontario Teachers'  
Pension Plan**

## **ORDER**

**ON** May 6, 1999, the Superintendent of Financial Services (the ASuperintendent) signed a Notice of Proposal to Make an Order against the Ontario Teachers' Pension Plan Board (the "Board"), proposing to order the Board to comply with section 51 and subsection 48(13) of the *Pension Benefits Act*, R.S.O. 1990, c.P.8 (the "Act") and pay to Ms. Anne Stairs from the Ontario Teachers'

Pension Plan (the "Plan") the amounts to which she is entitled in respect of her right to or interest in benefits provided under sections 48 and 51 of the Act set out in the domestic contract between Ms. Anne Stairs and her former spouse, Mr. John Roger Mowbray, within sixty (60) days from the date of the Superintendent's Order.

**ON** June 14, 1999, the Board requested a hearing before the Financial Services Tribunal (the "Tribunal").

**ON** July 21, 1999, the Tribunal conducted a pre-hearing conference.

**ON** March 27, 2000, the Tribunal conducted the hearing.

**ON** June 9, 2000, the Tribunal issued its decision dated May 31, 2000, in which it held that the Board was not required to pay to Ms. Anne Stairs an interest in the pre-retirement death benefit relating to the service of her former spouse, Mr. Roger Mowbray, pursuant to subsection 48(13) of the Act. The Tribunal directed the Superintendent to refrain from carrying out the Order contained in the Notice of Proposal.

**ON** July 6, 2000, Ms. Anne Stairs ("Ms. Stairs") filed a Notice of Appeal with the Divisional Court respecting the Tribunal's decision.

**ON** May 24, 2002, the Divisional Court heard the appeal and reserved its decision.



**ON** June 18, 2002, the Divisional Court issued its decision, allowing the appeal and setting aside the order of the Tribunal. The Divisional Court substituted an order directing the Superintendent to direct the Board to make the payment to Ms. Stairs according to the formula in the domestic contract, subject to the restrictions in subsections 51(1) and 51(2) of the Act.

**ON** July 4, 2002, the Board filed a motion to vary the Divisional Court's order under Rule 59.06 of the Rules of Civil Procedure.

**ON** September 3, 2002, the Divisional Court heard the motion to vary its order.

**ON** December 5, 2002, the Divisional Court issued its decision on the motion, in which it directed the Superintendent to direct the Board to honour Ms. Stairs' entitlement to the post-1986 pre-retirement death benefits, being one-half of the pension generated by 4.113 years of service or \$2,809.91 annually. The Divisional Court also declared that the Board was bound to honour the entitlement of Ms. Stairs to 50% of the pre-1987 pre-retirement death benefit.

**ON** December 20, 2002, the Board filed a Notice of Motion for Leave to Appeal the Divisional Court's orders dated June 18, 2002 and December 5, 2002.

**ON** December 20, 2002, Ms. Stairs filed a Notice of Motion for Leave to Cross-Appeal the Divisional Court's orders dated June 18, 2002 and December 5, 2002.

**ON** February 21, 2003, the Divisional Court issued a Supplementary Order awarding costs payable by the Board to Ms. Stairs in the amount of \$40,000.00 plus disbursements of \$2,487.10 and Goods and Services Tax in the amount of \$2,961.20.

**ON** March 19, 2003, the Court of Appeal granted leave to the Board to appeal the Divisional Court's orders dated June 18, 2002 and December 5, 2002, and granted leave to Ms. Stairs to cross-appeal the Divisional Court's orders.

**ON** March 25, 2003, the Board filed a Notice of Appeal with the Court of Appeal with respect to the Divisional Court's orders dated June 18, 2002 and December 5, 2002, and the Divisional Court's Supplementary Order dated February 21, 2003.

**ON** April 7, 2003, Ms. Stairs filed a Notice of Cross-Appeal with respect to the Divisional Court's orders dated June 18, 2002 and December 5, 2002.

**ON** November 10, 2003, the Court of Appeal heard the appeal.

**ON** February 10, 2004, the Court of Appeal released its decision, in which it ordered that the Board's appeal from the Divisional Court's orders dated June 18, 2002 and December 5, 2002 was dismissed, the Board's motion for leave to appeal the Divisional Court's Supplementary Order dated February 21, 2004 was granted, and the Board's appeal from the Divisional Court's Supplementary Order dated February 21, 2004 was dismissed.

and Ms. Stairs' Cross-Appeal was allowed in part. The Court of Appeal declared that Ms. Stairs is entitled to fifty per cent (50%) of the pre-retirement death benefit in respect of Mr. Roger Mowbray's service under the Plan that accrued between September 1, 1965 to December 31, 1986 (21.39705 years of credited service), valued at April 17, 1995, and that the Board is bound to honour this entitlement. The Court of Appeal ordered the Superintendent to direct the Board to make payment to Ms. Stairs of fifty per cent (50%) of the pre-retirement death benefit in respect of Mr. Roger Mowbray's service under the Plan that accrued between January 1, 1987 and March 7, 1991 (4.2269 years of credited service), valued at April 17, 1995. The Court of Appeal ordered that the parties calculate Ms. Stairs' pension entitlement on the basis of the reasons and conclusions set out in paragraphs 104 to 119 of the Court of Appeal's Reasons for Decision and the Divisional Court Order as amended, and that Ms. Stairs' survivor pension be paid accordingly. The Court of Appeal also ordered that the Board pay to Ms. Stairs her costs of the appeal on a partial indemnity basis, fixed in the amount of \$25,000.00 inclusive of Goods and Services Tax and disbursements. This order bears interest at the rate of 4% per annum commencing on the 10th day of February, 2004.

**NO** application for leave to appeal the Court of Appeal's decision has been filed with the Supreme Court of Canada.

**IT IS THEREFORE ORDERED THAT** the Ontario Teachers' Pension Plan Board pay to Ms. Anne Stairs fifty per cent (50%) of

the pre-retirement death benefit in respect of Mr. Roger Mowbray's service under the Plan that accrued between January 1, 1987 and March 7, 1991 (4.2269 years of credited service), valued at April 17, 1995, the commuted value of which is \$36,630.24.

**DATED** at North York, Ontario, this 22nd day of October, 2004.

K. David Gordon  
Deputy Superintendent, Pensions





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

**AND IN THE MATTER OF** a Proposal of  
the Superintendent of Financial Services  
to make an Order under section 69 of  
the Act, respecting **Pension Plan for  
Hourly Employees of Canadian Tack  
and Nail Ltd., Registration Number  
0241968 (the “Pension Plan”);**

**TO:** **Morneau Sobeco**  
895 Don Mills Road, Suite 700  
One Morneau Sobeco Centre  
Toronto ON M3C 1W3

**Attention:** David R. Kearney  
Senior Consultant  
**Administrator  
of the Pension Plan**

**AND TO:** **Canadian Tack and Nail Ltd.**  
431 Dundas Street  
P.O. Box 754  
Cambridge ON N1R 5W6

**Attention:** Gary Ayers  
Vice President  
& General Manager  
Treasurer  
**Employer**

**AND TO:** **KPMG Inc.**  
20 Erb Street West  
Marland Centre, 3rd Floor  
Waterloo ON MN2L 1T2

**Attention:** Robert J. Bradley  
Senior Manager  
**Trustee in Bankruptcy  
for Canadian Tack and  
Nail Ltd.**

### **ORDER**

**ON** the 16th day of September, 2004, the  
Deputy Superintendent, Pensions, issued  
a Notice of Proposal to make an Order  
dated the 15th day of September, 2004,  
pursuant to subsection 69(1) of Act to the  
Administrator and to the Employer to  
wind up in whole the Pension Plan.

**NO** Notice requiring a hearing was  
delivered to the Financial Services  
Tribunal (“Tribunal”), within the time  
prescribed by subsection 89(6) of the Act.

**IT IS THEREFORE ORDERED** that the  
Pension Plan be wound up in full for those  
members who ceased to be employed  
effective between March 20, 2003 and  
April 1, 2003, for the following reasons:

1. the Employer is bankrupt within  
the meaning of the *Bankruptcy and  
Insolvency Act* (Canada);
2. a significant number of members  
of the Pension Plan ceased to be  
employed by the Employer as a result  
of the discontinuance of all or part  
of the business of the Employer or  
as a result of the reorganization of  
the business of the Employer;



3. all or a significant portion of the business carried on by the Employer at a specific location was discontinued.

**DATED** at Toronto, Ontario, this  
26th day of October, 2004.

Tom Golfetto  
Director, Pension Plans Branch  
by Delegated Authority from  
the Superintendent of Financial Services





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

**AND IN THE MATTER OF** a Proposal of  
the Superintendent of Financial Services  
to Make an Order under section 69 of  
the Act, respecting the **Pension Plan for  
Salaried Employees of Canadian Tack  
and Nail Ltd., Registration Number  
0581306 (the “Pension Plan”);**

**TO:** **Morneau Sobeco**  
895 Don Mills Road, Suite 700  
One Morneau Sobeco Centre  
Toronto ON M3C 1W3

**Attention:** David R. Kearney  
Senior Consultant  
**Administrator  
of the Pension Plan**

**AND TO:** **Canadian Tack and Nail Ltd.**  
431 Dundas Street  
P.O. Box 754  
Cambridge ON N1R 5W6

**Attention:** Gary Ayers  
Vice President  
& General Manager  
Treasurer  
**Employer**

**AND TO:** **KPMG Inc.**  
20 Erb Street West  
Marland Centre, 3rd Floor  
Waterloo ON MN2L 1T2

**Attention:** Robert J. Bradley  
Senior Manager  
**Trustee in  
Bankruptcy for Canadian Tack  
and Nail Ltd.**

### **ORDER**

**ON** the 3rd day of September, 2004, the  
Deputy Superintendent, Pensions, issued  
a Notice of Proposal to make an Order  
dated the 3rd day of September, 2004,  
pursuant to subsection 69(1) of Act to the  
Administrator and to the Employer to  
wind up in whole the Pension Plan.

**NO** Notice requiring a hearing was  
delivered to the Financial Services  
Tribunal (“Tribunal”), within the time  
prescribed by subsection 89(6) of the Act.

**IT IS THEREFORE ORDERED** that the  
Pension Plan be wound up in full for those  
members who ceased to be employed  
effective between March 20, 2003 and  
April 1, 2003, for the following reasons:

1. there was a cessation or suspension  
of Employer contributions to  
the pension fund;
2. the Employer failed to make  
contributions to the pension fund as  
required by the Act or regulations;
3. the Employer is bankrupt within  
the meaning of the *Bankruptcy  
and Insolvency Act* (Canada);
4. a significant number of members  
of the Pension Plan ceased to be  
employed by the Employer as a result



- of the discontinuance of all or part of the business of the Employer or as a result of the reorganization of the business of the Employer;
5. all or a significant portion of the business carried on by the Employer at a specific location was discontinued.

**DATED** at Toronto, Ontario, this  
26th day of October, 2004.

Tom Golfetto  
Director, Pension Plans Branch  
by Delegated Authority from  
the Superintendent of Financial Services



## Consents to Payment of Surplus out of Wound Up Pension Plans

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

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(1) of the Act consenting to a payment out of the **Pension Plan for Employees of Dyment Limited, Registration Number 0242735;**

**TO:**                **Dyment Limited**  
1235 Bay Street  
Suite 400  
Toronto ON M5R 3K4

**Attention:**    Mr. E. A. Campbell  
                    Controller  
                    Applicant and Employer

### CONSENT

**ON** or about June 4, 2004, the Superintendent of Financial Services caused to be served on Dyment Limited a Notice of Proposal dated June 4, 2004, to consent, pursuant to subsection 78(1) of the Act, to the payment out of the Pension Plan for Employees of Dyment Limited, Registration Number 0242735, to Dyment Limited in the amount of 50% of the partial wind up surplus of \$636,915 as at August 23, 1996, plus 50% of investment earnings thereon to the date of payment, less 50% of expenses relating to the partial wind up of the Plan.

**NO** Notice requiring a hearing was delivered to the Financial Services Tribunal by the

Applicant or any other party within the time prescribed by subsection 89(6) of the Act.

**THE SUPERINTENDENT OF FINANCIAL SERVICES THEREFORE CONSENTS** to the payment out of the Pension Plan for Employees of Dyment Limited, Registration Number 0242735, to Dyment Limited in the amount of 50% of the partial wind up surplus of \$636,915 as at August 23, 1996, plus 50% of investment earnings thereon to the date of payment, less 50% of expenses relating to the partial wind up of the Plan.

**THIS CONSENT IS EFFECTIVE ONLY AFTER** the Applicant satisfies me that all benefits and benefit enhancements pursuant to the Surplus Distribution Agreement set out in paragraph 5 of the Notice of Proposal dated June 4, 2004 and any other payments to which the members, former members, and any other persons entitled to such payments have been paid, purchased, or otherwise provided for.

**DATED** at Toronto, Ontario,  
this 28th day of July, 2004.

Tom Golfetto,  
Director, Pension Plans Branch  
by Delegated Authority from  
the Superintendent of Financial Services

c.c.     Kerry Worgan, Mercer  
           Human Resource Consulting  
           Susan Philpott, Koskie Minsky LLP

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

**AND IN THE MATTER OF** a Proposal by  
the Superintendent of Financial Services  
to Make an Order under subsection 78(1)  
of the Act consenting to a payment out of  
the **Pension Plan for Employees of Rio  
Tinto North American Services Limited**,  
**Registration Number 0553362**;

**TO:** **QIT-Fer et Titane Inc.**  
1625 Marie-Victorin  
Tracy, Quebec  
J3R 1M6

**Attention:** Rolland G. Morier  
Senior Vice-President, Finance  
**Applicant and Employer**

### **CONSENT**

**ON** or about October 8, 2003, the  
Superintendent of Financial Services caused  
to be served on QIT-Fer et Titane Inc. a  
Notice of Proposal dated October 6, 2003  
to consent, pursuant to subsection 78(1) of  
the Act, to the payment out of the Pension  
Plan for Employees of Rio Tinto North  
American Services Limited, Registration  
Number 0553362, to QIT-Fer et Titane Inc.  
in the amount of \$7,531,352 as at September  
30, 2002, adjusted for investment earnings  
and expenses to the date of the payment.

**NO** Notice requiring a hearing was delivered  
to the Financial Services Tribunal by the  
Applicant or any other party within the time  
prescribed by subsection 89(6) of the Act.

**THE SUPERINTENDENT OF FINANCIAL  
SERVICES THEREFORE CONSENTS** to  
the payment out of the Pension Plan for  
Employees of Rio Tinto North American  
Services Limited, Registration Number  
0553362, to QIT-Fer et Titane Inc. in the  
amount of \$7,531,352 as at September 30,  
2002, adjusted for investment earnings and  
expenses to the date of the payment.

**THIS CONSENT IS EFFECTIVE ONLY  
AFTER** the Applicant satisfies me that all  
the surplus entitlements of the members  
have been paid or otherwise provided  
for in accordance with the terms of the  
Surplus Distribution Agreement.

**DATED** at Toronto, Ontario,  
this 28th day of July, 2004.

Tom Golfetto,  
Director, Pension Plans Branch  
by Delegated Authority from  
the Superintendent of Financial Services

c.c. Ms. Susan E. Fremes, Mercer  
Human Resource Consulting





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

**AND IN THE MATTER OF** a Proposal by  
the Superintendent of Financial Services  
to Make an Order under subsection  
78(1) of the Act consenting to a payment  
out of the **Restated Pension Plan for  
Employees of Downey Building Materials  
Limited, Registration Number 469718;**

**TO:** **Downey Building  
Materials Limited**  
539 Great Northern Road  
Sault Ste. Marie ON P6B 5A1

**Attention:** A. Melville  
Accountant & Director  
**Applicant and Employer**

### **CONSENT**

**ON** or about April 8, 2004, the Superintendent  
of Financial Services caused to be served  
on Downey Building Materials Limited a  
Notice of Proposal dated April 8, 2004, to  
consent, pursuant to subsection 78(1) of the  
Act, to payment out of the Restated Pension  
Plan for Employees of Downey Building  
Materials Limited, Registration No. 469718,  
to Downey Building Materials Limited in the  
amount of \$90,152.57 as at October 2, 2002,  
plus investment earnings thereon to the  
date of payment, less all expenses related to  
the plan wind up and surplus application.

**NO** Notice requiring a hearing was delivered  
to the Financial Services Tribunal by the

Applicant or any other party within the time  
prescribed by subsection 89(6) of the Act.

**THE SUPERINTENDENT OF FINANCIAL  
SERVICES THEREFORE CONSENTS** to the  
payment out of The Restated Pension Plan  
for Employees of Downey Building Materials  
Limited, Registration Number 469718, to  
Downey Building Materials Limited in the  
amount of \$90,152.57 as at October 2, 2002,  
plus investment earnings thereon to the  
date of payment, less all expenses related to  
the plan wind up and surplus application.

**DATED** at Toronto, Ontario, this  
12th day of August, 2004.

Tom Golfetto,  
Director, Pension Plans Branch  
by Delegated Authority from  
the Superintendent of Financial Services

c.c. T. Ian McLeod, HR-On-Demand Inc.

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

**AND IN THE MATTER OF** a Proposal by  
the Superintendent of Financial Services to  
Make an Order under subsection 78(1) of  
the Act consenting to a payment out of the  
**Guelph Dolime Limited Pension Plan for  
Salaried and Hourly-Rated Employees,  
Registration Number 0591909;**

**TO:** Carmeuse Lime  
(Canada) Limited  
c/o Blake,  
Cassels & Graydon LLP  
Box 25, Commerce Court West  
199 Bay Street  
Toronto, Ontario, Canada  
M5L 1A9

**Attention:** Jeffrey Sommers  
**Applicant and Employer**

### CONSENT

**ON** or about June 29, 2004, the Superintendent  
of Financial Services caused to be served on  
Carmeuse Lime (Canada) Limited a Notice  
of Proposal dated June 29, 2004, to consent,  
pursuant to subsection 78(1) of the Act, to  
payment out of the Guelph Dolime Limited  
Pension Plan for Salaried and Hourly-Rated  
Employees, Registration No. 0591909, to  
Carmeuse Lime Canada Limited in the  
amount of \$570,000 as at March 31, 2004, less  
legal fees incurred by the Company relating  
to the implementation and distribution of  
the Surplus and adjusted for investment  
gains and losses to the date of distribution.

**NO** Notice requiring a hearing was delivered  
to the Financial Services Tribunal by the  
Applicant or any other party within the time  
prescribed by subsection 89(6) of the Act.

**THE SUPERINTENDENT OF FINANCIAL  
SERVICES THEREFORE CONSENTS** to the  
payment out of the Guelph Dolime Limited  
Pension Plan for Salaried and Hourly-Rated  
Employees, Registration Number 0591909,  
to Carmeuse Lime (Canada) Limited in the  
amount of \$570,000 as at March 31, 2004, less  
legal fees incurred by the Company relating  
to the implementation and distribution of  
the Surplus and adjusted for investment  
gains and losses to the date of distribution.

**THIS CONSENT IS EFFECTIVE ONLY  
AFTER** the Applicant satisfies me that  
all payments to which the members,  
former members, and any other persons  
entitled to such payments have been  
paid or otherwise provided for.

**DATED** at Toronto, Ontario, this  
19th day of August, 2004.

Tom Golfetto,  
Director, Pension Plans Branch  
by Delegated Authority from  
the Superintendent of Financial Services

c.c. Hugh O'Reilly, Cavalluzzo Hayes  
Shilton McIntyre & Cornish LLP



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

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to make an Order under subsection 78(1) of the Act consenting to a payment out of the **Pension Plan of Cumba, Registration Number 0558379;**

**TO:** **CUMBA**  
562 Eglinton Avenue East  
Toronto ON M4P1B9

**Attention:** Patricia Cormier  
Chief Administrator  
**Applicant and Employer**

### **CONSENT**

**ON** or about June 29, 2004, the Superintendent of Financial Services caused to be served on CUMBA a Notice of Proposal dated June 29, 2004, to consent, pursuant to subsection 78(1) of the Act, to payment out of the Pension Plan of CUMBA, Registration No. 0558379 (the "Plan"), to CUMBA in the amount of \$32,898.50, as at February 28, 2001, plus investment earnings thereon to the date of payment less 50% of the expenses relating to the wind up of the Plan.

**NO** Notice requiring a hearing was delivered to the Financial Services Tribunal by the Applicant or any other party within the time prescribed by subsection 89(6) of the Act.

**THE SUPERINTENDENT OF FINANCIAL SERVICES THEREFORE CONSENTS**

to the payment out of the Pension Plan of Cumba, Registration Number 0558379, to Cumba in the amount of \$32,898.50, as at February 28, 2001, plus investment earnings thereon to the date of payment less 50% of the expenses relating to the wind up of the Plan.

**THIS CONSENT IS EFFECTIVE ONLY AFTER** the Applicant satisfies me in writing that the member's portion of the surplus assets, as set out in the Surplus Sharing Agreement have been paid or otherwise provided for.

**DATED** at Toronto, Ontario, this 20th day of August, 2004.

Tom Golfetto,  
Director, Pension Plans Branch  
by Delegated Authority from  
the Superintendent of Financial Services

c.c. Annie Doucet, The Standard  
Life Assurance Company



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

**AND IN THE MATTER OF** a Proposal of  
the Superintendent of Financial Services  
to Make an Order under section 69 of  
the Act, respecting the **Pension Plan  
for the Employees of Elias Markets  
Ltd., Registration Number 1063486;**

**TO:**               **Standard Life  
Assurance Company**  
1245 Sherbrooke Street West  
Montreal PQ H3G 1G3

**Attention:**   Dominic Muro  
Compliance Support Specialist  
Group Savings and Retirement  
**Administrator  
of the Pension Plan**

**AND TO:**   **Elias Markets Ltd.**  
250 Tecumseh Road East  
Windsor ON N8X 2R3

**Attention:**   Joe Elias  
President  
**Employer**

### **ORDER**

**ON** the 29th day of June 2004, the Deputy  
Superintendent, Pensions, issued a Notice of  
Proposal to Make an Order dated the 29th  
day of June, 2004, pursuant to subsection  
69(1) of Act to the Administrator and to the  
Employer to wind up in whole the Pension  
Plan for the Employees of Elias Markets Ltd.,


Registration Number 1063486 (the “Pension  
Plan”), up in full effective August 23, 2002.

**NO** Notice requiring a hearing was  
delivered to the Financial Services  
Tribunal (“Tribunal”), within the time  
prescribed by subsection 89(6) of the Act.

**IT IS THEREFORE ORDERED** that  
the Pension Plan for the Employees  
of Elias Markets Ltd., Registration  
Number 1063486 (the “Pension Plan”),  
be wound up in full effective August  
23, 2002, for the following reasons:

1. There was a cessation or suspension  
of Employer contributions  
to the pension fund.
2. The Employer failed to make  
contributions to the pension fund as  
required by the Act or regulations.
3. The Employer is bankrupt within  
the meaning of the *Bankruptcy  
and Insolvency Act* (Canada).
4. All or a significant portion of the  
business carried on by the Employer  
at a specific location is discontinued.

**PURSUANT TO** subsection 69(2) of the  
Act, the Administrator is required to  
give notice of this Order to the following  
persons by transmitting a copy hereof:



**Richter & Partners Inc.**  
200 King Street West  
Suite 1900, P.O. Box 1900  
Toronto ON M5H 3T4



**Attention:** Jackie Glazer  
**Interim Receiver  
of Elias Markets Ltd.**

**DATED** at Toronto, Ontario, this 20th  
day of August, 2004.

Tom Golfetto  
Director, Pension Plans Branch  
by Delegated Authority from  
the Superintendent of Financial Services

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

**AND IN THE MATTER OF** a Proposal by  
the Superintendent of Financial Services  
to Make an Order under subsection 78(1)  
of the Act consenting to a payment out of  
the **Retirement Income Plan for Salaried  
Employees of BPB Canada Inc. and  
Subsidiary and Associated Companies,  
Registration Number 210039;**

**TO:** **BPB Canada Inc.**  
2424 Lakeshore Road West  
Mississauga ON L5J 1K4

**Attention:** Mr. Keith Campbell  
Vice-President Finance  
and C.F.O.  
**Applicant and Employer**

### **CONSENT**

**ON** or about July 7, 2004, the Superintendent  
of Financial Services caused to be served  
on BPB Canada Inc. a Notice of Proposal  
dated July 7, 2004, to consent, pursuant  
to subsection 78(1) of the Act, to payment  
out of the Retirement Income Plan for  
Salaried Employees of BPB Canada Inc.  
and Subsidiary and Associated Companies,  
Registration No. 210039, to BPB Canada  
Inc. in the amount of \$28,129,000 as at  
January 1, 2002 and adjusted for expenses  
and investment earnings in accordance  
with the surplus sharing agreement.

**NO** Notice requiring a hearing was delivered  
to the Financial Services Tribunal by the

Applicant or any other party within the time  
prescribed by subsection 89(6) of the Act.

**THE SUPERINTENDENT OF FINANCIAL  
SERVICES THEREFORE CONSENTS** to the  
payment out of the Retirement Income Plan  
for Salaried Employees of BPB Canada Inc.  
and Subsidiary and Associated Companies,  
Registration Number 210039, to BPB Canada  
Inc. in the amount of \$28,129,000 as at  
January 1, 2002 and adjusted for expenses  
and investment earnings in accordance  
with the surplus sharing agreement.

**DATED** at Toronto, Ontario, this  
7th day of September, 2004.

Tom Golfetto,  
Director, Pension Plans Branch  
by Delegated Authority from  
the Superintendent of Financial Services

Copy: Ms. Sonia Mak,  
Borden Ladner Gervais LLP  
Mr. Mark Zigler, Koskie Minsky  
Mr. Brent Thomson  
Mr. Keith Campbell  
Ms. Alice Carr





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

**AND IN THE MATTER OF** a Proposal by  
the Superintendent of Financial Services  
to Make an Order under subsection 78(4)  
of the Act consenting to a payment out  
of the **Retirement Plan for Employees  
of Metso Automation Canada Ltd.,  
Registration Number 543835;**

**TO:**               **Metso Automation  
Canada Limited**  
32 Hymus Boulevard  
Pointe-Claire QC H9R 1C9

**Attention:**   Carrol Lamarche  
**Controller**

### **CONSENT**

ON or about August 11, 2004, the  
Superintendent of Financial Services caused  
to be served on Metso Automation Canada  
Limited a Notice of Proposal dated August  
11, 2004 to consent, pursuant to subsection  
78(4) of the Act, to payment out of the  
Retirement Plan for Employees of Metso  
Automation Canada Ltd., Registration  
No. 543835, to Metso Automation Canada  
Limited in the amount of \$467,175 as at May  
31, 2003, plus interest, at the fund rate of  
return thereon, to the date of payment.

NO Notice requiring a hearing was delivered  
to the Financial Services Tribunal by the  
Applicant or any other party within the time  
prescribed by subsection 89(6) of the Act.

**THE SUPERINTENDENT OF FINANCIAL  
SERVICES THEREFORE CONSENTS** to  
the payment out of the Retirement Plan for  
Employees of Metso Automation Canada Ltd.,  
Registration No. 543835, to Metso Automation  
Canada Limited in the amount of \$467,175 as  
at May 31, 2003, plus interest, at the fund rate  
of return thereon, to the date of payment.

**DATED** at Toronto, Ontario, this  
30th day of September, 2004.

Tom Golfetto,  
Director, Pension Plans Branch  
by Delegated Authority from  
the Superintendent of Financial Services



## Declarations that the Pension Benefits Guarantee Fund Applies to Pension Plans - Subsection 83(1) of the *Pension Benefits Act*

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

**AND IN THE MATTER OF** a Proposal by  
the Superintendent of Financial Services  
to Make a Declaration under Section  
83 of the Act respecting the **Pension  
Plan for Hourly Employees of Cold  
Metal Products Limited, Registration  
Number 0975045 (the “Pension Plan”)**;

**TO:** **PricewaterhouseCoopers Inc.**  
P.O. Box 82, Royal Trust Tower  
Toronto-Dominion Centre  
Toronto ON M5G 1G8

**Attention:** Tony Karkheck  
Senior Vice President  
**Administrator  
of the Pension Plan**

**AND TO:** **Cold Metal Products Limited**  
65 Imperial Street  
P.O. Box 66, LCD1  
Hamilton ON L8L 7V2

**Attention:** Soheil Monzavi  
General Manager  
**Employer**

**AND TO:** **Richter & Partners**  
200 King Street West  
Suite 1900  
Toronto ON M5H 3T4

**Attention:** Javed Rasool  
Manager  
**Trustee in Bankruptcy for  
Cold Metal Products  
Limited**

**AND TO:** **The United Steelworkers  
of America Local, 4444**  
1031 Barton Street East,  
Room 113  
Hamilton ON L8L 3E3

**Attention:** Roy Leslie  
Staff Representative  
**Union**

**AND TO:** **The United Steelworkers  
of America Local, 7625**  
4115 Ontario East  
Montreal PQ H1V 1J7

**Attention:** Gaetan Pare  
Local President  
**Union**

### **DECLARATION**

#### **WHEREAS:**

1. The Pension Plan for the Employees of Pension Plan for Hourly Employees of Cold Metal Products Limited, Registration Number 0975045 (the “Pension Plan”) is registered under the *Pension Benefits Act*, R.S.O. 1990, c. P. 8 as amended by the *Financial Services Commission of Ontario Act*, 1997, c. 28, (the “Act”); and

2. The Pension Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "Guarantee Fund") by the Act or the regulations made thereunder; and
  3. The Pension Plan was wound up effective March 17, 2003; and
  4. The Superintendent of Financial Services Commission appointed PricewaterhouseCoopers Inc. as the Administrator (the "Administrator") of the Pension Plan on June 16, 2003; and
  5. On April 8, 2004, the Deputy Superintendent, Pensions, issued a Notice of Proposal dated April 8, 2004, to Make a Declaration that the Guarantee Fund applies to the Pension Plan; and
  6. No notice requiring a hearing by the Financial Services Tribunal, pursuant to subsection 89 (6) of the Act, has been received.
2. Following its appointment, the Administrator requested a preliminary estimate of the wind up liabilities of the Pension Plan as of March 31, 2003. The actuary estimated the wind up funded ratio as 55% on assets and liabilities of \$7,622,644, and \$12,154,000, respectively.
  3. Richter and Partners Inc. was appointed Interim Receiver of Cold Metal Products Limited on March 17, 2003 and Trustee in Bankruptcy on March 24, 2003.
  4. The Trustee in Bankruptcy has advised the Administrator that no assets are expected to become available for distribution to ordinary creditors of the bankrupt estate.
  5. The Administrator has advised that they are reasonable and probable grounds for considering that the funding requirements of the Act and Regulation cannot be satisfied.

**NOW THEREFORE TAKE NOTICE I** declare pursuant to sections 83 and 89 of the Act that the Guarantee Fund applies to the Pension Plan for the following reasons:

1. The last full Actuarial Valuation Report for this Pension Plan was produced by the plan actuary as of December 31, 1999. The Pension Plan was reported to have a 98% transfer ratio at that date. Subsequent to December 31, 1999, the actuary prepared Interim Actuarial Opinions on the Pension Plan on several occasions, most recent being as of December 31, 2002. As of December 31, 2002, the funded ratio of the Pension Plan was reported to be 66%.

**DATED** at North York, Ontario,  
this 14th day of July, 2004.

Tom Golfetto  
Director, Pension Plans Branch  
by Delegated Authority from  
the Superintendent of Financial Services



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

**AND IN THE MATTER OF** a Proposal of  
the Superintendent of Financial Services  
to Make a Declaration under section 83  
of the Act relating to the **Pension Plan  
for Employees of Ryancon, Registration  
Number 298430 (the “Plan”)**;

**TO:** **PricewaterhouseCoopers Inc.**  
1 Robert Speck Parkway  
Suite 1100,  
Mississauga ON L4Z 3M3

**Attention:** Mr. Tony Karkheck  
**Appointed  
Administrator**

**AND TO:** **Ryancon**  
144 Sharer Road  
Vaughan ON L4L 8P4

**Attention:** John D. Hains  
Chief Financial Officer  
**Employer**

**AND TO:** **BDO Dunwoody Limited**  
33 City Centre Drive, Suite 680  
Mississauga ON L5B 2N5

**Attention:** Mr. Darryl McConnell  
Senior Manager  
**Trustee in Bankruptcy/  
Receiver and Manager**

## **DECLARATION**

### **WHEREAS:**

1. The Pension Plan for Employees of Ryancon is registered under the Act as Registration Number 298430 (the “Plan”); and
2. The Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the “Guarantee Fund”) by the Act or the regulations made thereunder; and
3. The Superintendent of Financial Services appointed PricewaterhouseCoopers Inc. Administrator of the Plan on December 17, 2003; and
4. On March 15, 2004, the Administrator filed an application for a Declaration that the Guarantee Fund applies to the Plan; and
5. The Administrator’s preliminary actuarial estimate of the deficit in the Plan as at August 31, 2003 is \$1,421,000 with a wind up funded ratio of 75.78% for the Plan; and
6. The Administrator has cutback all pensioners to the estimated funded ratio effective March 1, 2004 until further notice; and
7. On June 4, 2004, the Deputy Superintendent, Pensions, issued a Notice of Proposal to Make a Declaration that the Guarantee Fund applies to the Plan; and
8. On July 9, 2004, the Director, Pension Plans Branch, issued an order that the Plan be wound up effective March 31, 2003 through June 30, 2003; and
9. As of July 19, 2004, no request for a hearing before the Financial Services Tribunal has been made in respect

of the Notice of Proposal to Make a Declaration referred to in 7. above;

**NOW THEREFORE TAKE NOTICE I** declare pursuant to sections 83 and 89 of the Act that the Guarantee Fund applies to the Plan for the following reasons:

**REASONS FOR THE PROPOSED DECLARATION:**

1. The Employer, Ryancon, was adjudged bankrupt on November 7, 2003.
2. The Administrator has estimated the wind up funded ratio of the Plan to be 75.78%.
3. The Administrator has estimated the deficit in the plan as of as at August 31, 2003 to be \$1,421,000.
4. The Trustee in Bankruptcy has advised the Administrator that there are not enough funds available for full distribution to the ordinary unsecured creditors
5. The Administrator is of the view that there are reasonable and probable grounds for concluding that the funding requirements of the Act and regulation cannot be met.

**DATED** at North York, Ontario,  
this 23<sup>rd</sup> day of July, 2004.

Tom Golfetto  
Director, Pension Plans Branch

**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 Proposal by  
the Superintendent of Financial Services to  
Make a Declaration under Section 83 of the  
PBA respecting the **Retirement Plan for the  
Employees of Alloy Wheels International  
(Canada) Ltd., Registration Number 1036029;**

**TO:** **Morneau Sobeco**  
895 Don Mills Road, Suite 700  
One Morneau Sobeco Centre  
Toronto ON M2C 1W3

**Attention:** David R. Kearney  
Senior Consultant  
**Administrator  
of the Pension Plan**

**AND TO:** **Alloy Wheels  
International (Canada) Ltd.**  
49 Truman Road  
Box 13000  
Barrie ON L4M 6E7

**Attention:** Joan Oickle  
Compensation  
and Benefits Coordinator  
**Employer**

**AND TO:** **Deloitte & Touche Inc.**  
BCE Place  
Suite 1400  
181 Bay Street  
Toronto ON M5J 2V1

**Attention:** David Murray  
Partner  
**Trustee in Bankruptcy  
for Alloy Wheels International  
(Canada) Ltd.**

**AND TO:** **CAW Canada - Local 1991**  
178 Dunlap Street  
Barrie ON L4M 4S6

**Attention:** Ed Little  
President, Skill Trades Rep.  
**Union**

## **DECLARATION**

### **WHEREAS:**

1. The Retirement Plan for the Employees of Alloy Wheels International (Canada) Ltd., (the “Pension Plan”) Registration Number 1036029, is registered under the *Pension Benefits Act*, R.S.O. 1990, c. P. 8 as amended by the *Financial Services Commission of Ontario Act*, 1997, c. 28, (the “Act”); and
2. The Pension Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the “Guarantee Fund”) by the Act or the regulations made thereunder; and
3. The Pension Plan was wound up effective January 19, 2001; and
4. The Superintendent of Pensions initially appointed Arthur Andersen Inc. as the Administrator (the “Administrator”) of the Pension Plan on February 2, 2001 and on July 10, 2002, appointed Morneau Sobeco as Administrator to replace Deloitte & Touche; and





5. On July 16, 2004, the Deputy Superintendent, Pensions, issued a Notice of Proposal dated July 16, 2004, to Make a Declaration that the PBGF applies to the Pension Plan; and
6. No notice requiring a hearing by the Financial Services Tribunal, pursuant subsection 89 (6) of the Act, has been received.

**NOW THEREFORE TAKE NOTICE I** propose to consider to make a declaration pursuant to section 83 of the Act that the Guarantee Fund applies to the Pension Plan for the following reasons:

1. The revised Actuarial Valuation Report filed by the Administrator indicates an estimated funding deficiency of \$2,097,300 as at January 19, 2001, and an estimated claim against the Guarantee Fund as at January 19, 2001 of \$1,258,296.
2. Deloitte & Touche Inc. was appointed Trustee in Bankruptcy of Alloy Wheels International (Canada) Ltd. on January 19, 2001.
3. Apart from a proof of claim of in the amount \$16,920 from the Trustee in Bankruptcy, there are no other funds available from the bankrupt estate of Alloy Wheels International (Canada) Ltd. to make payments to the Pension Plan.
4. The Administrator has advised that they are reasonable and probable grounds for considering that the funding requirements of the Act and Regulation cannot be satisfied.

**DATED** at North York, Ontario,  
this 13th day of August, 2004.

Tom Golfetto  
Director, Pension Plans Branch  
by Delegated Authority from  
the Superintendent of Financial Services



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

**AND IN THE MATTER OF** a Proposal of  
the Superintendent of Financial Services  
to Make a Declaration under section 83  
of the Act relating to the **Pension Plan  
for Unionized Employees of Northern  
Globe Building Materials (Thorold  
Division), Registration Number 680405  
(formerly C-104311) (the “Plan”);**

**TO:** **Morneau Sobeco**  
895 Don Mills Road, Suite 700  
1 Morneau Sobeco Centre  
Toronto ON M3C 1W3

**Attention:** Ms. Pauline Frenette  
Associate Consultant  
**Administrator**

**AND TO:** **Striker Paper Canada, Inc.**  
100 Ormond Street South  
P.O. Box 10,  
Thorold ON L2V 3Y7

**Attention:** Ms. Patricia Gough, Manager  
**Employer**

**AND TO:** **BDO Dunwoody Limited**  
Royal Bank Plaza  
P.O. Box 33  
Toronto ON M5J 2J9

**Attention:** Mr. Mark Chow  
**Trustee in Bankruptcy**

**AND TO:** **Communications, Energy  
and Paper Workers  
Union of Canada**  
5890 Aspen Court  
Niagara Falls ON L2G 7V3

**Attention:** Michael Lambert  
National Representative  
**Union Representative  
for the members of the Plan**

### **DECLARATION**

#### **WHEREAS:**

1. The Pension Plan for Unionized Employees of Northern Globe Building Materials (Thorold Division) is registered under the Act as Registration Number 680405 (formerly C-104311) (the “Plan”); and
2. The Plan provides defined benefits that are not exempt from the application of the
3. Pension Benefits Guarantee Fund (the “Guarantee Fund”) by the Act or the regulations made thereunder; and
4. The Superintendent of Financial Services appointed Morneau Sobeco Administrator of the Plan on July 10, 2002; and
5. The Superintendent of Financial Services issued an Order that the Plan be wound up effective February 22, 1999; and
6. The distribution of assets of the Plan proposed by the wind up report was approved by the Superintendent of Financial Services on April 21, 2004, subject to any additional funding that may be required from the Guarantee Fund; and
7. On March 5, 2004, the Administrator filed an application for a Declaration that the

- Guarantee Fund applies to the Plan; and
8. The wind up report identified a deficit in the Plan as at February 22, 1999 of \$349,343 and a wind up funded ratio of 0.0%, with an estimated claim against the Guarantee Fund of \$331,601; and
  9. On or about June 30, 2004 a Notice of Proposal to Make a Declaration that the Guarantee Fund applies to the Plan was issued by the Deputy Superintendent, Pensions; and
  10. As of August 16, 2004, no request for a hearing before the Financial Services Tribunal has been received by the Registrar in respect of the notice of proposal;

**NOW THEREFORE TAKE NOTICE I** declare pursuant to sections 83 and 89 of the Act that the Guarantee Fund applies to the Plan for the following reasons:

**REASONS :**

1. The Employer, Striker Paper Canada Inc. was adjudged bankrupt on March 22, 2000.
2. The Administrator has estimated the wind up funded ratio of the Plan to be 0.0%.
3. Without any recovery from the estate of the Employer, the potential claim against the Guarantee Fund as at the wind up date would be \$331,601.00.
4. The trustee in bankruptcy has advised the administrator that there are no funds available for the Plan from the Employer's estate.
5. There are reasonable and probable grounds for concluding that the funding requirements of the Act and

regulation cannot be satisfied.

**DATED** at North York, Ontario,  
this 25th day of August, 2004.

Tom Golfetto  
Director, Pension Plans Branch





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

**AND IN THE MATTER OF** a Proposal of  
the Superintendent of Financial Services  
to Make a Declaration under section 83 of  
the Act relating to the **Philip Services Inc.  
Retirement Pension Plan for Members of  
United Steelworkers of America, Local 6098,  
Registration Number 347047 (the “Plan”)**;

**TO:** **PricewaterhouseCoopers Inc.**  
1 Robert Speck Parkway  
Suite 1100, Mississauga  
ON L4Z 3M3

**Attention:** Mr. Tony Karkheck  
**Administrator**

**AND TO:** **Philip Services Inc.**  
c/o PSC Metals Inc.  
20521 Chagrin Boulevard  
Cleveland OH 44122

**Attention:** Ms. Linda Bogdanovic  
Director, Human Resources  
**Employer**

**AND TO:** **Ernst & Young Inc.**  
220 Bay Street, P.O. Box 251  
Ernst & Young Tower  
Toronto-Dominion Centre  
Toronto ON M5K 1J7

**Attention:** Ms. Leslea Gordon  
**Trustee in Bankruptcy**

**AND TO:** **United Steelworkers  
of America, Local 6098**  
1031 Barton Street East,  
Room 113  
Hamilton ON L8L 3E3

**Attention:** Mr. Charlie Scibetta  
**Union Representative  
for the Members of the Plan**

### DECLARATION

#### **WHEREAS:**

1. The Philip Services Inc. Retirement Pension Plan for Members of United Steelworkers of America, Local 6098 is registered under the Act as Registration Number 347047 (the “Plan”); and
2. The Plan provides defined benefits that are not exempt from the application of the
3. Pension Benefits Guarantee Fund (the “Guarantee Fund”) by the Act or the regulations made thereunder; and
4. On December 19, 2003, the Employer submitted to FSCO an amendment to wind up the plan effective July 31, 2003; and
5. The Employer made a voluntary assignment into bankruptcy on December 30, 2003 and Ernst & Young were appointed Trustee in Bankruptcy on December 30, 2003; and
6. The Superintendent of Financial Services appointed PricewaterhouseCoopers Inc. administrator of the Plan on March 19, 2004; and
7. On April 2, 2004, the Administrator filed an application for a Declaration that the Guarantee Fund applies to the Plan; and



8. The Administrator's preliminary estimate of the deficit in the Plan as at July 31, 2003, before provision for wind up expenses and a contingency reserve, is \$1,373,000; and
  9. The Administrator filed a proof of claim on March 31, 2004 with the trustee in bankruptcy for an amount of \$1,800,000 in respect of the estimated deficiency in the Plan after provision for wind up expenses and a general contingency reserve; and
  10. The Trustee in Bankruptcy has advised the Administrator that the expected return to ordinary creditors of the bankrupt estate, of which the Plan is one, is 1 to 3 cents on the dollar; and
  11. On June 4, 2004, the Deputy Superintendent, Pensions, issued a Notice of Proposal to Make a Declaration that the Guarantee Fund applies to the Plan; and
  12. As of August 24, 2004, no request for a hearing before the Financial Services Tribunal has been made in respect of the Notice of Proposal to Make a Declaration referred to in 10. above;
- \$1,373,000 before any provision for wind up expenses and a contingency reserve.
3. The Administrator is of the view that there are reasonable and probable grounds for concluding that the funding requirements of the Act and regulation cannot be met.

**DATED** at North York, Ontario, this 26th day of August, 2004.

Tom Golfetto  
Director, Pension Plans Branch

**NOW THEREFORE TAKE NOTICE I**  
declare pursuant to sections 83 and 89 of the Act that the Guarantee Fund applies to the Plan for the following reasons:

**REASONS FOR THE PROPOSED  
DECLARATION:**

1. The Employer, Philip Services Inc., voluntarily assigned itself into bankruptcy on December 30, 2003.
2. The Administrator has estimated the deficiency in the plan as of July 31, 2003, the date of wind up of the Plan, to be



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

**AND IN THE MATTER OF** a Proposal of  
the Superintendent of Financial Services  
to Make a Declaration under section 83 of  
the Act relating to the **Philip Services Inc.  
Retirement Pension Plan for Members of  
United Steelworkers of America, Local 6920,  
Registration Number 474932 (the “Plan”);**

**TO:** **PricewaterhouseCoopers Inc.**  
1 Robert Speck Parkway  
Suite 1100,  
Mississauga ON L4Z 3M3

**Attention:** Mr. Tony Karkheck  
**Administrator**

**AND TO:** **Philip Services Inc.**  
c/o PSC Metals Inc.  
20521 Chagrin Boulevard  
Cleveland OH 44122

**Attention:** Ms. Linda Bogdanovic  
Director, Human Resources  
**Employer**

**AND TO:** **Ernst & Young Inc.**  
220 Bay Street, P.O. Box 251  
Ernst & Young Tower  
Toronto-Dominion Centre  
Toronto ON M5K 1J7

**Attention:** Ms. Leslea Gordon  
**Trustee in Bankruptcy**

**AND TO:** **United Steelworkers  
of America, Local 6920**  
1031 Barton Street East,  
Room 113  
Hamilton ON L8L 3E3

**Attention:** Mr. Charlie Scibetta  
**Union Representative  
for the Members of the Plan**

### **DECLARATION**

#### **WHEREAS:**

1. The Philip Services Inc. Retirement Pension Plan for Members of United Steelworkers of America, Local 6920 is registered under the Act as Registration Number 474932 (the “Plan”); and
2. The Plan provides defined benefits that are not exempt from the application of the
3. Pension Benefits Guarantee Fund (the “Guarantee Fund”) by the Act or the regulations made thereunder; and
4. On December 19, 2003, the Employer submitted to FSCO an amendment to wind up the plan effective July 31, 2003; and
5. The Employer made a voluntary assignment into bankruptcy on December 30, 2003 and Ernst & Young were appointed trustee in bankruptcy on December 30, 2003; and
6. The Superintendent of Financial Services appointed PricewaterhouseCoopers Inc. administrator of the Plan on March 19, 2004; and
7. On April 2, 2004, the administrator filed an application for a Declaration that the Guarantee Fund applies to the Plan; and





8. The administrator's preliminary estimate of the deficit in the Plan as at July 31, 2003, before provision for wind up expenses and a contingency reserve, is \$1,777,000; and
  9. The administrator filed a proof of claim on March 31, 2004 with the trustee in bankruptcy for an amount of \$2,181,000 in respect of the estimated deficiency in the Plan after provision for wind up expenses and a general contingency reserve; and
  10. The trustee in bankruptcy has advised the administrator that the expected return to ordinary creditors of the bankrupt estate, of which the Plan is one, is 1 to 3 cents on the dollar; and
  11. On June 4, 2004, the Deputy Superintendent, Pensions, issued a notice of proposal to make a declaration that the Guarantee Fund applies to the Plan; and
  12. As of August 24, 2004, no request for a hearing before the Financial Services Tribunal has been made in respect of the notice of proposal to make the declaration referred to in 10. above;
- \$1,777,000 before any provision for wind up expenses and a contingency reserve.
3. The Administrator is of the view that there are reasonable and probable grounds for concluding that the funding requirements of the Act and regulation cannot be met.

**DATED** at North York, Ontario,  
this 26th day of August, 2004.

Tom Golfetto  
Director, Pension Plans Branch

**NOW THEREFORE TAKE NOTICE I**  
declare pursuant to sections 83 and 89 of  
the Act that the Guarantee Fund applies  
to the Plan for the following reasons:

**REASONS FOR THE PROPOSED  
DECLARATION:**

1. The Employer, Philip Services Inc., voluntarily assigned itself into bankruptcy on December 30, 2003.
2. The Administrator has estimated the deficiency in the plan as of July 31, 2003, the date of wind up of the Plan, to be

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

**AND IN THE MATTER OF** a Proposal  
of the Superintendent of Financial  
Services to Make a Declaration under  
section 83 of the Act relating to the **Forest  
City International Trucks Ltd. Non-  
Contributory Retirement Plan (for Non-  
Managerial Employees of U.A.W., Local 27)  
Registration Number 405506 (the “Plan”);**

**TO:** Ernst & Young Inc.  
222 Bay Street  
P. O. Box 251  
Toronto-Dominion Centre  
Toronto ON M5K 1J7

**Attention:** Philip Kan  
Manager  
**Administrator**

**AND TO:** Forest City  
**International Trucks Ltd.**  
3003 Page Street  
London ON N5V 4J1

**Attention:** John Parliament  
Controller  
**Employer**

**AND TO:** C.A.W. Canada, Local 27  
310 Wellington Road South  
London ON N6C 4P4

**Attention:** John Parliament  
Controller  
**Union representative**

## **DECLARATION**

### **WHEREAS:**

1. The Forest City International Trucks Ltd. Non-Contributory Retirement Plan (for Non-Managerial Employees of U.A.W., Local 27) is registered under the Act as Registration Number 405506 (the “Plan”); and
2. The Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the “Guarantee Fund”) by the Act or the regulations made thereunder; and
3. Peat Marwick Thorne was appointed Receiver of the Employer on May 23, 1991, and on or soon thereafter appointed trustee in bankruptcy for the Employer; and
4. On October 6, 1993, the said receiver and trustee in bankruptcy was discharged; and
5. On February 5, 1992, the Superintendent of Pensions appointed Ernst & Young Inc. Administrator of the Plan; and
6. On March 5, 1997, the Superintendent of Pensions issued an order that the plan be wound up effective May 25, 1991; and
7. On December 2, 1999, the Superintendent of Financial Services approved a wind up report filed by the Administrator for the Plan; and
8. On September 21, 2001, the Administrator filed an application for a declaration that the Guarantee Fund applies to the Plan, and for an allocation of funds in the amount of \$136,800 from the Guarantee Fund determined as of October 31, 2001; and



9. On November 26, 2001, the Administrator filed a supplement to the wind up report disclosing a revised claim against the Guarantee Fund as of October 31, 2001 of \$148,300; and
10. Additional liabilities are to be included in the allocation amount requested from the Guarantee Fund in respect of benefits under the Plan for which the employer's consent is deemed to have been given in accordance with subsection 74(7) of the Act;
11. On August 16, 2004, the Deputy Superintendent, Pensions, issued a Notice of Proposal to Make a Declaration that the Guarantee Fund applies to the Plan; and
12. As of October 4, 2004, no request for a hearing before the Financial Services Tribunal has been made in respect of the Notice of Proposal to Make the Declaration;

**NOW THEREFORE TAKE NOTICE I** declare pursuant to sections 83 and 89 of the Act that the Guarantee Fund applies to the Plan for the following reasons:

**REASONS FOR THE PROPOSED DECLARATION:**

1. The Employer, Forest City International Trucks Ltd., was adjudged bankrupt on May 23, 1991 or soon thereafter.
2. The Administrator has estimated the deficit in the plan as of as at October 31, 2001 to be \$151,200 and the claim against the Guarantee Fund to be \$148,300.
3. The Trustee in Bankruptcy has been discharged.

4. The Administrator is of the view that there are reasonable and probable grounds for concluding that the funding requirements of the Act and regulation cannot be met.

**DATED** at North York, Ontario  
this 7th day of October, 2004.

Tom Golfetto  
Director, Pension Plans Branch



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

**AND IN THE MATTER OF** a Proposal of  
the Superintendent of Financial Services to  
Make a Declaration under section 83 of the  
Act relating to the **Employees’ Retirement  
Plan of Hoskins Alloys of Canada Limited**,  
**Registration Number 557868 (the “Plan”)**;

**TO:** **PricewaterhouseCoopers Inc.**  
1 Robert Speck Parkway  
Suite 1100  
Mississauga ON L4Z 3M3

**Attention:** Mr. Tony Karkheck  
Human Resource Services  
**Appointed Administrator**

**AND TO:** **Hoskins Manufacturing Co.**  
39500 High Pointe Boulevard,  
Suite 300  
Novi MI 48375

**Attention:** Phillip Varvatos  
Controller  
**Employer**

## **DECLARATION**

### **WHEREAS:**

1. Employees’ Retirement Plan of Hoskins Alloys of Canada Limited is registered under the Act as Registration Number 557868 (the “Plan”); and
2. The Plan provides defined benefits that are not exempt from the application of the

3. Pension Benefits Guarantee Fund (the “Guarantee Fund”) by the Act or the regulations made thereunder; and
4. The Superintendent of Financial Services appointed PricewaterhouseCoopers Inc. Administrator of the Plan on May 7, 2004; and
5. On May 17, 2004, the Administrator filed an application for a Declaration that the Guarantee Fund applies to the Plan; and
6. The Administrator has indicated that the employer had failed to remit required contributions to the Plan of \$117,880; and
7. The Administrator has indicated that the wind up funded ratio of the Plan is expected to be significantly lower than 80%; and
8. The Administrator is of the opinion that there are reasonable and probable grounds to conclude that the funding requirements of the Act cannot be met;
9. On August 27, 2004, the Deputy Superintendent, Pensions, issued a Notice of Proposal to Make a Declaration that the Guarantee Fund applies to the Plan; and
10. As of October 6, 2004, no request for a hearing before the Financial Services Tribunal has been made in respect of the notice of proposal to make the declaration;

**NOW THEREFORE TAKE NOTICE I**  
declare pursuant to sections 83 and 89 of  
the Act that the Guarantee Fund applies  
to the Plan for the following reasons:

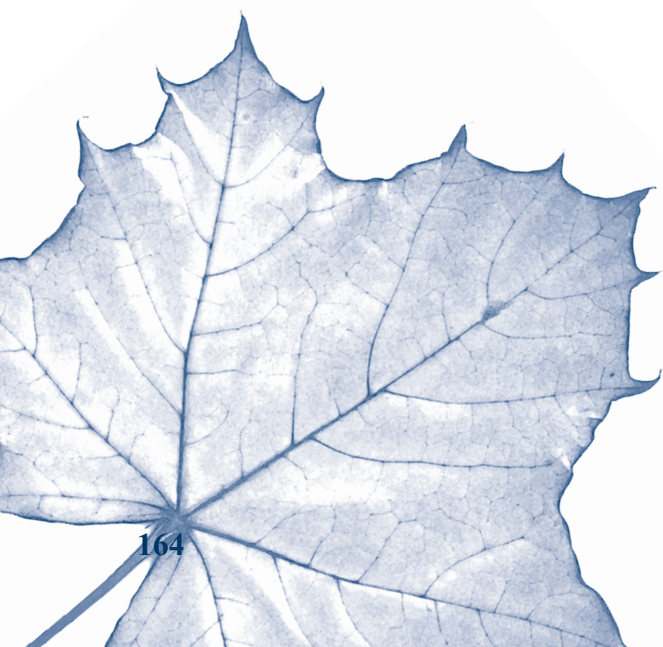


## REASONS FOR THE PROPOSED DECLARATION:

1. The employer, Hoskins Alloys of Canada Limited, no longer exists.
2. The former Administrator of the Plan, Hoskins Manufacturing Co., the parent company of the Employer, cannot be located.
3. The Administrator has estimated the wind up funded ratio of the Plan to be significantly less than 80%.
4. There are reasonable and probable grounds for concluding that the funding requirements of the Act and regulation cannot be satisfied.

**DATED** at North York, Ontario  
this 12th day of October, 2004.

Tom Golfetto  
Director, Pension Plans Branch



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

**AND IN THE MATTER OF** a Proposal of  
the Superintendent of Financial Services  
to Make a Declaration under section 83  
of the Act relating to the **Pension Plan  
for Employees of Mimik Industries  
Inc., Registration Number 287490;**

**TO:** **Mimik Industries Inc.**  
131 Sheldon Drive, Units 12 - 13  
Cambridge ON N1R 6S2

**Attention:** Mr. Robert N. Fraser  
**Employer**

**AND TO:** **Cowan Wright Limited**  
100 Regina Street South,  
Suite 270  
P.O. Box 96  
Waterloo ON N2J 3Z8

**Attention:** **Mr. Timothy**  
Lawrence, F.S.A., F.C.I.A.  
Principal  
Administrator

## **DECLARATION**

### **WHEREAS:**

1. The Pension Plan for Employees of Mimik Industries Inc.(the “Plan”), is registered under the Act as Registration Number 287490; and
2. The Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund

- (the “Guarantee Fund”) by the Act or the regulations made thereunder; and
3. The Plan was wound up by the employer effective September 13, 1996 with insufficient assets to pay out the wind up benefit entitlements of the Plan members and former members; and
4. The wind up proposals filed by the Employer were approved by the Superintendent of Financial Services on March 3, 1999, noting the intention of the Employer to fund the deficit in accordance with section 75 of the Act, and restricting the distribution of wind up benefits pending filing of a report under section 32 of the regulations to the Act showing no further part of the deficit to be funded; and
5. The Employer failed to comply with the funding requirements of section 75 of the Act, and did not comply with a court probation order issued in 1997 establishing a schedule of payments to be followed by the Employer for liquidating outstanding employer contributions; and
6. The Employer failed to comply with a subsequent agreement made with the Financial Services Commission of Ontario on or about May 2000 to follow a modified schedule of payments to be made into the Plan to liquidate the balance of the outstanding Employer contributions; and
7. A charge against the Employer was brought by Financial Services Commission of Ontario under section 75 of the Act for failing to make payment to the Plan in the manner prescribed under the Act; and
8. Sometime on or soon after March 22, 2004, the Employer ceased operations and closed its doors; and





Ontario

9. The Employer's assets have been sold off to pay creditors; and
10. Pursuant to the charges brought by Financial Services Commission of Ontario, in a joint submission at trial on May 11, 2004, which was accepted by the Ontario Court of Justice, the Employer entered a guilty plea to the charges and was fined \$3,420. The court at the same time issued an order under ss.110(4) of the Act requiring the Employer to pay the \$342,000 then estimated as being owed to the Plan; and
11. The Financial Services Commission of Ontario will arrange to have the above restitution order converted to a judgement of the Superior Court of Justice as soon as possible. The Superintendent will then have the option of attempting to recover from the Employer the value of any payments made from the Guarantee Fund, although it is not expected that the firm will have any unsecured assets available; and
12. The Superintendent of Financial Services has a lien and charge on the assets of the Employer in accordance with section 86 of the Act in respect of any payment made out of the Guarantee Fund to the Plan; and
13. For purposes of section 33 of the regulations to the Act, the proposed declaration will require that the wind up funded ratio and the liability for benefits guaranteed by the Guarantee Fund be calculated as of September 13, 2000; and
14. On August 24, 2004, the Deputy Superintendent issued a notice of proposal to make a declaration that the Guarantee Fund applies to the Plan; and

15. As of October 12, 2004, no request for a hearing before the Financial Services Tribunal has been received.

**NOW THEREFORE TAKE NOTICE I** declare pursuant to sections 83 and 89 of the Act that the Guarantee Fund applies to the Plan for the following reasons:

**REASONS FOR THE DECLARATION:**

1. There are currently insufficient assets in the Plan to provide for the benefit entitlements of the members on wind up. An actuarial evaluation of the Plan as at September 13, 2000 identified a deficit of \$100,954 in the Plan against which the Employer has made no further payment, and a funded ratio for the Plan of 86.3%.
2. The deficit in the Plan as at May 1, 2004 has been estimated by the administrator to be \$378,997 and the claim against the Guarantee Fund is estimated to be \$359,056.
3. There currently exist reasonable and probable grounds for concluding that the funding requirements of the Act and regulation cannot be satisfied.

**DATED** at North York, Ontario,  
this 14th day of October, 2004.

Tom Golfetto  
Director, Pension Plans Branch



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

**AND IN THE MATTER OF** a Proposal  
by the Superintendent of Financial  
Services to Make a Declaration under  
Section 83 of the Act respecting the  
**Pension Plan for Hourly Employees of  
Fantom Technologies Inc., Registration  
Number 0348995 (the “Pension Plan”);**

**TO:** **Morneau Sobeco**  
895 Don Mills Road, Suite 700  
One Morneau Sobeco Centre  
Toronto ON M3C 1W3

**Attention:** David R. Kearney  
Senior Consultant  
**Administrator  
of the Pension Plan**

**AND TO:** **Fantom Technologies Inc.**  
PO Box 1004  
Welland ON L3B 5S1

**Attention:** Norm Wotherspoon  
Treasurer  
**Employer**

**AND TO:** **PricewaterhouseCoopers Inc.**  
145 King Street West  
Toronto ON M5H 1V8

**Attention:** Catherine Hristow  
Vice President  
**Interim Receiver and Trustee  
in Bankruptcy for  
Fantom Technologies Inc**

**AND TO:** **The United Steelworkers  
of America Local 6444,  
District 6**  
234 Eglinton Avenue East  
Toronto ON M4P 1K5

**Attention:** Robert Heally  
and Brian Greenaway  
**Union**

### **DECLARATION**

#### **WHEREAS:**

1. The Pension Plan for Hourly Employees of Fantom Technologies Inc., Registration Number 0348995 (the “Pension Plan”), is registered under the *Pension Benefits Act*, R.S.O. 1990, c. P. 8, as amended by the *Financial Services Commission of Ontario Act, 1997*, c. 28, (the “Act”); and
2. The Pension Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the “Guarantee Fund”) by the Act or the regulations made thereunder; and
3. The Pension Plan was wound up in full for those members who ceased to be employed effective between November 20, 2000 and October 5, 2001; and
4. The Superintendent of Pensions initially appointed Deloitte & Touche Inc. as the Administrator (the “Administrator”) of the Pension Plan on April 25, 2002 and on July 11, 2002, appointed Morneau Sobeco as Administrator to replace Deloitte & Touche; and
5. On August 16, 2004, the Deputy Superintendent, Pensions, issued a Notice

- of Proposal dated August 16, 2004, to Make a Declaration that the Guarantee Fund applies to the Pension Plan; and
6. No notice requiring a hearing by the Financial Services Tribunal, pursuant to subsection
  7. 89 (6) of the Act, has been received.

**NOW THEREFORE TAKE NOTICE I**

declare pursuant to sections 83 and 89 of the Act that the Guarantee Fund applies to the Pension Plan for the following reasons:

1. The most recent actuarial valuation performed as at December 31, 1999, had a solvency deficiency of \$952,000 and a transfer ratio of 80%. Further, the Administrator had its actuary performed a preliminary valuation as at March 22, 2002, and the results of that review determined that the wind up funded ratio had deteriorated from 80% as at December 31, 1999, to approximately 59% as at March 22, 2002, and that the wind up deficit had increased to \$2,727,000 from \$952,000.
2. On October 25, 2001, Fantom Technologies Inc.'s request to obtain creditor protection for a temporary period under the *Companies' Creditors Arrangement Act* ("CCAA") was approved by an Order of the Ontario Superior Court of Justice. The Court appointed PricewaterhouseCoopers Inc. as the Monitor, as required under the CCAA proceedings and also appointed PricewaterhouseCoopers Inc. as Interim Receiver of the Fantom Technologies Inc.
3. On March 22, 2002, the Court issued an Order terminating the CCAA proceedings and discharged PricewaterhouseCoopers

- Inc. as Monitor but directed it to continue in its role as Interim Receiver. On the same day, PricewaterhouseCoopers Inc. was appointed Trustee in Bankruptcy.
4. The Administrator has filed a proof of claim in respect of the estimated \$2,727,000, deficit with the Trustee in Bankruptcy. The Administrator advises that the Trustee in Bankruptcy has not completed their administration of the bankruptcy but have advised them that it is unlikely there will be any proceeds from the bankrupt estate of Fantom Technologies Inc. to make payments to the Pension Plan.
  5. The Administrator has advised that they are reasonable and probable grounds for considering that the funding requirements of the Act and Regulation cannot be satisfied.

**DATED** at North York, Ontario, this 22nd day of October, 2004.

Tom Golfetto  
Director, Pension Plans Branch  
by Delegated Authority from  
the Superintendent of Financial Services



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

**AND IN THE MATTER OF** a Proposal by  
the Superintendent of Financial Services  
to Make a Declaration under Section 83 of  
the Act respecting the **Pension Plan for  
Employees of General Publishing Co.  
Limited, Registration Number 0563148;**

**TO:** **Morneau Sobeco**  
895 Don Mills Road, Suite 700  
One Morneau Sobeco Centre  
Toronto ON M2C 1W3

**Attention:** David R. Kearney  
Senior Consultant  
**Administrator  
of the Pension Plan**

**AND TO:** **General  
Publishing Co. Limited**  
895 Don Mills Road  
400-2 Park Centre  
Toronto ON M3C 1W3

**Attention:** Mary Hainey  
Manager Human Resources  
**Employer**

**AND TO:** **Deloitte & Touche Inc.**  
79 Wellington Street West  
Maritime Life Tower  
Toronto Dominion Centre,  
P.O. Box 29  
Toronto ON M5K 1B9

**Attention:** Paul Denton  
Director, Financial  
Advisory Services  
**Trustee in Bankruptcy  
for General  
Publishing Co. Limited**

**AND TO:** **Graphic  
Communications  
International  
Union Local 500M**  
324 Prince Edward Drive  
Suite 10  
Toronto ON M8Y 3Z5

**Attention:** John Bickford  
Office Manager  
**Union**

### **DECLARATION**

#### **WHEREAS:**

1. The Pension Plan for Employees of General Publishing Co. Limited, Registration Number 0563148 (the “Pension Plan”), is registered under the *Pension Benefits Act*, R.S.O. 1990, c. P. 8, as amended by the *Financial Services Commission of Ontario Act*, 1997, c. 28, (the “Act”); and
2. The Pension Plan provides defined benefits that are not exempt from the application of
3. the Pension Benefits Guarantee Fund (the “Guarantee Fund”) by the Act or the regulations made thereunder; and
4. The Pension Plan was wound up in full for those members who ceased to be employed effective between April 30, 2002 and August 19, 2002; and



5. The Superintendent of Financial Services Commission appointed Morneau Sobeco as the Administrator (the "Administrator") of the Pension Plan on September 5, 2002.
6. On August 16, 2004, the Deputy Superintendent, Pensions, issued a Notice of Proposal dated August 16, 2004, to Make a Declaration that the Guarantee Fund applies to the Pension Plan; and
7. No notice requiring a hearing by the Financial Services Tribunal, pursuant to subsection
8. 89 (6) of the Act, has been received.

**NOW THEREFORE TAKE NOTICE I** declare pursuant to sections 83 and 89 of the Act that the Guarantee Fund applies to the Pension Plan for the following reasons:

1. The most recent Actuarial Valuation Report for this Pension Plan was produced by the plan actuary as of June 30, 2001. The Pension Plan was reported to have a 96.4% transfer ratio at that date and a solvency deficiency of \$75,000.

Following its appointment, the Administrator requested the actuary prepare a preliminary estimate of the wind up liabilities of the Pension Plan as of August 19, 2002. The actuary estimated the wind up funded ratio as 72.6% and a solvency deficiency of \$723,800.

2. Deloitte & Touche Inc. was appointed Trustee in Bankruptcy on August 20, 2002.
3. The Administrator has filed a proof of claim with the Trustee in Bankruptcy in respect of the deficiencies in the Pension

Plan but has not received a response from the Trustee in Bankruptcy.

4. The Administrator has advised that they are reasonable and probable grounds for considering that the funding requirements of the Act and Regulation cannot be satisfied.

**DATED** at North York, Ontario, this 22nd day of October, 2004.

Tom Golfetto  
Director, Pension Plans Branch  
by Delegated Authority from  
the Superintendent of Financial Services



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

**AND IN THE MATTER OF** a Proposal by  
the Superintendent of Financial Services  
to Make a Declaration under Section 83 of  
the Act respecting the **Pension Plan for  
Hourly Employees of Maksteel Hamilton  
- Division of Maksteel Inc., Registration  
Number 1059146 (the “Pension Plan”);**

**TO:** **Morneau Sobeco**  
895 Don Mills Road, Suite 700  
One Morneau Sobeco Centre  
Toronto ON M3C 1W3

**Attention:** Pauline Frenette  
Associate Consultant  
**Administrator  
of the Pension Plan**

**AND TO:** **Maksteel Inc.**  
7615 Torbram Road  
Mississauga ON L4T 4A8

**Attention:** Jerry Sauer  
Manager  
Human Resources  
**Employer**

**AND TO:** **Ernst & Young Inc.**  
222 Bay Street, 16th Floor  
Toronto-Dominion Centre  
Toronto ON M5K 1J7

**Attention:** Sharon Hamilton  
Manager  
**Interim Receiver  
for Maksteel Inc.**

**AND TO:** **United Steelworkers  
of America Local 5958**  
1031 Barton Street East  
Hamilton ON L8L 3E3

**Attention:** Bryan Adamczyk  
Staff Representative  
**Union**

## **DECLARATION**

### **WHEREAS:**

1. The Pension Plan is registered under the *Pension Benefits Act*, R.S.O. 1990, c. P. 8 as amended by the *Financial Services Commission of Ontario Act*, 1997, c. 28, (the “Act”); and
2. The Pension Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the “Guarantee Fund”) by the Act or the regulations made thereunder; and
3. The Pension Plan was wound up in full for those members who ceased to be employed effective between July 10, 2001 and December 14, 2001; and
4. The Superintendent initially appointed Arthur Andersen Inc. as the administrator (the “Administrator”) of the Pension Plan on April 18, 2002 and on July 10, 2002, appointed Morneau Sobeco as Administrator to replace Deloitte & Touche





5. On September 3, 2004, the Deputy Superintendent, Pensions issued a Notice of Proposal dated September 3, 2004, to Make a Declaration that the Guarantee Fund applies to the Pension Plan; and
6. No notice requiring a hearing by the Financial Services Tribunal, pursuant to subsection 89 (6) of the Act, has been received.

**NOW THEREFORE TAKE NOTICE I** declare pursuant to sections 83 and 89 of the Act that the Guarantee Fund applies to the Pension Plan for the following reasons:

1. The most-recent actuarial report on the Pension Plan was the Supplemental Wind-Up Actuarial Report prepared as of July 31, 2001 by BCM Actuarial Consulting Ltd. That report showed a wind up deficiency of \$7,400 as at July 31, 2001. The Administrator had its actuary prepare a preliminary valuation of the Pension Plan as at December 31, 2001. The result of that review determined that the wind up deficiency had deteriorated to approximately \$283,075, and an estimated-funded ratio of 75% as at December 31, 2001.
2. Ernst & Young was appointed Interim Receiver of Maksteel Inc. on January 7, 2002.
3. The Administrator has advised that they have filed a Proof of Claim with the Interim Receiver in the amount of \$164,880 but was advised by the Interim Receiver that there are no funds available for distribution to unsecured creditors.

4. The Administrator has advised that they are reasonable and probable grounds for considering that the funding requirements of the Act and Regulation cannot be satisfied.

**DATED** at North York, Ontario,  
this 27th day of October, 2004.

Tom Golfetto  
Director, Pension Plans Branch  
by Delegated Authority from  
the Superintendent of Financial Services



## Allocations of Money from the Pension Benefits Guarantee Fund

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

**AND IN THE MATTER OF** a Declaration  
by the Superintendent of Financial Services  
under section 83 of the Act relating to  
the **Revised Pension Plan for Salaried  
Employees of Marsh Engineering Limited**,  
Registration Number 276030 (“the Plan”);

**TO:** **Morneau Sobeco**  
895 Don Mills Road, Suite 700  
One Morneau Sobeco Centre  
Toronto ON M3C 1W3

**Attention:** Mr. David R. Kearney  
Appointed Plan  
**Administrator**  
 (“Administrator”)

**AND TO:** **Marsh Engineering Limited**  
118 West Street  
Port Colborne ON L3K 4C9

**Attention:** Charlotte Watson  
Payroll Administrator  
**Employer**

**AND TO:** **Marsh Instrumentation Inc.**  
1016-C Sutton Drive  
Burlington ON L7L 6B8

**Attention:** Ronald Bake  
President  
**Participating Employer**

**AND TO:** **Deloitte & Touche Inc.**  
181 Bay Street, Suite 1400  
BCE Place  
Toronto ON M5J 2V1

**Attention:** Robert Paul  
Partner  
**Trustee in Bankruptcy**

### ALLOCATION

**WHEREAS** on the 27th day of August, 2003,  
the Superintendent of Financial Services  
declared, pursuant to sections 83 and 85 of the  
Act, that the Pension Benefits Guarantee fund  
(the “Guarantee Fund”) applies to the Plan,

**NOW THEREFORE I** shall allocate from  
the Guarantee Fund and pay to the Plan,  
pursuant to subsection 34(7) of R.S.O. 1990.  
eg. 909, under the Act (the “Regulation”),  
an amount not to exceed \$1,896,600 to  
provide, together with the Ontario assets  
of the Plan, for the benefits determined in  
accordance with section 34 of the Regulation,  
and to pay the reasonable administration  
costs to wind up the Plan. Any money  
allocated from the Guarantee Fund but not  
required to provide such benefits or costs  
shall be returned to the Guarantee Fund.

**DATED** at Toronto, Ontario,  
this 16th day of July, 2004.

K. David Gordon  
Deputy Superintendent, Pensions



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

**AND IN THE MATTER OF** a Declaration  
by the Superintendent of Financial Services  
under section 83 of the Act relating to the  
**Pension Plan for Employees of Moyer Vico  
Corp., Registration Number 465070;**

**TO:** **Morneau Sobeco**  
895 Don Mills Road, Suite 700  
One Morneau Sobeco Centre  
Toronto ON M3C 1W3

**Attention:** Ms. Pauline Frenette  
Associate Consultant  
**Administrator**

**AND TO:** **Moyer Vico Corp.**  
25 Milvan Drive  
Weston ON M9L 1Z1

**Attention:** Adam Okhai  
President & CEO  
**Employer**

**AND TO:** **Mintz and Partners Limited**  
1446 Don Mills Road, Suite 100  
Don Mills ON M3B 3N6

**Attention:** Daniel R. Weisz  
Senior Vice-President  
**Trustee in Bankruptcy**

**AND TO:** **Industrial Wood & Allied  
Workers of Canada, Local 1-700**  
2088 Weston Road  
Toronto ON M9N 1X4

**Attention:** Ron Diotte  
President, Local 1-700  
**Union representative  
for the members of the Plan**

### **ALLOCATION**

**WHEREAS** on the 18th day of June, 2004, the  
Superintendent of Financial Services declared,  
pursuant to sections 83 and 85 of the Act,  
that the Pension Benefits Guarantee fund  
(the “Guarantee Fund”) applies to the Plan,

**NOW THEREFORE I** shall allocate from  
the Guarantee Fund and pay to the Plan,  
pursuant to subsection 34(7) of R.S.O. 1990.  
eg. 909, under the Act (the “Regulation”), an  
amount not to exceed \$351,300 to provide,  
together with the Ontario assets of the Plan,  
for the benefits determined in accordance  
with section 34 of the Regulation, and to  
pay the reasonable administration costs to  
wind up the Plan. Any money allocated  
from the Guarantee Fund but not required  
to provide such benefits or costs shall  
be returned to the Guarantee Fund.

**DATED** at Toronto, Ontario,  
this 16th day of July, 2004.

K. David Gordon  
Deputy Superintendent, Pensions





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

**AND IN THE MATTER OF** a Proposal  
by the Superintendent of Financial  
Services to Make a Declaration under  
Section 83 of the Act respecting the  
**Pension Plan for the Employees of  
United Tire & Rubber Co. Limited  
Represented by United Steel Workers  
of America, Local 3950 (the “Pension  
Plan”), Registration Number 0424671;**

**TO:**           **PricewaterhouseCoopers Inc.**  
1 Robert Speck Parkway  
Suite 1100  
Mississauga ON M5G 1G8

**Attention:**   Lois J. Reyes  
Manager  
**Administrator  
of the Pension Plan**

### **ALLOCATION**

**WHEREAS** on May 25, 2004, the Director,  
Pension Plans Branch, declared, pursuant to  
sections 83 and 89 of the Act, that the Pension  
Benefits Guarantee Fund (the “Guarantee  
Fund”) applies to the Pension Plan;

**NOW THEREFORE I** shall allocate from  
the Guarantee Fund and pay to the Pension  
Plan, pursuant to subsection 34(7) of  
R.R.O. 1990, Reg. 909, under the Act (the  
“Regulation”), an amount not to exceed  
\$680,630 which together with the Ontario  
assets of the Pension Plan, will provide  
for the benefits determined in accordance

with section 34 of the Regulation. Any  
money allocated from the Guarantee Fund  
but not required to provide such benefits  
shall be returned to the Guarantee Fund.

**DATED** at Toronto, Ontario,  
this 11th day of August, 2004.

K. David Gordon  
Deputy Superintendent, Pensions





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

**AND IN THE MATTER OF** a  
Declaration by the Superintendent  
of Financial Services under  
Section 83 of the Act respecting the  
**Pension Plan for Unionized Employees  
of Northern Globe Building Materials  
(Thorold Division), Registration Number  
680405 (formerly C-104311) (the “Plan”);**

**TO:** **Morneau Sobeco**  
895 Don Mills Road, Suite 700  
One Morneau Sobeco Centre  
Toronto ON M3C 1W3

**Attention:** Mr. David R. Kearney  
Senior Consultant  
**Appointed  
Administrator of the Plan**

**AND TO:** **Communications, Energy and  
Paper Workers  
Union of Canada**  
5890 Aspen Court  
Niagara Falls ON L2G 7V3

**Attention:** Michael Lambert  
National Representative  
**Union Representative  
for the members of the Plan**

**ALLOCATION**

**WHEREAS** on the 25th day of August,  
2004, a declaration was made, pursuant  
to sections 83 and 89 of the Act, that the

Pension Benefits Guarantee Fund (the  
“Guarantee Fund”) applies to the Plan;

**NOW THEREFORE I** shall allocate from  
the Guarantee Fund and pay to the Plan,  
pursuant to subsection 34(7) of R.R.O. 1990,  
Reg. 909, under the Act (the “Regulation”), an  
amount not to exceed \$593,100 determined as  
of October 1, 2004 to provide, together with  
the Ontario assets of the Plan, for the benefits  
determined in accordance with section 34  
of the Regulation, and to pay the reasonable  
administration costs to wind up the Plan. Any  
money allocated from the Guarantee Fund  
but not required to provide such benefits or  
costs shall be returned to the Guarantee Fund.

**DATED** at North York, Ontario,  
this 14th day of October, 2004.

K. David Gordon

Deputy Superintendent, Pensions

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

**AND IN THE MATTER OF** a Declaration  
by the Superintendent of Financial Services  
under Section 83 of the Act, respecting  
the **Retirement Plan for the Hourly  
Employees of Superior Machine and  
Tool (Chatham) Limited, Registration  
Number 0327601 (the “Plan”)**;

**TO:** **Morneau Sobeco**  
895 Don Mills Road, Suite 700  
One Morneau Sobeco Centre  
Toronto ON M3C 1W3

**Attention:** Mr. David R. Kearney  
Senior Consultant  
**Appointed  
Administrator of the Plan**

**AND TO:** **Zwaig Consulting Inc.**  
Suite 1560, Exchange Tower  
P.O. Box 17, 130 King Street West  
Toronto ON M5X 1J5

**Attention:** Mr. Jeffrey D. Kerbel  
**Trustee in Bankruptcy  
and Interim Receiver  
and Manager**

### **ALLOCATION**

**WHEREAS** on the 16th day of January,  
2002, a declaration was made, pursuant  
to sections 83 and 89 of the Act, that the  
Pension Benefits Guarantee Fund (the  
“Guarantee Fund”) applies to the Plan;

**NOW THEREFORE I** shall allocate from  
the Guarantee Fund and pay to the Plan,  
pursuant to subsection 34(7) of R.R.O. 1990,  
Reg. 909, under the Act (the “Regulation”),  
an amount not to exceed \$600,648 to provide,  
together with the Ontario assets of the Plan,  
for the benefits determined in accordance  
with section 34 of the Regulation, and to  
pay the reasonable administration costs to  
wind up the Plan. Any money allocated  
from the Guarantee Fund but not required  
to provide such benefits or costs shall  
be returned to the Guarantee Fund.

**DATED** at North York, Ontario,  
this 14th day of October, 2004.

K. David Gordon

Deputy Superintendent, Pensions





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

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to Make a Declaration under Section 83 of the Act, respecting the **Retirement Plan for the Employees of Alloy Wheels International (Canada) Ltd., Registration Number 1036029 (the Pension Plan)**;

**TO:** **Morneau Sobeco**  
895 Don Mills Road, Suite 700  
One Morneau Sobeco Centre  
Toronto ON M3C 1W3

**Attention:** David Kearney  
Senior Consultant  
**Administrator  
of the Pension Plan**

### **ALLOCATION**

**WHEREAS** on August 13, 2004, the Director, Pension Plans Branch declared, pursuant to sections 83 and 89 of the Act, that the Pension Benefits Guarantee Fund (the "Guarantee Fund") applies to the Pension Plan;

**NOW THEREFORE I** shall allocate from the Guarantee Fund and pay to the Pension Plan, pursuant to subsection 34(7) of R.R.O. 1990, Reg. 909, under the Act (the "Regulation"), an amount not to exceed \$5,475,100, which together with the Ontario assets of the Pension Plan, will provide for the benefits determined in accordance with section 34 of the Regulation. Any money allocated from the Guarantee Fund

but not required to provide such benefits shall be returned to the Guarantee Fund.

**DATED** at Toronto, Ontario, this 29th day of October, 2004.

K. David Gordon  
Deputy Superintendent, Pensions

## FINANCIAL SERVICES TRIBUNAL ACTIVITIES

### Appointments of Financial Services Tribunal Members

<u>Name and O.C.</u>	<u>Effective Appointment Date</u>	<u>Expiry Date</u>
McNairn, Colin (Chair)		
O.C. 1518/2004	August 11, 2004	August 10, 2006
O.C. 1192/2004	June 9, 2004	September 8, 2004
O.C. 1623/2001	June 20, 2001	June 19, 2004
O.C. 1809/98	July 8, 1998	July 7, 2001
Corbett, Anne (Vice-Chair)		
O.C. 1519/2004	August 11, 2004	August 10, 2006
O.C. 1193/2004	June 9, 2004	September 8, 2004
O.C. 1438/2001	June 20, 2001	June 19, 2004
Ashe, Kevin		
O.C. 1510/2002	September 26, 2002	September 25, 2005
Bharmal, Shiraz Y.M.		
O.C. 1511/2002	September 9, 2002	September 8, 2005
Brown, Martin J. K.		
O.C. 1522/2004	August 11, 2004	August 10, 2006
Erllichman, Louis		
O.C. 439/2002	January 23, 2002	January 22, 2005**
O.C. 2527/98	December 9, 1998	December 8, 2001
O.C. 1592/98	June 17, 1998	December 16, 1998
Gavin, Heather		
O.C. 440/2002	January 23, 2002	January 22, 2005**
O.C. 11/99	January 13, 1999	January 12, 2002
Holden, Florence A.		
O.C. 1523/2004	August 11, 2004	August 10, 2006
Litner, Paul W.		
O.C. 1512/2002	September 9, 2002	September 8, 2005
Scane, Ralph Edward		
O.C. 1520/2004	August 11, 2004	August 10, 2006
Short, David A.		
O.C. 2118/2001	October 24, 2001	October 23, 2004
O.C. 2095/2004	November 3, 2004	November 2, 2006
Solursh, John M.		
O.C. 1521/2004	August 11, 2004	August 10, 2006

\*\* or on the day FSCO/OSC merges, if earlier.

## Pension Hearings Before the Financial Services Tribunal

**Revised Retirement Plan for Employees of the Allen-Bradley Division of Rockwell International of Canada (now the Pension Plan for Employees of Rockwell Automation Canada Inc.), Registration Number 321554, and the Pension Plan for Salaried and Management Employees of Reliance Electric Limited, Registration Number 292946, FST File Number P0051-1999;**

On May 18, 1999, members of the Reliance Plan, requested a hearing regarding a decision of the Director of Pension Plans Branch of the Financial Services Commission, by delegated authority from the Superintendent of Financial Services, dated March 20, 1999, with respect to the transfer of assets from the Pension Plan for Salaried and Management Employees of Reliance Electric Limited to the Revised Retirement Plan for Employees of the Allen-Bradley Division of Rockwell International of Canada.

On June 2, 1999, an application for party status was filed by Rockwell Automation Canada Inc.

At the pre-hearing conference on July 6, 1999 full party status was granted. The matter was adjourned sine die as the Applicants indicated that an application would be made to the Superintendent requesting a wind up of the Reliance Plan and all parties agreed that it would be premature to proceed in this matter until the Superintendent has made a decision respecting the request for wind up.

The pre-hearing conference is scheduled to resume on January 20, 2005.

**The Retirement Plan for Salaried Employees (Consumer Foods) of General Mills Canada, Inc., Registration Number 342042, FST File Number P0058-1999;**

On June 30, 1999, General Mills Canada Inc. requested a hearing regarding the Superintendent's Notice of Proposal dated May 19, 1999 refusing to approve a partial wind up report. The grounds for the refusal were: (a) the partial wind up report did not deal with the treatment of surplus on partial wind up; (b) the payment of benefit enhancements on wind up to certain members constituted an inequitable distribution of surplus, and an indirect payment of surplus to the employer without following the statutory requirements for the payment of surplus to the employer; and (c) proper notice of the partial wind up was not provided to the affected members, and the partial wind up report did not allow the affected members who were entitled to an immediate pension and who receive a "special pension upgrade" to commute their pension benefits.

On May 12, 2000, at the request of the parties, the matter was adjourned sine die pending the outcome of the *Monsanto* case. On July 29, 2004, the Supreme Court of Canada released its decision in the *Monsanto* case. On September 2, 2004, the Superintendent requested a pre-hearing conference be scheduled.



The pre-hearing conference scheduled for December 8, 2004 was adjourned sine die at the request of the parties on October 27, 2004, due to settlement discussions.

**Gerald Menard; Public Service Pension Plan, Registration Number 208777 and the Ontario Municipal Employees' Retirement System "OMERS", Registration Number 345983, FST File Number P0071-1999;**

A request for hearing was filed on December 16, 1999, by Mr. Gerald Menard in respect of a complaint relating to the Public Service Pension Plan Registration Number 208777 and the Ontario Municipal Employees' Retirement System "OMERS", Registration Number 345983.

At a pre-hearing conference on February 21, 2000, the matter was adjourned sine die so that the Applicant could request the Superintendent to make a decision respecting the relief claimed by the Applicant.

On October 15, 2004, the request for hearing was withdrawn.

**Consumers' Gas Ltd.; Pension Plan for Employees of the Consumers' Gas Company Ltd. And Designated Affiliated, Associated and Subsidiary Companies (now the Pension Plan for Employees of Enbridge Gas Distribution Inc. and Affiliates), Registration Number 242016, FST File Number P0076-1999;**

On August 19, 1999, the Superintendent issued a Notice of Proposal to refuse to

approve a partial wind up report filed by the Consumers' Gas Company Ltd. with respect to the sale of the Telesis Oil and Gas Division of Consumers' Gas. The grounds for the refusal were: (a) the report did not provide for the distribution of the surplus attributable to the partial wind up group; (b) the report did not provide "grow in" to indexation benefits for members who had achieved 55 points under subsection 74(1) of the *Pension Benefits Act* (rather, it provided these benefits only to members who were 55 years old); and (c) the report did not include certain bonuses paid to Telesis employees in the calculation of earnings in determining the commuted value of these employees' pensions.

A pre-hearing conference was held on November 15, 1999, December 2, 1999, and April 3, 2000, during which time a Group of Former Employees of Telesis was added as a party. The pre-hearing reconvened on June 27, 2000 and the matter was adjourned sine die pending the outcome of the *Monsanto* case.

On July 29, 2004, the Supreme Court of Canada released its decision in the *Monsanto* case. On September 2, 2004, the Superintendent requested a pre-hearing conference be scheduled. At a pre-hearing conference on October 13, 2004, the parties executed Minutes of Settlement, which were made an Order of the Tribunal. The Order, dated October 19, 2004, is published in this bulletin on page 207.

**Schering-Plough Healthcare Products Canada Inc. Salaried Employees'**

**Pension Plan, Registration Number  
297903, FST File Number P0085-1999;**

On November 10, 1999, Schering-Plough Healthcare Products Canada Inc. filed a request for hearing regarding the Superintendent's Notice of Proposal dated October 14, 1999, ordering Schering-Plough Healthcare Products Canada Inc. to amend the partial wind up report with respect to its salaried pension plan as at August 31, 1996, so that the surplus attributable to the partial wind up group would be distributed.

On March 27, 2000 a number of affected plan members filed an application for party status. The matter was adjourned sine die on May 10, 2000 pending the outcome of the *Monsanto* case. On July 29, 2004, the Supreme Court of Canada released its decision in the *Monsanto* case. On September 2, 2004, the Superintendent requested a pre-hearing conference be scheduled.

A pre-hearing conference is scheduled for December 15, 2004.

**Cooper Industries (Canada) Inc.,  
Retirement Plan for Salaried Employees  
of Cooper Canada – Plan A Registration  
Number 0240622, FST File P0156-2001;**

On April 17, 2001, Cooper Industries (Canada) Inc. requested a hearing with respect to the Superintendent's Notice of Proposal dated March 8, 2001, to Refuse to Approve a Partial Wind Up Report, prepared in November 1999 in relation to the partial wind up of the Retirement Plan for Salaried Employees

of Cooper Canada – Plan A, Registration Number 0240622, as at March 30, 1992, in relation to employees at the Port Hope location of Cooper Industries (Canada) Inc., and to make an Order requiring Cooper Industries (Canada) Inc. to refrain from using and to preserve for distribution that portion of the surplus of the Plan attributable to the Port Hope location. The basis for the Notice of Proposal was that the Partial Wind Up Report proposed that the surplus assets of the Plan attributable to the Port Hope location be retained for continuing application toward future current service contributions for the Plan's continuing membership and, therefore, failed to provide for distribution of the Port Hope surplus assets.

On May 15, 2001, Messrs. Ray Mills and Larry Battersby applied for party status on behalf of Plan members and former Plan members employed at the Port Hope plant and beneficiaries of same.

A pre-hearing conference was held on September 5, 2001 at which Messrs. Mills and Battersby were joined as parties. The pre-hearing conference for May 27, 2002 was adjourned to a date to be set at the request of the parties, pending the outcome of the *Monsanto* case.

On July 29, 2004, the Supreme Court of Canada released its decision in the *Monsanto* case. On September 2, 2004, the Superintendent requested a pre-hearing conference be scheduled. The pre-hearing conference, scheduled for November 1, 2004,

was adjourned on consent of the parties to allow for settlement discussions.

**Marcel Brousseau, Electrical Industry of Ottawa Pension Plan, Registration Number 0586396, FST File Number P0183-2002;**

On February 20, 2002, Marcel Brousseau, a member of the Plan, requested a hearing regarding the Superintendent's Notice of Proposal dated January 22, 2002, to refuse to make an order in respect of the Plan Administrator's determination, pursuant to section 87 of the *Pension Benefits Act*, of Mr. Brousseau's pensionable service under the terms of the Plan.

A pre-hearing conference was held on August 27, 2002. At the pre-hearing conference, the Superintendent raised a jurisdictional issue which it was agreed would be dealt with through a motion. The parties agreed that the issue on the motion was whether, given the November 19, 2001 decision of the Superior Court of Justice in *Board of Trustees of the Electrical Industry of Ottawa Pension Plan v. Cybulski*, Court File No. 01-CV-18268, the Tribunal had jurisdiction to proceed in the circumstances of this case.

At the motion hearing on November 29, 2002, the Superintendent argued that the Tribunal did not have jurisdiction to hear the Applicant's request because the issue that is the subject of the Applicant's request for hearing was decided by the Ontario Superior Court of Justice. The Superintendent therefore argued that the doctrine of issue estoppel applies and precludes the Tribunal

from holding a hearing. In its majority reasons dated October 27, 2003, the Tribunal determined that the doctrine of issue estoppel does not apply and that even if it did, this was a proper case for the exercise of the Tribunal's discretion to refuse to apply that doctrine. The Reasons for Decision dated October 27, 2003, were published in Volume 13, Issue 1 of the Pension Bulletin.

At a resumption of the pre-hearing conference on November 12, 2003, hearing dates for February 2-3, 2004 were agreed to.

On December 17, 2003, an application for party status was filed by the Board of Trustees, Electrical Industry of Ottawa Pension Plan. At a resumption of the pre-hearing conference on January 12, 2004, full party status was granted, and the hearing dates were changed. At the hearing on March 30, 2004, the panel reserved its decision.

In its Reasons dated October 22, 2004, the Superintendent was ordered to refrain from issuing the Notice of Proposal, and the Trustees were directed to provide credited service to Mr. Brousseau for the first 90 days after his layoff in 1983 (starting from September 12, 1983) and for two weeks plus 90 days in 1984. The Reasons dated October 22, 2004, are published in this bulletin on page 214.

**Elaine Nolan, George Phillips, Elisabeth Ruccia, Kenneth R. Fuller, Paul Carter, R.A. Varney and Bill Fitz being the members of the DCA Employees Pension Committee, Pension Plan for the Employees of Kerry**



**(Canada) Inc., Registration Number  
238915, FST File Number P0192-2002;**

On May 27, 2002, William Fitz on behalf of the DCA Employees Pension Committee, requested a hearing regarding the Superintendent's Notice of Proposal, dated April 22, 2002, proposing to refuse to make an order that:

- the Plan be wound up, effective December 31, 1994;
- Kerry (Canada) Inc. pay to the pension fund (the "Fund") of the Plan all employer contributions for which a contribution holiday was taken since January 1, 1985, together with income that would have been earned by the Fund if those contributions had been made; and
- registration of the Revised and Restated Plan Text dated January 1, 2000, and all amendments to the Plan included therein, be refused.

On June 5, 2002, Kerry (Canada) Inc. filed an application for party status.

At the pre-hearing conference on October 15, 2002, full party status was granted to Kerry (Canada) Inc. The pre-hearing conference was adjourned to allow the parties to bring certain motions with respect to disclosure. At the motion hearing on December 6, 2002, three orders for disclosure were issued, one against Kerry (Canada) Inc., one against the DCA Employees Committee and one against the Superintendent.

On January 22, 2003, the pre-hearing conference resumed and was further adjourned to allow a further disclosure motion to be brought by the DCA Employees Pension Committee. The motion was heard on March 27, 2003, at which time it was dismissed.

On June 5, 2003, the pre-hearing conference resumed to deal with the framing of the "partial wind-up issue." The DCA Employees Pension Committee indicated that it would be bringing a motion for an order that would add an issue to or otherwise amend the matters in issue. That motion and another motion by Kerry (Canada) Inc. to amend the "partial wind up issue" were heard on June 25, 2003. At the hearing, the parties agreed on a revised wording of the "partial wind up issue," and it was ordered that the statement of the issues in the proceeding be amended accordingly.

At a resumption of the pre-hearing conference on October 14, 2003, the parties agreed to hearing dates. On March 2-3, 2004, the Tribunal heard the evidence of the witnesses who were put forward in this matter.

On April 8, 2004, the Tribunal heard argument from the parties with respect to the DCA Employees Pension Committee's request that the Tribunal issue reasons for decision concerning the earlier motions for disclosure brought by the Committee. The Tribunal denied the request. The Tribunal also heard argument from the parties concerning the Applicant's reply submissions, in addition to a request that the argument phase of the hearing be adjourned to permit surreply

submissions from the Respondents. The Respondents argued that the Applicant's reply submissions raised new issues and arguments not previously addressed. The request for adjournment was granted to allow the Respondents time to prepare, file and serve surreplies to the Applicant's reply. On June 8 and 9, 2004, the Tribunal heard oral arguments from the parties.

In its Reasons for Decision dated September 1, 2004, the Tribunal ordered the Superintendent to carry out the proposals in its Notice of Proposal except that the Superintendent was ordered to deny registration of the 2000 Plan unless certain amendments were made to preserve the interests of the Plan members who were beneficiaries of the trust in respect of the Fund, failing which the Superintendent was ordered to require Kerry (Canada) to reimburse the Fund for contribution holidays taken in respect of the Plan since January 1, 2000. The Reasons for Decision are published in this bulletin on page 193.

On September 29, 2004, the DCA Employees Pension Committee made a request to the Tribunal for an order of costs against Kerry (Canada) Inc. payable out of the Fund. On October 1, 2004, Kerry (Canada) Inc. made a request to the Tribunal for an order of costs against the DCA Employees Pension Committee. The hearing on the issue of costs is scheduled for December 9, 2004.

**Bestfoods Canada Inc., Pension Plan for Salaried Employees of Bestfoods Canada Inc., Registration Number 240358, FST File Number P0222-2003;**

On March 24, 2003, Mr. Gerry O'Connor requested a hearing regarding the Superintendent's Notice of Proposal dated February 25, 2003, to refuse to make an order, pursuant to section 69 (1) (d) or (e) of the *Pension Benefits Act*, to wind up, in part, the Pension Plan for Salaried Employees of Bestfoods Canada Inc., Registration Number 240358.

On April 11, 2003, an application for party status was filed by Unilever Canada Inc., the successor to Bestfoods Canada Inc. At the pre-hearing conference on June 25, 2003, full party status was granted to Unilever Canada Inc. The pre-hearing conference was adjourned to allow the parties the opportunity to resolve some preliminary issues and to allow the Applicant to bring a motion, as necessary, with respect to disclosure of documents and notice of hearing. The motion hearing scheduled for September 22, 2003, was rescheduled to November 3, 2003, at the request of the parties. At the end of the hearing on the motion, the Tribunal made Orders framing the issues in the proceeding, establishing the requirements for giving notice of the main hearing and requiring disclosure by Unilever Canada Inc. and the Superintendent of certain material relevant to the issues in the proceeding.

On January 22, 2004, the Tribunal heard argument from the parties on a request by Unilever Canada Inc. for an order separating certain jurisdictional and standing issues for preliminary determination by the Tribunal. That request was denied, the Tribunal confirming its earlier decision to receive any evidence and hear argument on those issues, along with evidence and argument on the other issues, at the main hearing in this proceeding.

On March 2, 2004, the Tribunal granted the parties' request to defer the disclosure date, and adjourn the March 8, 2004 pre-hearing conference return date, as the parties are engaged in settlement discussions.

On August 6, 2004, the request for hearing was withdrawn.

**Boilermakers' National Pension Plan (Canada), Registration Number 0366708, FST File Number P0228-2003**

On October 7, 2003, Trustees of the Boilermakers' National Pension Plan (Canada) (the "Plan") requested a hearing regarding the Superintendent's Notice of Proposal dated September 22, 2003. By the terms of the Notice of Proposal, the Superintendent proposes to:

- revoke or refuse to register certain amendments to the Plan which provide that a member is deemed not to be retired unless he or she has withdrawn from employment in the construction industry, or to reduce an early retirement benefit for a member who is re-employed by an

employer not participating in the Plan, on the grounds that these amendments impose additional requirements for, or restrictions on the continued receipt of, early retirement benefits in breach of s. 40(2) of the *Pension Benefits Act* (the "Act");

- direct the trustees of the Plan to cease requiring members who are retiring early to confirm that they will cease working in the boilermaker industry, on the grounds that no such requirement is set out in the Plan; and
- refuse registration of a Plan amendment that would allow a plan member to terminate membership in the Plan if contributions were not made on his or her behalf by a participating employer but only if the member withdraws from employment in the construction industry, on the grounds that this qualification would add a further condition to the right to terminate membership in contravention of s. 38(1) of the Act.

The pre-hearing conference was held on December 8, 2003. Hearing dates for the giving of evidence were scheduled on April 19, 20 and 21, 2004, and oral arguments were scheduled to take place on June 14, 2004.

On February 4, 2004, the parties agreed to adjourn the matter sine die pending finalization of the terms of a settlement.

The request for hearing was withdrawn in accordance with Minutes of Settlement dated November 8, 2004.



**Melnor Canada Ltd. Retirement Income Plan, Registration Number 449777, FST File Number P0233-2004;**

On January 21, 2004, Gardena Canada Ltd. (the “Employer”), requested a hearing regarding the Notice of Proposal dated December 19, 2003 of the Deputy Superintendent, Pensions, to refuse to consent to the application dated March 12, 2002, submitted by the Employer for the payment of surplus on the windup of the Plan to the Employer under subsection 78(1) of the Act.

On February 25, 2004, David Evans, a member of the Plan, filed an application for party status.

On March 5, 2004, applications for party status were filed by Raymond Bamsey, Ernest Burke, Pat Dobson, Leone Douglas, Gloria Dunn, Karen Garvey, Doreen Harding, Connie Heron, James Peter and Patricia Sinden, who are active, deferred vested and retired members of the Plan (“the Ten Members”).

On March 19, 2004, Kevin MacRae, a member of the Plan, filed an application for party status.

On March 24, 2004, Liviana Macoretta, a member of the Plan, filed an application for party status, which was subsequently withdrawn on April 20, 2004.

At the pre-hearing conference on May 6, 2004, the Ten Members were granted full party status on consent of all parties. The applications for party status filed by

Kevin MacRae and David Evans were denied as no one was in attendance to speak to the respective applications.

At a settlement conference on July 29, 2004, the parties settled the matter. The request for hearing and Notice of Proposal will be withdrawn once the settlement is fully implemented.

**Hugo Jaik, Electrical Industry of Ottawa Pension Plan, Registration Number 0586396, FST File Number P0235-2004;**

On February 16, 2004, Hugo Jaik, a former member of the Plan, requested a hearing regarding the Deputy Superintendent, Pensions’ Notice of Proposal, dated January 28, 2004, to refuse to make an order requiring the Board of Trustees of the Electrical Industry of Ottawa Pension Plan (the “Board”) to recalculate the pension benefits of members, and specifically to recalculate Mr. Jaik’s pension benefit, and requiring that the composition of the Board be amended to comply with the terms of the Plan and declaring that the decisions of the Board improperly constituted are invalid.

A pre-hearing conference was held on May 25, 2004. On July 15, 2004, the Board of Trustees of the Electrical Industry of Ottawa Pension Trust Fund filed an application for party status. At a resumption of the pre-hearing conference on July 26, 2004, full party status was granted to the Board of Trustees.

At a settlement conference on August 5, 2004, the parties were unable to settle the

matter. At a resumption of the pre-hearing conference on August 30, 2004, the hearing date of September 27, 2004 was cancelled and rescheduled to November 30, 2004, and was further rescheduled to January 24, 2005.

**Peter Stopyn, Douglas Llewellyn,  
United Association of Journeyman  
and Apprentices of the Plumbing and  
Pipefitting Industry of the United States  
and Canada, Local 67, Registration Number  
381525; FST File Number P0239-2004;**

On May 13, 2004, Peter Stopyn and Douglas Llewellyn, former members of the Plan, a multi-employer plan, requested a hearing regarding the Deputy Superintendent, Pensions' Notice of Proposal dated April 23, 2004, proposing to refuse to make an order:

- requiring the Trustees of the Plumbing and Pipefitting Workers' Benefit Plans Local 67 (the "Board"), the administrator of the Plan, to refrain from suspending the retirement benefits of former members of the Plan who return to work with a participating employer after the commencement of their retirement benefits;
- requiring the Board to limit the suspension of the retirement benefits of former members of the Plan who return to work with a participating employer after the commencement of retirement benefits to situations where the returning former member works more than 200 hours in any calendar year and not where the returning former member is

paid for more than 200 hours but does not work more than 200 hours; or

- requiring the Trustees to amend the Plan so that the Plan text reflects the requirements listed in paragraphs (a) or (b) above as the case may be.

On July 13, 2004, the Trustees of Local 67, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada Pension Plans filed an application for party status.

On August 10, 2004, Thomas Hand, Albert Creary and Joe Bruno, former members of the Plan, filed applications for party status. On August 19, 2004, John Fischer a former member of the Plan, filed an application for party status.

The pre-hearing conference scheduled for November 23, 2004, was adjourned sine die at the request of the applicants.

**Constantin Munteanu, Portship  
Employees Negotiated Pension  
Plan, Registration Number 0393199;  
FST File Number P0240-2004;**

On June 10, 2004, Constantin Munteanu a former member of the Plan, requested a hearing regarding the Notice of Proposal of the Deputy Superintendent, Pensions, dated April 8, 2004, proposing to refuse to make an Order directing Pascol Engineering, formerly Port Arthur Shipbuilding Company, to make an additional payment from the pension fund for the Portship Employees

Negotiated Pension Plan in respect of Mr. Munteanu's pension benefits or the commuted value of his pension benefits.

The request for hearing was filed outside the 30 day time period set out in subsection 89(6) of the *Pension Benefits Act* (the "Act"). The parties to the proceeding, namely Mr. Munteanu and the Superintendent, and Pascol Engineering were invited to file written representations with the Tribunal directed to the following questions:

- whether the Tribunal has the authority to extend the 30-day time period for making a request for a hearing under s. 89(6) of the Act and,
- if so, whether the Tribunal should exercise that authority in the circumstances of this case.

The parties filed written representations with the Tribunal in November 2004. In its Reasons for Decision dated November 29, 2004, the Tribunal determined that it had the authority to extend the statutory time period and proceeded to grant such an extension as well as an extension of the similar time period under the Tribunal's Rules of Practice and Procedure for filing a formal Request for Hearing. Therefore, a hearing in this matter will now be convened. In the meantime, a pre-hearing conference is being scheduled. The Reasons for Decision dated November 29, 2004, are published in this bulletin on page 219.

**Power Workers' Union, Kinectrics Inc.  
Pension Plan, Registration Number  
1075787; FST File Number P0242-2002;**

On July 15, 2004, the Power Workers' Union requested a hearing regarding a refusal, evidenced by a letter from the Pension Plan Branch of the Financial Services Commission dated May 28, 2004, to issue an Order under s. 87 of the *Pension Benefits Act* requiring the administrator of the Kinectrics Inc. Pension Plan to take certain action and to refrain from taking other action in order to bring the Plan into compliance with the Act. The Power Workers' Union had requested that the Superintendent issue a Notice of Proposal requiring Kinectrics Inc. to immediately cease taking a contribution holiday, to prepare and file an updated actuarial report, and to commence funding the Plan pursuant to the updated actuarial report. The Pension Plan Branch took the position, in its May 28 letter, that the Plan was being funded in accordance with the latest filed actuarial report and that no new actuarial report was yet due as the filed report did not disclose a funding concern.

On July 23, 2004, Kinectrics Inc filed an application for party status. At a pre-hearing conference on November 15, 2004, the Tribunal was advised that a new financial actuarial report in respect of the Plan had been filed by Kinectrics Inc. showing a surplus in the fund for the Plan. At that pre-hearing conference, full party status was granted to Kinectrics Inc. and the conference was then adjourned, at the request of the parties, to allow for a settlement conference.





A settlement conference was held on November 15, 2004, at which time the parties requested the settlement conference resume again on December 7, 2004.

**Mary Sutton and other members and former members, AIG Assurance Canada Pension Plan, Registration Number 0284604; FST File Number P0245-2004**

On November 23, 2004, Mary Sutton and other members and former members of the Plan, requested a hearing regarding the Notice of Proposal of the Deputy Superintendent, Pensions, dated October 22, 2004, proposing to refuse to make an Order that the Plan be wound up under s. 69(1)(a) of the Act. A pre-hearing conference is being scheduled.

**The following cases are adjourned *sine die*:**

- **Eaton Yale Limited Pension Plan for Salaried Employees of Cutler-Hammer Canada Operations, Registration Number 440396, FST Number P0117-2000;** At the request of the parties, this matter was adjourned sine die pending the outcome of the *Monsanto* case.
- **Crown Cork & Seal Canada Inc., Registration Numbers 474205, 595371 & 338491, FST File Number P0165-2001;** At a settlement conference on October 30, 2001, the parties agreed to adjourn the matter sine die pending discussions between the parties.
- **James MacKinnon (Labourers' Pension Fund of Central and Eastern Canada), Registration Number 573188, FST File Number P0167-2001;** On July 10, 2002, the hearing dates were adjourned sine die on consent of the parties.
- **Bauer Nike Hockey Inc. Pension Plan for Employees of Bauer Nike Hockey Inc., Registration Number 257337, FST File Number P0189-2002;** At the pre-hearing conference on October 28, 2002, the matter was adjourned sine die pending the outcome of the *Monsanto* case.
- **Slater Steel Inc. Pension Plan for Corporate Employees and Salaried Employees of the Hamilton Specialty Bar Division, Registration Number 308338, FST File Number P0203-2002;** On June 2, 2003, an Order was issued by the Ontario Superior Court of Justice in relation to Slater Steel Inc., pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36. The Order includes a stay of all proceedings. The hearing in this matter originally scheduled for October 8-10, 15-16, 2003, therefore did not proceed.
- **George Polygenis, Public Service Pension Plan, Registration Number 0208777, FST File Number P0204-2002;** On May 29, 2003, the parties consented to adjourn the June 11, 2003 hearing date sine die, pending finalization of a settlement.
- **Slater Stainless Corp. Pension Plan for Slater Stainless Corp. Members of the National Automobile Aerospace, Transportation and General Workers Union of Canada (CAW-Canada), Registration Number 561456, FST File Number P0220-2003;** The pre-hearing conference scheduled for June 16, 2003 did not proceed since an Order was issued on June 2, 2003 by the Ontario Superior Court

of Justice in relation to Slater Stainless Corp., pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36. The Order includes a stay of all proceedings.

- **Slater Stainless Corp. Pension Plan for Slater Stainless Corp. Members of the United Steel Workers of America (Local 7777), Registration Number 561464, FST File Number P0221-2003;** The pre-hearing conference scheduled for June 16, 2003 did not proceed since an Order was issued on June 2, 2003 by the Ontario Superior Court of Justice in relation to Slater Stainless Corp., pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36. The Order includes a stay of all proceedings.
- **Jane Parker Bakery Limited Retirement Plan for Full-time Bargaining Employees, Registration Number 0400325, FST File Number P0224-2003** On September 8, 2003, the parties advised they agreed to proceed with settlement discussions, and requested that the pre-hearing conference scheduled for September 10, 2003, be adjourned to a date to be determined if one becomes necessary.
- **Plumbers Local 463 Pension Plan, Registration Number 0598532, FST File Number P0230-2003** On February 26, 2004, the matter was adjourned sine die pending the outcome of an application, by the Applicant, for judicial review of the Superintendent's Order dated October 6, 2003.
- **Coats Canada Inc., Coats Canada Employees' Pension Plan, Registration Number 288563, FST File Number P0237-2004;** On March 4, 2004, the Applicant requested agreement from the

Superintendent to adjourn this matter sine die pending the outcome of the *Monsanto* case. On March 12, 2004, the Superintendent agreed to the adjournment.



## Financial Hardship

Application to the Superintendent of Financial Services for Consent to Withdraw Money from a Locked-in Retirement Account, Life Income Fund or Locked-in Retirement Income Fund based on Financial Hardship.

FST File Number	Superintendent of Financial Services' Notice of Proposal	Comments
U0244-2004	To Refuse to Consent dated October 6, 2004	Ongoing

## Decisions to be Published

Consumers' Gas Ltd.  
Marcel Brousseau  
DCA Employees Pension Committee



## Financial Services Tribunal Decisions with Reasons

**INDEX NO.:** FST File Number P0192-2002

**PLAN:** Pension Plan for the Employees of Kerry (Canada) Inc.,  
Registration Number 238915 (the “Plan”)

**DATE OF DECISION:** September 1, 2004

**PUBLISHED:** Bulletin 14/1 and FSCO website

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*(Note: Only FST decisions pertaining to pensions are included in this section.)*

*(Note: In this section, “Commission” refers to the Financial Services Commission of Ontario.)*

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

**AND IN THE MATTER OF** a proposal of  
the Superintendent of Financial Services to  
refuse to make an order under sections 69  
and 87 of the Act relating to the Pension Plan  
for the Employees of Kerry (Canada) Inc.,  
Registration Number 238915 (the “Plan”);

**AND IN THE MATTER OF** a Hearing in  
accordance with subsection 89(8) of the Act;

**BETWEEN:**

**ELAINE NOLAN, GEORGE PHILLIPS,  
ELISABETH RUCCIA, KENNETH R.  
FULLER, PAUL CARTER, R.A. VARNEY  
and BILL FITZ, being members of the DCA  
EMPLOYEES PENSION COMMITTEE,  
representing certain of the members and  
former members of the Pension Plan for  
the Employees of Kerry (Canada) Inc.**  
**Applicants**

- and -

**SUPERINTENDENT OF FINANCIAL  
SERVICES and KERRY (CANADA) INC.**  
**Respondents**

**BEFORE:**

Mr. Colin H.H. McNairn,  
Vice Chair of the Tribunal  
and Chair of the Panel

Mr. Shiraz Y.M. Bharmal,  
Member of the Tribunal and of the Panel

Mr. David A. Short,  
Member of the Tribunal and of the Panel

### **APPEARANCES:**

For the DCA Employees Pension Committee  
Mr. Bill Fitz (at the evidence  
phase of the hearing)  
Mr. Ari N. Kaplan &  
Ms. Leanne Hull (at the argument  
phase of the hearing)

For the Superintendent of Financial Services  
Ms. Deborah McPhail

For Kerry (Canada) Inc.  
Mr. Ronald J. Walker &  
Ms. Christine Tabbert

### **HEARING DATES:**

March 2-3, 2004 (evidence phase)  
June 8-9, 2004 (argument phase)

### **REASONS FOR DECISION**

#### **Facts**

#### **History of the Plan and Trust Agreements**

Kerry (Canada) Inc. ("Kerry Canada"), one of the respondents in this proceeding, is the successor to DCA Canada Inc. ("DCA Canada") and the sponsor of a pension plan for its employees that was initially established by its predecessor. We refer to the employer and plan sponsor from time to time as the "Company" and the pension plan for the Company's employees as the

"Plan". Kerry Canada became the plan sponsor as a result of its purchase of the business of DCA Canada at the end of 1994, in an asset purchase transaction, and the subsequent amendment of the Plan to reflect the assumption of the Plan by Kerry Canada, as contemplated by the purchase transaction.

The Plan was established on a defined benefit basis by the terms of a plan text effective December 31, 1954 (the "1954 Plan") with funding through Company and employee contributions to a pension fund constituted as a trust under a trust agreement made as of December 31, 1954 between the Company and National Trust Company, Limited as trustee (the "1954 Trust Agreement"). We refer to the pension fund for the Plan as the "Fund". The 1954 Trust Agreement describes the Fund and the trust limitations associated with it as follows:

The Company hereby establishes with the Trustee a Fund consisting of such money and such property acceptable to the Trustee as shall from time to time be paid or delivered to the Trustee and the earnings and profits thereon. All such money and property, all investments made therewith and proceeds thereof and all earnings and profits thereon, less any payments which at the time of reference shall have been made by the Trustee as authorized herein, shall constitute the Fund hereby created and established. The Fund shall be held by the Trustee in trust and dealt with in accordance with the provisions of this Agreement. No part of the corpus or income of the Fund shall ever revert to the Company or be used for

or diverted to purposes other than for the exclusive benefit of such persons or their beneficiaries or personal representatives as from time to time may be designated in the Plan except as therein provided.

The initial beneficiaries of the trust were employees and retired employees of the Company, their beneficiaries or estates and their contingent annuitants (as per section 22 of the 1954 Plan).

A new trust agreement was entered into between the Company and the same trustee as of May 31, 1958 (the "1958 Trust Agreement"), the terms of which are similar to those of the 1954 Trust Agreement which it purports to replace. We have considered both the 1954 and 1958 Trust Agreements in these Reasons as the parties were unable to agree that, from the effective date of the 1958 Trust Agreement, the governing provisions of the trust are to be found exclusively in that Agreement.

Over the years, the Plan was amended a number of times, sometimes with an accompanying restatement of the full text of the Plan as amended. The Plan amendments have included amendments effective as of January 1, 1965 (the "1965 Plan Amendments") and amendments reflected in a revised and restated plan as at January 1, 2000 (the "2000 Plan"). The 2000 Plan has been submitted to the Superintendent of Financial Services (the "Superintendent"), the other respondent in this proceeding, for registration but has not yet been registered. The 1965 Plan Amendments and the 2000

Plan makes revisions to the obligation of the Company to make contributions under the Plan. Beginning in 1985 and continuing thereafter, at least through 2001, the Company has taken contribution holidays under the Plan, apparently on the faith of the revised contribution obligation.

On or about November 22, 1999, notice was given by the Company to its employees advising them that they were being given a one-time opportunity to convert their defined benefit entitlements, as of January 1, 2000, to a "new plan" established on a defined contribution basis, and requiring that any exercise of that option should be made by December 15, 1999, any such exercise to have the effect of eliminating any pension entitlements "under the current defined benefit plan". The 2000 Plan provides, among other things, for the addition of a defined contribution component to the Plan. Those participating in that component (designated "Part 2" under the 2000 Plan), funded by an insurance policy, include those employees who exercised their option to convert to a defined contribution arrangement and new employees hired after January 1, 2000 (collectively the "Part 2 members"). Those who did not exercise the conversion option remain in the defined benefit component of the Plan (designated "Part 1" under the 2000 Plan). As "Part 1 members", their pension entitlements continue to be provided from the Fund, now reduced by the commuted values, as at December 31, 1999, of the accrued benefits of the employees who exercised their option to become Part 2 members.



## History of the Dispute

The DCA Employees Pension Committee (the “Committee”), the applicant in this proceeding, made a request to the Superintendent to:

- order the Company to reimburse the Plan for all the contributions that the Company should have made to the Fund, together with income that would otherwise have been earned thereon, but for the contribution holidays that it had taken;
- deny registration of the 2000 Plan; and
- order the wind up of the Plan as at December 31, 1994 under s. 69 of the *Pension Benefits Act* (the “Act”).

The Committee made an additional request of the Superintendent, asking that the Superintendent order the reversal of certain expense charges made against the Fund. The Superintendent’s proposal in response to that request was the subject of an earlier proceeding before this Tribunal (see *Kerry (Canada) Inc. v. Superintendent of Financial Services and Elaine Nolan, George Phillips, Elisabeth Ruccia, Kenneth R. Fuller, Paul Carter, R.A. Varney and Bill Fitz, being members of the DCA Employees Pension Committee* (FST File No. PO191-2002), reported in the Financial Services Commission of Ontario Pension Bulletin, May 2004, vol. 13, issue 2, at pp. 132-145).

By notice of proposal dated April 22, 2002 (the “Notice of Proposal”), the Deputy Superintendent of Financial Services, acting as delegate of the Superintendent, proposed

to refuse to take any of the three actions requested by the Committee noted above.

The Committee requested a hearing by this Tribunal, pursuant to s. 89(6) & (8) of the Act, with respect to the proposals in the Notice of Proposal, which has resulted in this proceeding. On application to the Tribunal, Kerry Canada was made a party to the proceeding.

## The Issues in the Dispute

For the purposes of the proceeding, the parties identified three major issues, which can be summarized as follows:

- do the terms of the Plan and applicable Trust Agreement permit the Company to take contribution holidays since 1985 and, if not, should the Superintendent be directed to order the Company to pay into the Fund all employer contributions that it did not make by virtue of taking contribution holidays, together with an amount equal to the income that would have been earned thereon in the Fund (the “Contribution Holiday Issue”);
- is the 2000 Plan allowing for optional conversion to a defined benefit arrangement valid pursuant to the terms of the Plan and the Act and, if not, should the Superintendent be directed to refuse registration of the 2000 Plan (the “Conversion Issue”); and
- do the circumstances surrounding and immediately following the sale of assets by DCA Canada to Kerry Canada and the resulting changes in the Plan establish

grounds for the Superintendent to order the wind up of the Plan and, if so, should the Superintendent be directed to order the wind up of the Plan and, if not, is there any other remedy that the Tribunal could or should order (the “Wind Up Issue”).

We will deal with these issues separately and in the order in which we have described them.

## CONTRIBUTION HOLIDAY ISSUE

### The Company’s Authority to Take Contribution Holidays under the Terms of the General Regulation

The General Regulation under the Act has, since 1966 (see Ont. Reg. 103/66, s. 2(11)), permitted an employer to take a contribution holiday, i.e. to refrain from contributing to an on-going pension plan that it sponsors to the extent that the funding of the plan is in a surplus position (see s. 7(3) of Ont. Reg. 909 and its predecessors). In *C.U.P.E. Local 1000 v. Ontario Hydro* (1989), 58 D.L.R. (4<sup>th</sup>) 552, the Ontario Court of Appeal said that an employer cannot rely on this permission unless the plan itself provides for or contemplates the taking of a contribution holiday (at p. 564). However, in *Askin v. Ontario Hospital Association* (1991), 2 O.R. (3d) 641, a differently constituted panel of the same court characterized the latter statement as referable to a situation where there is a calculated contribution mandated by the terms of a pension plan in the nature of that required by the statutory plan at issue in Ontario Hydro (see *Askin*, at pp. 651 & 657-658). In *Askin*, by comparison,

the employer was required to contribute to a pension plan “on a basis determined by the Actuary from time to time” (see p. 644). In those circumstances, the court concluded that an employer is acting within the scope of the authorization for contribution holidays, contained in the General Regulation, where its actuary takes surplus into account when determining the employer’s required contribution to the pension plan, subject only to any restrictions on such a practice contained in the plan text (see p. 651). In other words, surplus can be notionally applied against a contribution obligation so long as the plan does not prohibit it. The Company’s Authority to Take Contribution Holidays under the Terms of the Plan

We turn now to a consideration of the Company’s contribution obligation under the Plan that was in effect when the Company began to take contribution holidays. Those contribution holidays were taken commencing in 1985. By that time, the original employer contribution provision of the Plan had been modified, as a result of the 1965 Plan Amendments, to provide as follows:

The Company shall contribute from time to time but not less frequently than annually such amounts as are not less than those certified by the Actuary as necessary to provide the retirement income accruing to members during the current year pursuant to the Plan and to make provision for the proper amortization of any initial unfunded liability or experience deficiency with respect to benefits previously accrued as

required by the *Pension Benefits Act*, after taking into account the assets of the Trust Fund, the contribution of Members during the year and such other factors as may be deemed appropriate (section 14(b)).

If this provision is valid, it would permit the Company to take contribution holidays for it is virtually identical to the employer contribution provision that was found by the Supreme Court of Canada in *Schmidt v. Air Products Canada Ltd.* (1994), 115 D.L.R. (4<sup>th</sup>) 631, to allow for contribution holidays (see pp. 671-672). In *Schmidt*, the court concluded that the employer contribution provision in question was like that in *Askin* rather than that in *Ontario Hydro* (at pp. 671-672). If that is so in respect of the employer's contribution obligation at issue in *Schmidt*, it must also be so in respect of the employer's contribution obligation in the present case, given that the two obligations are substantially the same. There is nothing in the Plan as altered by the 1965 Plan Amendments (nor in the 1954 or 1958 Trust Agreement) that imposes any restrictions on the taking of contribution holidays by the Company, which might distinguish the situation from that in *Askin* and *Schmidt*.

#### The Effect of the Trust on the Company's Authority to Take Contribution Holidays

The fact that the Fund is subject to a trust for the benefit of employees is not inconsistent with the authority of the Company to take contribution holidays since a contribution holiday does not amount to a use or diversion of the Fund assets, for purposes other than

the exclusive benefit of employees and other beneficiaries, in violation of section 1 of the 1954 Trust Agreement (section 1 of the 1958 Trust Agreement is in similar terms). It is not a diversion of assets from the Fund to the prejudice of the beneficiaries because no payment is made from the Fund and the beneficiaries' entitlement is simply to receive the defined benefits provided in the Plan from the Fund. Any surplus in the Fund, in excess of what is required to satisfy those entitlements, to which the Company resorts for the purpose of a contribution holiday, is indefinite and only becomes ascertainable on a wind up of the Plan (including a partial wind up, in which event a pro rata share of the surplus, relating to the part of the plan being wound up, becomes actual rather than notional; see *Monsanto Canada Inc. v. Ontario (Superintendent of Financial Services)*, an unreported decision of the Supreme Court of Canada dated July 29, 2004, esp. at para. 46). Therefore, the taking of contribution holidays does not constitute an encroachment on the trust established in respect of the Fund. These conclusions are directly supported by the authority of *Schmidt* (see (1994), 115 D.L.R. (4<sup>th</sup>) 631, at p. 665).

#### The Validity of the Provisions of the Plan Authorizing Contribution Holidays

The next question that we have to consider is whether the employer contribution provisions introduced by the 1965 Plan Amendments are amendments to the Plan of a kind that are properly authorized.



## The Effect of the Absence of an Express Power to Revoke the Trust

In *Schmidt*, the Supreme Court of Canada said that “in the context of pension trusts, the reservation by the settler [the Company in the present case] of an unlimited power of amendment does not include a power to revoke the trust”; rather, a revocation power “must be explicitly reserved in order to be valid” (at p. 660). The power to amend the trust established by the 1954 and 1958 Trust Agreements that is set out in those Agreements (in section 11) does not explicitly reserve such a power of revocation to the Company.

The 1954 Trust Agreement contains a recital, which is consistent with the body of the Agreement (including, particularly, section 1), to the following effect:

**WHEREAS** it is desirable that funds irrevocably contributed for the payment of benefits under the Plan be segregated and held in trust in a Trust Fund for the exclusive benefit of such employees or their beneficiaries or personal representatives as shall be included under the Plan.

There is a similar recital, but in the past tense, in the 1958 Trust Agreement.

It is clear, therefore, that the relevant trust relates to funds contributed under the Plan. The trust does not extend to funds that would have been contributed under the Plan but for the assertion by the Company of a right to take a contribution holiday (or

but for the Company’s insolvency or any other circumstance). Nor is the Company’s obligation to contribute to the Plan impressed with a trust. In fact, that obligation is one that has its source in the Plan rather than any trust agreement. The Plan is not part of the 1954 or 1958 Trust Agreement. In fact, the 1958 Trust Agreement recites the opposite, i.e. that the Agreement is part of the Plan. Neither the Plan nor either of those Trust Agreements says that the Plan, which contains the Company’s contribution obligation, is part of the Trust Agreement. In these circumstances, the Company’s contribution obligation cannot be part of the trust.

Thus, any change in the Company’s obligation under the Plan to contribute to the Fund does not amount to a revocation of trust, in which case it does not have to be supported by an explicit reservation by the Company of a power to revoke the trust.

In *Schmidt*, the employer contribution provision in question was, as in the present case, the result of an amendment to the original terms of the pension plan (see pp. 671 & 682-683) and, as in the present case, the trust agreement establishing a trust fund for the pension plan did not explicitly reserve the power to revoke the trust (see p. 670). There is no suggestion in the majority reasons in *Schmidt* that the amendment might be invalid as a result of these factors, although that may simply be because the point was not argued by the parties challenging the contribution holiday taken by the employer in that case.

## The Effect of the *Maurer* Decision

In the present case, the Committee relied on the decision of the Ontario Court of Appeal in *Maurer v. McMaster University* (1995), 23 O.R. (2d) 577, for the proposition that where a pension plan is subject to a trust for the benefit of employees, the plan text cannot be unilaterally amended by the employer to provide for contribution holidays unless a power to revoke the trust has been explicitly reserved to the employer. Unfortunately, the reasons delivered by the Court of Appeal in *Maurer* contain some apparent contradictions, raising doubts as to whether the court was in fact adopting this proposition or leaving for another day the resolution of the issue of whether such an amendment could be validly made in the absence of an explicit power to revoke the trust.

The court in *Maurer* stated, at one point in its reasons, that it was desirable to wait until the issue arises in a case before deciding whether an employer has the right to amend a trustee pension plan unilaterally to allow it to take contribution holidays (at p. 580). As it wasn't necessary to decide that issue in *Maurer*, the court simply declined to support the trial judge's conclusion that there was such a right. But it then went on to amend the relief granted by the trial judge so as to provide a declaration that the amendments to the pension plan in question were invalid to the extent that they purported to give the employer the right to take contribution holidays, to have the return of actuarial surplus during the continuation of the plan and to receive surplus on termination or wind up of the plan (at pp. 580-581).

We think that the amended relief granted by the court was simply a reflection of its disagreement, on the basis of the *Schmidt* decision, with the pre-*Schmidt* determination of the trial judge that the employer could unilaterally amend the pension plan to provide that it was entitled to surplus during and at the termination of the plan even though it had no explicit power to revoke the trust in respect of the pension fund. Since some aspect of the amendments could not stand - i.e. their attempt to obtain for the employer any surplus in the fund - the court presumably thought that the amendments were invalid generally. In other words, the taint of association may well have caused the amendments to fail even to the extent that they gave the employer the right to take contribution holidays. The trial decision in *Maurer* appears to treat these amendments as a package (see (1991), 4 O.R. (3d) 139, at pp. 156 & 159). Consequently, we don't take *Maurer* as authority for the proposition for which the Committee says that it stands. Rather, we think that *Maurer* did, indeed, leave open the question that has to be decided in the present case, i.e. whether an employer has the right to amend a trustee pension plan to allow it to take contribution holidays in the absence of an express reservation of the power to revoke the trust. As we have already indicated, we think that the Company has that right on the basis that such an amendment would not revoke the trust established under the 1954 and 1958 Trust Agreements.

## **Possible Revocation of Trust by the Grant of Discretion to the Actuary to Fix the Company's Annual Contribution to the Plan**

The Committee argued that the 1965 Plan Amendments effected a partial revocation of the trust established by the 1954 and 1958 Trust Agreements because they purport to give discretionary power to the Company's agent, the Plan actuary, to establish the amount of the employer's annual contribution to the Plan when the employer had previously alienated all control over the trust property. In our view, this argument misconceives the nature of the trust property, which consists of the actual contributions to the Fund and the earnings and profits thereon, net of any authorized payments from the Fund made by the trustee (section 1 of the 1954 and 1958 Trust Agreements). Any change in the basis for calculating the amount of the employer's contribution obligation under the Plan does not misdirect any of those funds and only impacts the Fund in the indirect sense that, going forward, the amount of the Fund may be less than it otherwise would be. But that wouldn't result in the Fund being inadequate at that time to meet pension obligations under the Plan, since any permitted contribution holiday would be limited to the amount that is surplus to what is required to satisfy those pension obligations.

## **The Scope of the Power of the Company to Amend the Plan**

When measured against the general amending power in the 1954 Plan, the employer contribution provisions introduced

by the 1965 Plan Amendments are clearly authorized. That amending power reserves to the Company "the right to change, modify, suspend or discontinue the Plan, should future conditions, in the judgment of the Company, warrant such action, provided that no change or modification will affect any rights that any member may then have with respect to the terms of payment of, or the amount of, retirement income, which the contributions made by the Member and/or the Company, prior to the effective date of such change or modification, will provide" (section 22). The changes in the employer's contribution obligation introduced by the 1965 Plan Amendments do not run afoul of this proviso.

## **Relevance of the Employer Contribution Provision under the Original Plan**

We heard arguments from the Committee that the employer contribution provision under the terms of the 1954 Plan did not permit the Company to take contribution holidays. However, by the time the Company began taking contribution holidays, in 1985, this particular provision had been replaced as a result of changes effected by the 1965 Plan Amendments. Since we have found the new contribution provision in the 1965 Plan Amendments to be valid and to authorize contribution holidays, there is no need for us to consider whether the Company could take contribution holidays under the terms of the 1954 Plan.



## CONVERSION ISSUE

Section 18(1) of the Act provides, in clause (d), that the Superintendent may refuse to register an amendment to a pension plan “if the amendment is void or if the pension plan with the amendment would cease to comply with [the] Act and the regulations”.

### Inconsistencies between the 2000 Plan and 1954 and 1958 Trust Agreements

The Committee argued that the 2000 Plan should not be registered because of certain inconsistencies with the 1954 and 1958 Trust Agreements, which render the 2000 Plan void because the trust established by those Agreements takes primacy over the Plan text. The Committee claimed that the 2000 Plan is inconsistent with the Trust Agreements in that it permits the employer, in sections 18.08 and 25.02, to take a holiday from its contribution obligation on account of Part 2 members (those who participate in the defined contribution component of the Plan) by resort to the surplus in the Fund, which is held for the benefit of the Part 1 members (those who participate in the defined benefit component of the Plan). We agree that this is indeed the case as these provisions allow the Company to use or divert some part of the Fund, i.e. the surplus, “to purposes other than for the exclusive benefit of” the beneficiaries of the trust in respect of the Fund who, by virtue of the 2000 Plan, are now the Part 1 members. Any holiday taken by the Company in respect of Part 2 contributions in this fashion can only be realized by actually moving money out of the

Fund and transferring it to the insurer that is the funding agency for Part 2, for credit to the individual accounts of the Part 2 members. This action is inconsistent with section 1 of the 1954 Trust Agreement, recited above under the heading “FACTS” (section 1 of the 1958 Trust Agreement is in similar terms).

There are two ways in which this inconsistency could be resolved. The 2000 Plan could be amended to eliminate the authority of the Company to apply the surplus in the Fund to satisfy its contribution obligation in respect of Part 2 members or the Part 2 members could be made beneficiaries of the trust in respect of the Fund (in which case it would seem to follow that the insurance policy that is the funding vehicle for Part 2 should be held by the trustee).

The fact that the 2000 Plan confines the beneficiaries of the trust in respect of the Fund to Part 1 members does not involve a breach of trust since the 1954 and 1958 Trust Agreements contemplate a potentially moving category of beneficiaries of the Fund, subject to the proviso that the category cannot be expanded to include the Company itself. In particular, the beneficiaries of the trust in respect of the Fund under those Agreements are such persons as from time to time may be designated under the Plan (as per section 1 of the Trust Agreements). Thus, the trust language leaves it to the terms of the Plan to designate the beneficiaries of the trust. The 2000 Plan makes such a designation in constituting the Part 1 members beneficiaries of the Fund to the exclusion of the Part 2 members. Because

of the express terms of the trust, as set out in the Trust Agreements, that designation is consistent with the terms of the trust and does not, therefore, involve a breach of trust.

### **Relevance of the *Aegon* Decision**

We note that the circumstances of the present case are quite different from those in *Aegon*, on which the Committee relies. In that case, two pension plans were “merged” subject to the condition, imposed by the Pension Commission of Ontario, that the assets and liabilities of each plan were to be accounted for separately in the merged plan. The pension fund for one of the merging plans was in a surplus position and was subject to a trust for the benefit of plan members. The other merging plan was in a deficit position. The Ontario Court of Appeal held that no part of the assets of the fund in surplus could be applied to meet the liabilities associated with the other fund without breaching the trust in favour of the beneficiaries of the fund in surplus. In the present case, we don’t have two funds in relation to a single pension plan. Rather, we have one pension fund (the Fund), which was formerly held in trust for the benefit of all employees, that, after the effective date of the 2000 Plan, is to be held in trust for Part 1 members by virtue of a change in the designation of the class of beneficiaries contemplated by the terms of the trust.

### **The Nature and Effect of Deficiencies in the Disclosure Associated with the Conversion Option**

Finally, the Committee argued that the 2000 Plan should be refused registration because of inadequacies in the Company’s process of disclosure to its employees in connection with the exercise of the conversion right associated with the changes effected by the 2000 Plan. We heard evidence as to the information and access to advice, and the time for obtaining and considering that information and advice, that were afforded by the Company to its employees. There appear to have been some shortcomings in the disclosure process, including a misdescription of the change of the pension arrangements that were subsequently to take place as the creation of a new defined contribution plan when a defined contribution component of the existing Plan was actually established. These shortcomings raise questions as to whether employees were adequately informed of the material factors that might affect their conversion decisions by the time they had to make that decision. However, we do not think that the alleged deficiencies would make the 2000 Plan void or inconsistent with the Act or the General Regulation. In fact, the conversion option was provided before the effective date of the 2000 Plan (i.e. before January 1, 2000) and was not established by that Plan; rather, the conversion process is simply described, in the past tense, in the 2000 Plan (in section 24.01). Therefore, any deficiencies in the process cannot fairly be taken to affect the validity of the amendments introduced by the 2000 Plan.

Neither the Act nor the General Regulation establishes a process for giving notice to pension plan members of a conversion option. While the Act does require, in s. 26(1), that notice be given of an adverse amendment to a pension plan that reduces pension benefits prospectively, a conversion from a defined benefit pension arrangement to a defined contribution arrangement does not necessarily have that effect. Rather, it essentially changes the risks associated with pension benefits. In any event, even if notice of an adverse amendment was required in respect of the 2000 Plan, under s. 26(1) of the Act, the Superintendent would have been entitled, under s. 26(4), to refrain from requiring the Company to give such a notice if he was of the opinion that the 2000 Plan would not substantially affect pension benefits, rights or obligations of any members. The Superintendent has taken the position, in responding to the requests made to him by the Company (in an attachment to a letter dated April 22, 2002 from the Deputy Superintendent to the chair of the Committee) and in this proceeding that the employees potentially affected by the 2000 Plan had adequate notice. In any case, the Act does not say that a failure to give notice of an adverse amendment, when required under the Act, results in the amendment being void or otherwise non-registerable. For all of these reasons, the deficiencies in the conversion process would not, in themselves, constitute sufficient grounds for the Superintendent to refuse to register the 2000 Plan.

## PARTIAL WIND UP ISSUE

The Committee argued that the Superintendent was entitled to, and should have, ordered a partial wind up of the Plan on the basis of the circumstances surrounding the sale of assets from DCA Canada to Kerry Canada as at the end of 1994. The authority of the Superintendent to order a partial wind up of a pension plan is derived from s. 69 of the Act. That section sets out a list of grounds for either a partial wind up or a full and final wind up of a pension plan, but does not require the Superintendent to order such action when the grounds are present. None of those grounds fits the circumstances surrounding the sale of assets from DCA Canada to Kerry Canada in 1994. Of course, by that time DCA Canada had begun to take contribution holidays, a practice that was continued thereafter by Kerry Canada. The Committee maintained that this amounted to a “cessation or suspension of employer contributions to the pension fund”, in the sense of clause (a) of s. 69(1) of the Act, and, therefore, constituted grounds for a partial wind up of the Plan. We think that clause (a) of s. 69(1) should logically be taken to refer to a situation where an employer does not make contributions to a pension plan that it is not relieved from making by virtue of a surplus in the pension fund for the plan. As we have noted above, in our discussion of the Contribution Holiday Issue, neither the Act nor the Plan requires the Company to contribute to the pension fund for the Plan, i.e. the Fund, when it has a sufficient balance to cover pension liabilities. Moreover, both the General Regulation under the Act and



the Plan specifically authorize the Company to take a contribution holiday in that event.

While we have found that the contribution holidays taken by the Company in respect of Part 2 of the Plan after January 1, 2000 were not validly authorized by the 2000 Plan, because of an inconsistency with the trust in respect of the Fund, that situation will be remedied by our orders in this case (see below under the heading “DISPOSITION”) in that the 2000 Plan will be amended to provide the necessary authority or the Fund will be reimbursed for the amount of the contributions made from the Fund.

The Committee also argued that even if there were no current grounds for a partial wind up of the Plan, the Superintendent should be directed to monitor the Plan with a view to making an order for its partial wind up when there are no active members left in Part 1 of the Plan, at which time any employer contributions in respect of current service of employees under that Part would necessarily cease. Even if the latter event were to constitute grounds for a partial wind up of the Plan under clause (a) of s. 69(1) of the Act, we are not persuaded that the monitoring of the Plan is something that the “Superintendent ought to do in accordance with [the] Act and regulations” (see s. 89(9) of the Act) and, therefore, something that we should order the Superintendent to do.

Finally, the Committee made reference to s. 80 of the Act as justifying some form of alternative relief for employees whose potential interest in the surplus in the

Fund was adversely affected as a result of the circumstances surrounding the sale of assets from DCA Canada to Kerry Canada. However, s. 80 has no application in connection with a sale of assets unless the purchaser brings any transferred employees under its own pension plan. That is not the situation in the present case as the transferred employees of DCA Canada remained members of the Plan, to which they had previously belonged, although it was no longer a DCA pension plan but a Kerry pension plan by virtue of a change of name and sponsorship.

## DISPOSITION

For the foregoing reasons, we order the Superintendent to

- (a) carry out the proposals contained in the Notice of Proposal (subject to para. (c) below), except for the proposal to refuse to deny registration of the 2000 Plan;
- (b) deny registration of the 2000 Plan in its current form; and
- (c) if within 90 days of the date of these Reasons the 2000 Plan is not amended, with effect from January 1, 2000, to make the Part 2 members beneficiaries of the trust in respect of the Fund, order Kerry Canada to reimburse the Fund for the amount of all contributions that, had it not taken contribution holidays after January 1, 2000, it would have had to make under the Plan in respect of the Part 2 members but that it made from the

Fund, together with the income on the amount of such contributions that would have been earned thereon in the Fund.

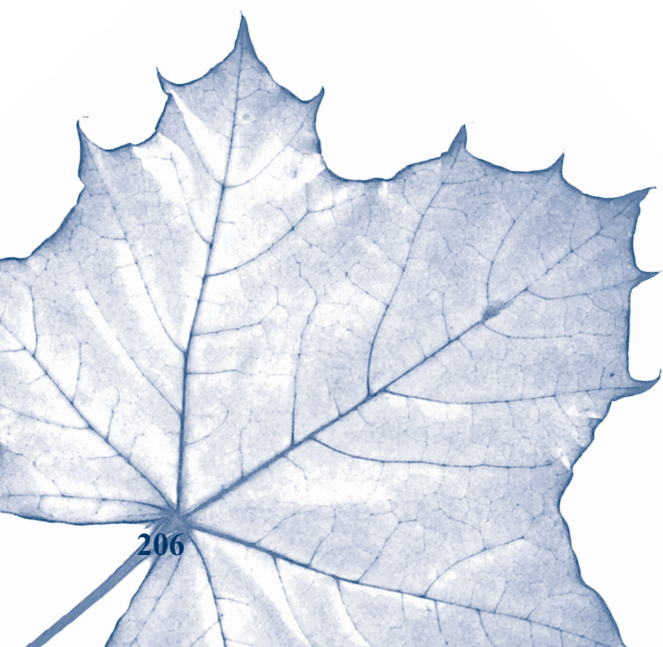
If any party wishes to make application for an order of costs in this matter, it may do so by written request filed with the Tribunal and served on the other parties within 30 days of this decision. The other parties shall have 14 days to file and serve written responses to any such request.

**DATED** at Toronto, Ontario, this  
1<sup>st</sup> day of September 2004.

Colin H.H. McNairn,  
Vice Chair of the Tribunal  
and Chair of the Panel

Shiraz Y.M. Bharmal,  
Member of the Tribunal  
and of the Panel

David A. Short,  
Member of the Tribunal  
and of the Panel



**INDEX NO.:** FST File Number P0076-99

**PLAN:** Pension Plan for Employees of The Consumers' Gas Company Ltd. and Designated Affiliated, Associated and Subsidiary Companies (now the Pension Plan for Employees of Enbridge Gas Distribution Inc. and Affiliates), Registration Number 242016

**DATE OF DECISION:** October 19, 2004

**PUBLISHED:** Bulletin 14/1 and FSCO website

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*(Note: Only FST decisions pertaining to pensions are included in this section.)*

*(Note: In this section, "Commission" refers to the Financial Services Commission of Ontario.)*

**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O.1990, c.P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c.28 (the "Act");

**AND IN THE MATTER OF** a Partial Plan Wind-Up Report submitted by The Consumers' Gas Company Ltd. (now Enbridge Gas Distribution Inc.) in respect of the Pension Plan for Employees of The Consumers' Gas Company Ltd. and Designated Affiliated, Associated and Subsidiary Companies (now the Pension Plan for Employees of Enbridge Gas Distribution Inc. and Affiliates), Registration Number 242016;

**AND IN THE MATTER OF** a Hearing in accordance with subsection 89(8) of the Act .

**BETWEEN:**

**ENBRIDGE GAS DISTRIBUTION INC.**  
**(formerly The Consumers'**  
**Gas Company Ltd.)**  
**Applicant**  
**- and -**  
**SUPERINTENDENT OF**  
**FINANCIAL SERVICES and**  
**A GROUP OF FORMER**  
**EMPLOYEES OF TELESIS**  
**Respondents**

**ORDER**

**WHEREAS** the parties have agreed upon terms of settlement as evidenced by the attached Minutes of Settlement;

**AND WHEREAS** the parties have consented to the terms of this Order;



The Tribunal orders:

1. The Minutes of Settlement are hereby approved;
2. Following approval of the Revised Report as referenced in paragraph 2 of the Minutes of Settlement, the Applicant is granted leave to withdraw its Request for Hearing, without costs or any other conditions other than as set out below;
3. Thereafter, the Superintendent of Financial Services shall withdraw the Notice of Proposal in this matter and will refrain from carrying out said Notice of Proposal;
4. The Tribunal shall remain seized to deal with any matter arising from implementation of the Minutes of Settlement.

**DATED** at Toronto this 19th  
day of October, 2004.

Colin McNairn,  
Chair

Heather Gavin,  
Member



**FST File No. P0076-99**  
**FINANCIAL SERVICES TRIBUNAL**

**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O.1990, c.P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c.28 (the “Act”);

**AND IN THE MATTER OF** a Partial Plan Wind-Up Report submitted by The Consumers’ Gas Company Ltd. (now Enbridge Gas Distribution Inc.) in respect of the Pension Plan for Employees of The Consumers’ Gas Company Ltd. and Designated Affiliated, Associated and Subsidiary Companies (now the Pension Plan for Employees of Enbridge Gas Distribution Inc. and Affiliates), Registration Number 242016;

**AND IN THE MATTER OF** a Hearing in accordance with subsection 89(8) of the Act.

**BETWEEN:**

**ENBRIDGE GAS DISTRIBUTION INC.**  
**(formerly The Consumers’**  
**Gas Company Ltd.)**

**Applicant**

- and -

**SUPERINTENDENT OF**  
**FINANCIAL SERVICES and**  
**A GROUP OF FORMER**  
**EMPLOYEES OF TELESIS**  
**Respondents**

**MINUTES OF SETTLEMENT**

**WHEREAS** the Applicant is the sponsoring employer and administrator of the Pension Plan for Employees of Enbridge Gas Distribution Inc. and Affiliates (formerly the Pension Plan for Employees of The Consumers’ Gas Company Ltd. and Designated Affiliated, Associated and Subsidiary Companies), Registration Number 242016 (the “Plan”);

**AND WHEREAS** effective May 31, 1994, the Telesis Oil and Gas Division of British Gas Enterprises (Canada) Limited, a participating employer in the Plan, was sold;

**AND WHEREAS** the Applicant terminated the Plan in part as it related to those members employed in the Telesis Oil and Gas Division of British Gas Enterprises (Canada) Limited, members employed by Telesis Oil and Gas Ltd. and members employed by Underwater Gas Developers Limited (“Affected Members”);

**AND WHEREAS** in November 1994, the Applicant filed a report on the partial wind-up of the Plan as at May 31, 1994 (the “Partial Wind-Up Report”) pursuant to Section 70 of the Act;

**AND WHEREAS** the Superintendent of Financial Services (the “Superintendent”), by Notice of Proposal dated August 19, 1999 (the “Notice Of Proposal”), proposed to refuse to approve the Partial Wind-Up Report;

**AND WHEREAS** the Partial Wind-Up Report was revised by the Applicant in 2000 to reflect the inclusion of certain bonuses in pensionable earnings;

**AND WHEREAS** the Applicant commenced these proceedings before the Financial Services Tribunal in respect of the Notice Of Proposal;

**AND WHEREAS** the parties to these Minutes of Settlement wish to resolve all remaining matters at issue in these proceedings;

**NOW THEREFORE** the parties hereto agree to the following terms in full and final settlement of all claims made by the parties, arising from the subject matter of these proceedings:

1. The Partial Wind-Up Report shall be further revised (the "Revised Report") to reflect the following:

(a) Affected Members whose age plus service equalled 55 or more at May 31, 1994 shall be entitled to "grow-in" to the automatic pension increases provided under former section 8.12(2) and Schedule D of the Plan pursuant to Section 74 of the Act. Depending on each Affected Member's election and circumstances, this additional benefit would take the form of: (a) transfers of commuted value entitlements (accumulated at 7.5% per annum); (b) refunds of excess contribution entitlements (accumulated at 5.36% per annum); (c) increases in pension entitlements to pensioners; or (d) cash

payments to members who previously elected a transfer of their benefit from the Plan in an amount equal to the difference in their May 31, 1994 entitlement accumulated at 7.5% per annum; and

2. Affected Members shall be entitled to a distribution in cash of all of the wind-up surplus attributable to that portion of the Plan being wound-up, calculated in the Revised Report after giving effect to subparagraph 1(a) hereof based on the same methods and assumptions used in the Partial Wind-Up Report. This principal amount of \$1,334,869.00 as of May 31, 1994 (net of expenses) shall be credited with interest equal to the rate of return earned on such surplus from June 1, 1994 to the last day of the month preceding the month in which the date of distribution falls, net of the administrative, custodial, and investment expenses charged to the Plan fund (which expenses have averaged 0.44 percent per annum from June 1, 1994 through July 31, 2004). It is agreed that such net rate of return to July 31, 2004 was 9.26 percent per annum, resulting in an amount of surplus of \$3,284,435.00 at that date. Subject to paragraph 4 hereof, the amount of surplus to which each Affected Member is entitled shall be in proportion to the pro rata share of each Affected Member's wind-up liabilities under the Plan as at May 31, 1994 and the total wind-up liabilities in respect of Affected Members as at May 31, 1994.
3. Within 60 days following the execution of these Minutes of Settlement, the Applicant shall file the Revised Report. Except for



the revisions that are required to give effect to these Minutes of Settlement, the Revised Report will be unchanged from the Partial Wind-Up Report as first revised in 2000. The Superintendent shall approve the Revised Report, provided it is consistent with these Minutes of Settlement. The Superintendent shall not support the position of any person or party that seeks to challenge these Minutes of Settlement, or otherwise take any position on any litigation concerning members, former members, or others entitled to benefits under the Plan that is inconsistent with these Minutes of Settlement. The Superintendent further agrees not to support the position of any person or party that seeks to challenge the approval of the Revised Report, provided that the Revised Report otherwise complies with these Minutes of Settlement.

4. On receiving the Superintendent's approval for the Revised Report as set out in paragraph 2 hereof, the Applicant shall withdraw its request for a hearing. All parties will request that the Tribunal accept the Applicant's request to withdraw on a without costs basis and with no conditions imposed, subject to paragraph 7 hereof. Subject to paragraph 7 hereof, the parties agree that these proceedings shall be terminated, save and except for any matter arising from the implementation of these Minutes of Settlement. The Superintendent shall then withdraw the Notice of Proposal.
5. Legal costs of the Affected Members represented by Koskie Minsky LLP, as listed in Appendix 1 hereto, shall be

deemed a reasonable administrative expense of implementing the partial wind-up pursuant to the Revised Report and shall be deducted pro rata from each such Affected Member's entitlement to surplus calculated in accordance with subparagraph 1(b) hereof, and remitted out of the Plan directly to Koskie Minsky LLP, in trust, upon execution of these Minutes of Settlement and issuance of the Order described in paragraph 7 hereof. The sum and total of all legal costs of the Affected Members represented by Koskie Minsky LLP is \$39,100.

6. These Minutes of Settlement are made without prejudice and without precedent to any other matter, and without admission of liability by any party. The parties hereto agree that the implementation of these Minutes of Settlement will be in full and final satisfaction of all claims by the parties and by all members, former members, and others entitled to benefits under the Plan arising from the termination of the Affected Members represented by Koskie Minsky LLP.
7. The parties agree to execute any document or documents that may reasonably be required to give effect to these Minutes of Settlement.
8. The parties agree that these Minutes of Settlement shall be made an Order of the Financial Services Tribunal, and that the Financial Services Tribunal shall remain seized to deal with any matter arising from the implementation of these Minutes of Settlement.



October 13, 2004

Enbridge Gas Distribution Inc.  
by its Counsel

Superintendent of Financial Services  
by its Counsel

A Group of Former Employees of Telesis  
by its Counsel

## APPENDIX 1

<b>Telesis Partial Plan Wind-Up Contributing Members To Legal Fund</b>	
<b>Number</b>	<b>Contributing Member</b>
1	Anderson, Robert
2	Audit, Noel
3	Augustine, David
4	Bowley, Glen
5	Carter, Bruce
6	Chupa, Terry
7	Costella, Debra
8	Coulter, Steve
9	Cowx, Doug
10	Crewe, Bob
11	Cuthill, Rob
12	Darowski, Ken
13	Dawson, Don
14	Dawson, Ester
15	Druet, Paul
16	Ecker, Irene
17	Elvidge, Kevin
18	Epp, Marg
19	Fairchild, Jeff
20	Falls, Bill
21	Fedor, Barb
22	Fosum, Donna
23	Garner, Mike
24	Gray, Zane
25	Hoey, Neil
26	Hughes, Sheree
27	Johnson, Rick
28	Kasha, Lonnie
29	Lahay, Lori
30	Laplante, Ed
31	Laplante, Ernie
32	Lince, Chris

<b>Telesis Partial Plan Wind-Up Contributing Members To Legal Fund</b>	
<b>Number</b>	<b>Contributing Member</b>
33	MacKinnon, Greg
34	Manning, Sue
35	Marsden, Max
36	McEwan, Bob
37	McPhee, Bruce
38	McPhee, Ross
39	Mikkelsaar, Peter
40	Morse, John
41	Murphy, Bryen
42	Omar, George
43	Osadac, Mark
44	O'Sullivan, Larry
45	Pegg, David
46	Pretulac, Lauri
47	Riddell, Sharon
48	Ross, Greg
49	Ross, Brenda
50	Ross, Sherry
51	Rousselle, John
52	Stasso, Sharon
53	Stinson, Ron
54	Thompson, Carol
55	Tompkins, Scott
56	Tricker, Dan
57	Vanderveen, Jacob
58	VanLoy, Kim
59	Vidler, Jim
60	Wilson, Alex
61	Wilson, Barrie
62	Wolf, Rolfe
63	Woodworth, Brian
64	Yee, Verna



**INDEX NO.:** FST File Number P0183-2002

**PLAN:** Electrical Industry of Ottawa Pension Plan Ontario,  
Registration No. 0586396 (the “Plan”)

**DATE OF DECISION:** October 22, 2004

**PUBLISHED:** Bulletin 14/1 and FSCO website

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*(Note: Only FST decisions pertaining to pensions are included in this section.)*

*(Note: In this section, “Commission” refers to the Financial Services Commission of Ontario.)*

**IN THE MATTER OF** the *Pension Benefits Act*,  
R.S.O. 1990, Chapter P. 8, as amended by the  
*Financial Services Commission of Ontario Act*,  
1997, S.O. 1997, Chapter 28 (PBA) (the “Act”);

**AND IN THE MATTER OF** a Proposal  
by the Superintendent of Financial Services  
(the “Superintendent”) to Refuse to Make an  
Order Under Section 87 of the Act, respecting  
a Request by Mr. Marcel Brousseau Relating to  
the Electrical Industry of Ottawa Pension Plan  
Ontario, Registration No. 0586396 (the “Plan”)

**AND IN THE MATTER OF** a Hearing in  
Accordance with Subsection 89(8) of the Act.

**BETWEEN:**

**MARCEL BROUSSEAU**

**Applicant**

- and -

**SUPERINTENDENT OF FINANCIAL  
SERVICES OF ONTARIO and  
BOARD OF TRUSTEES OF THE  
ELECTRICAL INDUSTRY OF  
OTTAWA PENSION PLAN**  
**Respondents**

**BEFORE:**

Ms. Anne Corbett,  
Vice Chair of the Tribunal  
and Chair of the Panel

Ms. Heather Gavin,  
Member of the Tribunal and  
Member of the Panel

Mr. David Vincent,  
Member of the Tribunal and  
Member of the Panel

## APPEARANCES:

Mr. Marcel Brousseau  
Appearing on his own behalf

For the Superintendent of Financial Services  
Mr. Mark Bailey  
For the Board of the Trustees of the  
Electrical Industry of Ottawa Pension Plan  
Ms. Fiona Campbell

## HEARING DATE:

March 30, 2004

## REASONS

### Background

The Applicant, Mr. Brousseau, is a member of the Electrical Industry of Ottawa Pension Plan (the "Plan"). The Plan is a multi-employer pension plan covering members of the International Brotherhood of Electrical Workers, Local 586. The Plan is administered by the Board of Trustees of the Electrical Industry of Ottawa Pension Plan (the "Trustees"). Coughlin and Associates Limited ("Coughlin") provide administrative services to the Plan.

This hearing results from a request made by Mr. Brousseau to the Financial Services Commission in October, 2001 with respect to his pension credits prior to 1985. In response to that request the Deputy Superintendent issued a Notice of Proposal to issue an Order dated January 22, 2002 that the Trustees, in refusing to give Mr. Brousseau credit during

the lay-off period from November 1983 to 1985, had interpreted the Plan in compliance with the requirements of the *Pension Benefits Act*, the regulation thereunder and the 1985 Plan Text and the 1987 Declaration of Trust.

Mr. Brousseau became a member of the Plan on January 1, 1974 and he was a member of the Plan at the date of the hearing of this matter.

Mr. Brousseau was not given credit under the Plan for the period November 1, 1983 to August 31, 1985.

It is the position of the Superintendent and the Trustees that Mr. Brousseau is not entitled to credit under the Plan for this period of time as he was working for a non-union employer and therefore not "ready, willing and able to work in the electrical industry" as was, it is alleged by the Trustees and the Superintendent, required by the Plan. The Trustees and the Superintendent rely on the decision of the Ontario Superior Court of Justice released November 19, 2001 with respect to the correct interpretation of the Plan in Mr. Brousseau's circumstances.

Mr. Brousseau argues that he relied on the advice of the Business Manager and was never told that he would lose pension credits if he worked for a non-union employer.

At the opening of the hearing counsel for the Trustees acknowledged that there had been a miscalculation of Mr. Brousseau's period of eligibility and a correction would be made to provide an additional thirty-day credit.

The parties submitted an Agreed Statement of Facts to the Tribunal, however, during the hearing the evidence contradicted the Agreed Statement of Facts.

### **Relevant Provisions of the Plan and Trust Agreement**

This Trustees' decision regarding Mr. Brousseau's pension credit during the lay-off period is based on the provisions of the 1977 Trust Agreement. In particular, Article IV of the Trust Agreement provides as follows:

"Insurance Coverage During Unemployment: If the employment of an Employee is terminated by the act of a contractor and while such Employee is a member of the Local, all insurance benefits hereunder shall be continued in force by the Trustee for a period of ninety (90) days after cessation of such employment or longer at the discretion of the Trustees. Employees must be ready, willing and able to work in the electrical industry to remain eligible for insurance benefits under the Plan."

### **Article V of the Trust Agreement provides as follows:**

#### "Authority of Trustees:

Subject to the stated purposes of the Plan and the provisions of this Agreement the Trustees shall have full authority to determine all questions of coverage and eligibility. They shall have the power to construe the provisions of this Agreement and the terms used herein. Any such determination or such construction

adopted in good faith shall be binding on all parties and beneficiaries hereto."

### **Issue:**

Should the Applicant be granted "credit service" for periods when the Applicant continued to be a member of the Local but was employed by an employer who was not a participating employer under the Plan?

### **Analysis:**

The determination of the "credited service" to which the Applicant is entitled is dependent upon an application of the Plan terms to Mr. Brousseau's employment history.

The parties submitted an Agreed Statement of Facts. The Agreed Statement of Facts states that Mr. Brousseau worked for a participating employer under and was a member of the Plan from January 1, 1974 to the present except during a period between November 1, 1983 and August 31, 1985 when he was on temporary layoff. The Agreed Statement of Facts further provides that during the layoff period, the Applicant worked for Metcalfe Realty, an employer that did not participate in the Plan. During this period the Applicant did not receive pension credits under the Plan except for the first 90 days of the period.

Mr. Brousseau gave evidence that he was laid off by his employer, Glen-Mur Ltd. on September 12, 1983. He then became employed by Metcalfe Realty, an employer who did not participate in the Plan. Mr. Brousseau returned to his former employer



(Glen-Mur Ltd.) for whom he worked for a two-week period in September 1984. All parties agreed that the former employer was a participating employer prior to 1983 and after August 1, 1985. The Trustees argued that there was no evidence that the former employer was a union employer during the relevant two-week period in September 1984. In the absence of evidence that the former employer ceased being a union employer during the relevant period of time (September 1984), we have concluded Mr. Brousseau did work for a participating employer up until November 1, 1983, for two weeks in September 1984 and after August 1, 1985.

The question then becomes how should the Plan terms be interpreted in the case of this employment history.

The interpretation of the relevant Plan provisions has been the subject of a decision of the Court [Ontario Superior Court of Justice, Court File No. 01 CU-18268 dated October 19, 2001]. In that case, the Court was asked to determine whether the Trustees had properly interpreted the Plan documents and adequately exercised their discretion in deciding whether to give members of the Plan credited service under the Plan for the periods before 1984 when they had a break in service and were not working for a participating employer under the Plan. The practice of the Trustees was to give Plan members whose employment by a participating employer was terminated, pension credits for a period of 90 days following the termination. After 90 days if the members were still not working for a participating employer, the

Trustees considered whether the member was “ready, willing and able” to work in the electrical industry. The Trustees did not consider members who were employed by non-participating employers to be “ready, willing and able” to work in the electrical industry. If the members were “ready, willing and able” to work in the electrical industry the Trustees exercised their discretion whether to continue to give the members credited service based on the individual circumstances of each case.

The Court determined that the interpretation and practice of the Trustees was reasonable. In the case of Mr. Brousseau, the Trustees concluded he was not ready, willing and able to work in the electrical industry given that he was working for a non-participating employer.

Mr. Brousseau gave evidence that he was advised by a Business Manager with Local 586 that if he did become employed by a non-participating employer during the layoff period his pension benefits would be maintained so long as he continued to pay his union dues. Mr. Brousseau argues that the representation from the Business Manager should determine his credited service and therefore there should be no break in his credited service for the periods during which he was employed by a non-union employer.

While we believe that Mr. Brousseau was of the impression that his service would continue, the interpretation of the Trustees, as confirmed by the Court, determines the eligibility of Mr. Brousseau to benefits under the Plan.

The question remains however as to whether the Plan terms have been correctly applied to Mr. Brousseau's circumstances. Given that Mr. Brousseau worked for his former employer for two weeks during September 1984 we have concluded that Mr. Brousseau was eligible for credited service for that period and for a period of 90 days following termination with that union employer in 1984 and that such service must be recognized by the Trustees as service with a participating employer under the Plan.

### **Conclusion:**

For the reasons noted above, the Superintendent is ordered to refrain from issuing the Notice of Proposal and the Trustees are directed to provide credited services to Mr. Brousseau for the first 90 days after his layoff in 1983 (starting from September 12, 1983) and for two weeks plus 90 days in 1984.

### **Costs:**

Mr. Brousseau requested an opportunity to make submissions as to costs. He may do so by written request filed with the Tribunal and served on the other parties within 30 days of the date of this decision. The other parties shall have 14 days to file and serve written responses to any such request.

**DATED** at the City of Toronto this  
22nd day of October 2004.

Anne Corbett,  
Vice Chair of the Tribunal  
and Member of the Panel

Heather Gavin,  
Member of the Tribunal  
and Member of the Panel

David Vincent,  
Member of the Tribunal  
and Member of the Panel

**INDEX NO.:** FST File Number P0240-2004

**PLAN:** Portship Employees Negotiated Pension Plan,  
Registration No. 0393199 (the “Plan”)

**DATE OF DECISION:** November 29, 2004

**PUBLISHED:** Bulletin 14/1 and FSCO website

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*(Note: Only FST decisions pertaining to pensions are included in this section.)*

*(Note: In this section, “Commission” refers to the Financial Services Commission of Ontario.)*

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

**AND IN THE MATTER OF** a proposal by  
the Superintendent of Financial Services  
(the “Superintendent”), pursuant to the  
Act, to refuse to make an order directing  
Pascol Engineering to make an additional  
payment from the fund for the Portship  
Employees Negotiated Pension Plan,  
Registration No. 0393199 (the “Plan”) in  
respect of Constantin Munteanu’s pension  
benefits, or the commuted value thereof;

**AND IN THE MATTER OF** a request  
to the Financial Services Tribunal for  
a hearing in respect of the proposal,  
made pursuant to the Act;

**AND IN THE MATTER OF** a hearing  
by way of written submissions on the  
jurisdictional questions of whether the  
Tribunal has authority to entertain that  
request and, if so, whether it should do so;

**BETWEEN:**

**CONSTANTIN MUNTEANU**  
**Applicant**  
-and-  
**SUPERINTENDENT OF**  
**FINANCIAL SERVICES**  
**Respondent**

**BEFORE:**

Mr. Colin H.H. McNairn  
Chair of the Tribunal

**WRITTEN SUBMISSIONS:**

On behalf of Constantin Munteanu, from  
Mr. Doron J. Gold of Wrock & Associates

On behalf of the Superintendent  
of Financial Services, from  
Mr. Mark Bailey



## **REASONS FOR DECISION**

### **The Background**

The Deputy Superintendent, Pensions Division of the Financial Services Commission of Ontario, acting under delegated authority from the Superintendent, served a notice of proposal dated April 8, 2004 on Mr. Constantin Munteanu, a former employee of Pascol Engineering (or its predecessor company) and member of the Plan, and on Pascol Engineering, the plan sponsor and administrator of the Plan. The notice was to the effect that the Deputy Superintendent refused to make an order under subsection 87(1) of the Act, requested by Mr. Munteanu, directing Pascol Engineering to make an additional payment from the pension fund for the Plan in respect of Mr. Munteanu's pension benefits or the commuted value of those pension benefits.

The notice advised Mr. Munteanu that he was entitled to a hearing by this Tribunal, pursuant to subsection 89(6) of the Act, and that, to request a hearing, he must deliver to the Tribunal a written request requiring a hearing within 30 days of service of the notice. The notice also advised that if Mr. Munteanu should fail to request a hearing within 30 days, the Superintendent may refuse to make the order, as proposed in the notice.

The Tribunal did not receive written notice requesting or requiring a hearing in this matter within 30 days of service of the notice of proposal. On June 9, 2004, Mr. Charles Wrock of Mr. Munteanu's firm of

solicitors faxed a letter bearing that date to the Registrar of this Tribunal requesting a hearing in this matter and indicating that "the correspondence requiring [the solicitors] to file a request for hearing" had been misplaced. That letter was received by the Registrar on June 10, 2004. By letters dated June 11, 2004, the Registrar advised Mr. Wrock that a Request for Hearing, in the form prescribed by the Tribunal's Rules of Practice, was required to be filed and served, in accordance with Rule 15. A completed Request for Hearing was sent by Mr. Wrock to the Tribunal with a cover letter of July 2, 2004 asking, in effect, that the Tribunal convene a hearing notwithstanding the late filing of the Request. The Request for Hearing was received by the Tribunal on July 8, 2004.

On August 9, 2004, the Registrar faxed a letter to counsel for the parties to this proceeding and to Pascol Engineering inviting the submission of written representations to the Tribunal on the following jurisdictional questions;

- whether the Tribunal has the authority to extend the 30-day time period for delivering a notice requiring a hearing under subsection 89(6) of the Act; and
- if so, whether the Tribunal should exercise that authority in the circumstances of this case.

Such representations were made by counsel for the parties, both taking the position that the Tribunal could and should convene a hearing in this matter despite the late delivery or filing of a notice requiring, and a request

for, such a hearing. Pascol Engineering did not submit any written representations.

## The Statutory Framework

Section 89 of the Act provides, in its relevant provisions, as follows;

(2) Where the Superintendent proposes to make or to refuse to make an order in relation to,

...

(e) section 87 (administration of pension plan in contravention of Act or regulation);

...

the Superintendent shall serve notice of the proposal, together with written reasons therefor, on the administrator and any other person to whom the Superintendent proposes to direct the order.

...

(6) A notice under subsection ...

(2) ... shall state that the person on whom the notice is served is entitled to a hearing by the Tribunal if the person delivers to the Tribunal, within thirty days after service of the notice under that subsection, notice in writing requiring a hearing, and the person may so require such a hearing.

(7) Where the person on whom the notice is served does not require a

hearing in accordance with subsection (6), the Superintendent may carry out the proposal stated in the notice.

(8) Where a person requires a hearing by the Tribunal in accordance with subsection (6), the Tribunal shall appoint a time and hold the hearing.

...

The Statutory Powers Procedure Act, R.S.O. 1990, c. S.22, as amended (the "SPPA"), to which this Tribunal is subject, provides as follows;

4. (1) Any procedural requirement of this Act or of another Act or regulation that applies to a proceeding, may be waived with the consent of the parties and the tribunal.

## The Relevant Rules of Practice

At the time the Request for Hearing was filed in this case, the Tribunal's Rules of Practice (then called the "Interim Rules of Practice") provided, in Rule 15, as follows;

1.01 A proceeding is initiated by a written Request for a Hearing (in Form 1) or by written Notice of Appeal (in Form 2).

1.02 A Request for a Hearing shall be in writing and shall be filed within the time period set out in the statute setting out the right of hearing and shall be served on the Superintendent

and any other interested parties or as directed by the Tribunal.

There are no substantial differences in the versions of these provisions as set out in the Tribunal's current Rules of Practice (the "Current Rules of Practice"), which replaced the Interim Rules of Practice effective August 1, 2004.

The Rules of Practice provide for variations in time periods prescribed by the Rules as follows;

5.01 The Tribunal may, before or after the expiration of a prescribed time period and on such conditions as it considers just, extend or abridge the time prescribed for the performance of anything required under the Rules.

A party who cannot meet a time limit prescribed by the Rules must promptly request an extension (Rule 5.02), although the process for doing so varies between the Interim Rules of Practice and the Current Rules of Practice. Both versions of the Rules authorize the Tribunal to exercise any of its powers under the Rules (e.g. under Rule 5.01) on its own initiative or at the request of a party (Rule 2.02 of the Current Rules of Practice and Rule 2.03 of the Interim Rules of Practice).

### Analysis

Section 89 of the Act provides for a hearing by the Tribunal in a back-handed way. It comes at the subject through its prescription

of the contents of the notice of proposal that the Superintendent is required to serve on affected persons. The notice must set out the fact that the recipient of the notice is entitled to a hearing by the Tribunal if a written notice requiring a hearing is delivered to the Tribunal within 30 days of service of the notice of proposal. Although the Act is drafted on the basis that the entitlement to a hearing has its source in the terms of the notice of proposal, it does not indicate how that entitlement will be affected if the notice describes it in an inaccurate and misleading way or not at all. Suppose the notice does not advise a person to whom it is directed of the 30-day period for requiring a hearing by the Tribunal or advises, incorrectly, that the period is 60 days. Would the Tribunal be without any authority to waive the 30-day time period and entertain a notice requiring a hearing that was delivered to it beyond that period? It shouldn't be, given the unfairness of such a result to the person giving the notice requiring a hearing. This unfairness suggests that the 30-day time limit referred to in subsection 89(6) of the Act should not be construed as mandatory (i.e. imperative) or substantive, as it is sometimes put, for that would preclude any discretion, on the part of the Tribunal, to afford a hearing when it was requested beyond the 30-day period, whatever the circumstances might be.

If the time limit is not mandatory or substantive, it must then be directory or procedural in nature. Consequently, it can be waived with the consent of the parties and the Tribunal in accordance with subsection 4(1) of the SPPA. The parties to this proceeding,



Mr. Munteanu and the Superintendent, have effectively consented to such a waiver and the question of whether the Tribunal should also consent is a remaining question that I have to address in these Reasons. Since the parties have consented to waive the time limit, I don't have to decide, for the purposes of this case, whether that time limit could be waived in the absence of the consent of the parties, which would necessitate a consideration of whether subsection 4(1) of the SPPA should be taken to contain an exhaustive description of the circumstances in which the time limit, in subsection 89(6) of the Act, can be waived or otherwise dispensed with.

Rule 15.02 of the Tribunal's Rules of Practice has the effect, in the present case, of incorporating by reference the 30-day time limit referred to in subsection 89(6) of the Act and making it the limit within which Mr. Munteanu was obliged to file with this Tribunal a written Request for Hearing in the form prescribed by the Rules. He did not file such a Request with the Tribunal until 3 months after the date of the notice of proposal. However, the Tribunal has the authority, under Rule 5.01, to extend the 30-day time limit, as adopted by Rule 15.02. I am prepared to consider the correspondence of Mr. Munteanu's counsel to the Registrar as, in effect, a request for such an extension under Rule 15.02 or alternatively to consider, on my own initiative under Rule 2.02 (formerly Rule 2.03, in the Interim Rules), whether such an extension should be granted.

I turn then to the question of whether in the circumstances of this case, the Tribunal should:

- consent to the waiver of the 30-day time limit, for delivering a written notice requiring a hearing, in subsection 89(6) of the Act, and
- grant an extension of the similar time limit, for filing a written Request for Hearing, in Rule 15.02 of the Tribunal's Rules of Practice.

In this case, the delay in delivering a notice requiring a hearing and in filing a Request for Hearing was not significant and, apparently, was the result of inadvertence on the part of Mr. Munteanu's solicitors. Moreover, neither party seems to have taken any action on the faith of the proposal contained in the notice following the expiry of the 30-day period. I am unaware of any third parties whose reasonable expectations might be frustrated if the proposal didn't have finality after 30 days in the absence of a notice requiring or requesting a hearing. While Pascol Engineering might have had an interest in the proposal being final in that event, it was given notice of the jurisdictional questions that were to be decided in this case and was invited to make written representations but declined to do so.

### **Disposition**

In the circumstances, I make the following orders with respect to the jurisdictional questions that are before me;

- the Tribunal has the authority to extend the 30-day time period, under subsection 89(6) of the Act, for delivering a written notice requiring a hearing in this matter;
- that 30-day time period is waived, with the result that the written notice delivered by Mr. Munteanu, through his solicitors, to the Tribunal in a letter dated June 9, 2004 shall be treated as an adequate notice requiring a hearing in this matter for the purposes of subsection 89(6) of the Act.

I also order that the 30-day time limit for filing a Request for Hearing in this matter is extended, retroactively, to July 8, 2004, with the result that the Request for Hearing filed by Mr. Munteanu with the Tribunal on that date shall be treated as having been properly filed in accordance with the Rule 15.02 of the Tribunal's Rules of Practice and Procedure.

**DATED** at Toronto, Ontario this  
29<sup>th</sup> day of November, 2004.

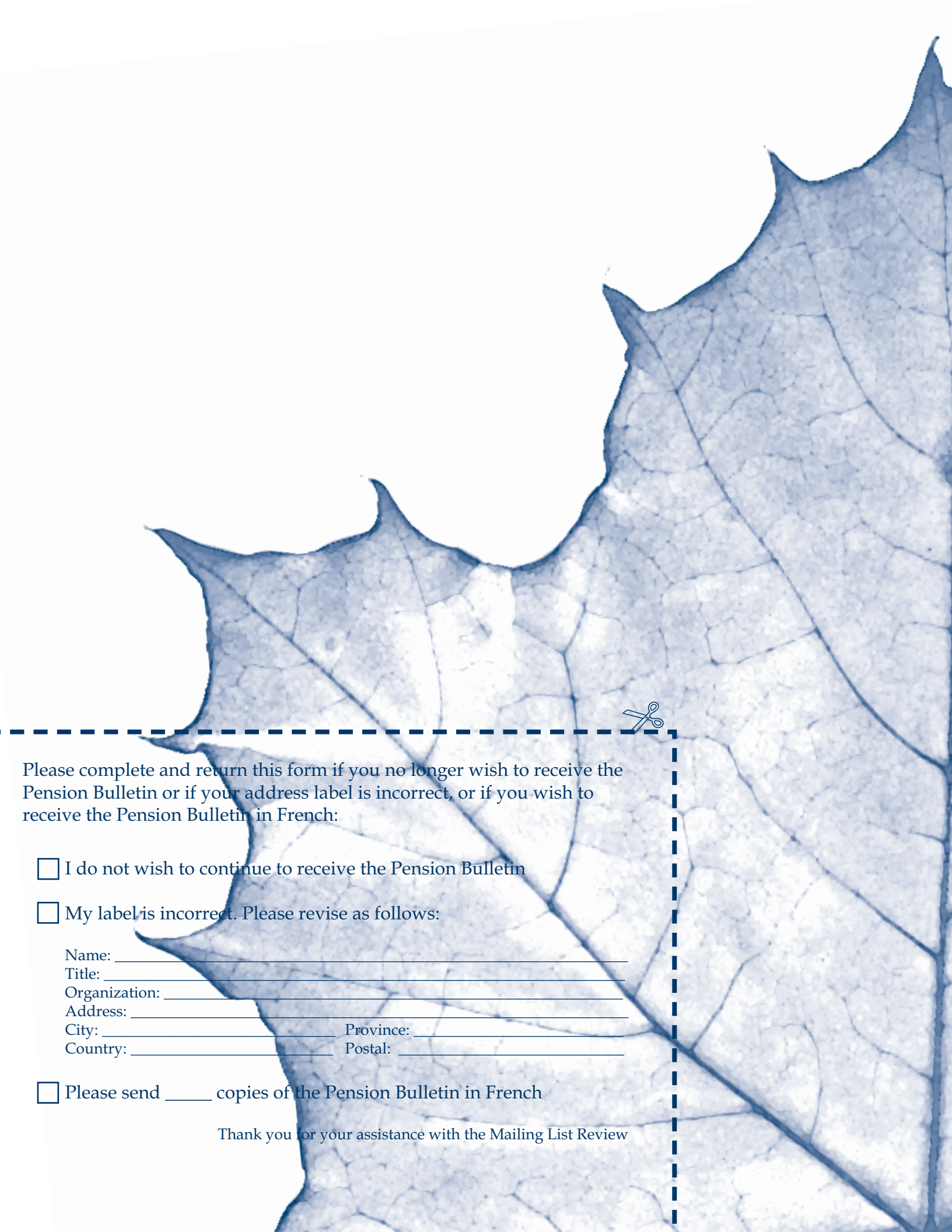
Colin H.H. McNairn,  
Chair of the Tribunal



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