

PENSION BULLETIN

SEPTEMBER 2002 • VOLUME 11, ISSUE 3

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The Financial Services Commission of Ontario Act, 1997, S.O. 1997, c. 28 as amended, the Pension Benefits Act, R.S.O. 1990, c. P.8 as amended, R.R.O. 1990, Reg. 909 as amended, the terms of the pension plan and trust, if any, and the policies, procedures and practices of FSCO should be considered in determining specific legal requirements, and professional advice should be sought.

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GENERAL ANNOUNCEMENTS

Appointment of Bryan Davies as Chief Executive Officer and Superintendent of Financial Services, FSCO

July 15, 2002

Dear FSCO Stakeholder:

Today the Ontario Deputy Minister of Finance, Bob Christie, announced the appointment of Bryan Davies as the new Chief Executive Officer and Superintendent of Financial Services, Financial Services Commission of Ontario (FSCO). The appointment is effective September 3, 2002.

I would like to welcome Mr. Davies to FSCO and express my confidence in his leadership as FSCO moves forward in fulfilling its mandate to protect the public interest and enhance public confidence in the regulated sectors by providing regulatory services that protect consumers and support a healthy and competitive financial services industry.

Most recently, Mr. Davies has been the Senior Vice President of Regulatory Affairs at the Royal Bank of Canada. Prior to that he spent several years at the University of Toronto as Senior Vice President of Business Affairs and Chief Administrative Officer.

Mr. Davies also has extensive senior experience in the public sector, including Deputy Treasurer and Deputy Minister of Economics at the former Ontario Ministry of Treasury and Economics as well as Deputy Minister at the former Ontario Ministry of Financial Institutions. He is an exceptional choice to lead FSCO.

I will remain as the acting Chief Executive Officer and Superintendent, Financial Services until Mr. Davies assumes his position in September 2002.

Sincerely,

Philip Howell
Chief Executive Officer and
Superintendent of Financial Services (Acting)





Contacts for Plan Specific Enquiries

Contact Name	Title	Phone Number	Allocation Alpha Range
Jaan Pringi	Sr. Pension Officer	416-226-7826	
Gulnar Chandani	Pension Officer	416-226-7770	#'s - Associated
Penny McIlraith	Pension Officer	416-226-7822	Associates - Bulk
Tim Thomson	Pension Officer	416-226-7829	Bull - Cem
Irene Mook Sang	Pension Officer	416-226-7824	Cen - Cz
Kathy Carmosino	Pension Officer	416-226-7823	I - King
Preethi Anthonypillai	Pension Officer	416-226-7812	Kinh - Mark
Gino Marandola	Sr. Pension Officer	416-226-7820	
Calvin Andrews	Pension Officer	416-226-7768	Gko - H
Jeff Chuchman	Pension Officer	416-226-7807	D - Em
John Graham	Pension Officer	416-226-7774	Marl - Nes
Julina Lam	Pension Officer	416-226-7815	Net - Pep
Anna Vani	Pension Officer	416-226-7833	Peq - Rob
Larry Martello	Pension Officer	416-226-7821	
Rosemin Jiwa Jutha	Sr. Pension Officer	416-226-7816	
John Khing Shan	Pension Officer	416-226-7237	En - Gkn
Peter Dunlop	Pension Officer	416-226-7814	Roc - Sons
Hae-Jin Kim	Pension Officer	416-226-7876	Sont - The Drop
David Allan	Pension Officer	416-226-7803	The Droq - Unicorp
Mark Lucyk	Pension Officer	416-226-7781	Unicorp - Z
Robin Gray	Pension Officer	416-226-7855	

HEARINGS/COURT MATTERS

The information set out below is current to July 23, 2002.

Enforcement Matters

i. Canadian Corporation Creation Center (CCCC)

Charges under the *Pension Benefits Act* (the "Act") were laid against the CCCC Pension Plan administrator, the individual trustees, CCCC and related companies on September 12, 2001. The charges relate to a scheme whereby locked in accounts were assigned to the defendant companies in return for the promise to extend a loan to the locked in account holder. A first appearance occurred on October 9, 2001. A second appearance occurred on December 6, 2001, at which time one of the individual trustees pleaded guilty to a charge of failing to administer the CCCC Pension Plan in accordance with Act. A fine of \$5,000 inclusive of victim surcharge was levied. The charges against the other defendants were withdrawn on June 17, 2002.

ii. Visentin Steel Fabricators Ltd.

Charges were laid for failing to file annual information returns. The first appearance occurred on August 21, 2001. The matter was subsequently adjourned and on February 12, 2002, a trial date was set for April 12, 2002. On April 12, 2002, the defendant pleaded guilty to three counts relating to filings for periods prior to the effective date of the wind up of the plan. A total fine of \$3,600 was levied and a probation order requiring that the defendant file the outstanding documents was imposed.

iii. Bimeda-MTC Animal Health Inc./ Bimeda-MTC Sante Animale Inc.

Charges were laid in respect of two pension plans administered by Bimeda. In one pension

plan, Bimeda was charged for failing to file a financial statement. In respect of the other plan, Bimeda was charged for failing to file financial statements for two consecutive years. The first appearance for the charges occurred on March 5, 2002. The matter was subsequently adjourned and on May 31, 2002, the charges were withdrawn.

iv. Dubreuil Forest Products Limited

Charges were laid for failing to file a financial statement. The first appearance for the charges occurred on March 5, 2002. The matter was subsequently adjourned to August 27, 2002.

v. Pass & Seymour Canada, Inc.

Charges were laid for failing to file a financial statement and an annual information return. The first appearance in Court was on March 5, 2002. The matter was adjourned to April 16, 2002. On April 16, 2002, Pass & Seymour pleaded guilty to all charges and a total fine of \$1,500 was levied on all charges.

vi. Pacific Paving Limited

A charge was laid for failing to file a financial statement. The first appearance in Court was on March 5, 2002. The matter was subsequently adjourned and on May 31, 2002, Pacific Paving pleaded guilty to the charge and a total fine of \$100 was levied.

vii. Mimik Industries Inc.

Charges were laid against the employer, Mimik Industries Inc., and against an officer of the employer for failing to remit the required contributions to the pension plan. The first appearance in Court was on June 13, 2002, at which time the matter was adjourned to July 31, 2002.

viii. Servifood Ltd.

Charges were laid against the employer for failing to file an amendment, PBGF assessment certificates and an annual information return. The first appearance in Court was on June 13, 2002, at which time the Court determined that service had not been effected against the defendants.

ix. Glenex Industries Inc.

Charges were laid for failing to file financial statements for five consecutive years. The first appearance in Court was on June 28, 2002. Glenex pleaded guilty to all the charges and a total fine of \$3,700 was levied.

x. Rellok Ltd.

Charges were laid for failing to pay the filing fees for annual information return for two consecutive years. The first appearance in Court was on June 28, 2002, at which time the charges were adjourned to July 30, 2002.

Court Matters

i. Moisan et al. v. Pension Commission of Ontario et al.

In August 1996, a group of former members of the Retirement Income Plan for Employees of Kidd Creek Mines commenced a civil action against the Pension Commission of Ontario (PCO), Falconbridge Limited, and Sedgwick Limited, claiming \$11.4 M in damages. The plaintiffs claimed that the PCO's consent to a wind up and surplus withdrawal by the employer in 1986 was void because no notice was provided to the members. The plaintiffs also claimed that the employer Kidd Creek and its actuary deliberately undervalued liabilities for the wind up so as to maximize the surplus, and that Kidd Creek and its actuary encouraged members to take the Kidd Creek Retirement Savings Program option rather than the deferred annuity option.

The action was certified as a class action in 1999. The claim against the PCO was amended to eliminate the claim for damages and to instead claim a declaration that the PCO's consent was void.

Settlement negotiations on the eve of trial resulted in a proposed settlement reached in March of 2002. On May 28, 2002, the Superior Court of Justice approved the settlement and the proposed allocation of funds. The settlement involves Falconbridge paying the sum of \$5.0 M over four years and Sedgwick paying the sum of \$700,000 immediately.

ii. Monsanto Canada Inc.

On April 29 and 30, 2002, the Court of Appeal heard the appeal of the Divisional Court's decision brought by Monsanto Canada Inc., the Association of Canadian Pension Management, and National Trust Company. The issues are

whether the Act compels a distribution of surplus on partial wind up and whether the doctrine of legitimate expectation applies. The Divisional Court had unanimously allowed the Superintendent's appeal of the Financial Services Tribunal's majority decision, which held that the Act does not compel a distribution of surplus on partial wind up and that the doctrine of legitimate expectation applied against the Superintendent.

The Court of Appeal reserved its decision.

iii. Ontario Teachers' Pension Plan (Anne Stairs)

On May 24, 2002, the Divisional Court heard an appeal by Anne Stairs against the Financial Services Tribunal's decision which directed the Superintendent not to carry out a proposal to order the Teachers' Pension Plan Board to pay certain survivor benefits to Ms. Stairs, a former spouse of the plan member who died before reaching retirement age. The Tribunal held that a separation agreement awarding Ms. Stairs an interest in the plan member's pension benefits (including death benefits) could not be enforced under the Act, as death benefits were not property and the plan member's spouse at the time of his death was not a party to the separation agreement.

The Divisional Court released its decision on June 18, 2002. The appeal was allowed. The Court found that death benefits were property that could be assigned and that subsection 48(13) clearly gave Ms. Stairs an interest in the death benefits. The standard of review was reasonableness. However, the standard was correctness when the Tribunal interpreted family law or the common law.

The parties will return to argue the amount of

Ms. Stairs entitlement before the Divisional Court on September 31, 2002.

iv. Dustbane Enterprises Limited

On June 7, 2002, the Divisional Court heard an appeal by Dustbane Enterprises Limited with respect to a Financial Services Tribunal decision. The case involves a partial wind up of the Pension Plan for Employees of Dustbane Enterprises Limited whereby Dustbane's distributors and their employees were removed from the plan. The Tribunal's majority decision held that the plan was not a multi-employer pension plan because there was no agreement on the part of the distributors to contribute as employers to the plan, and that Dustbane and not its distributors was responsible for a deficit that had arisen on partial wind up. The Tribunal majority held that Dustbane was the employer of the distributors and their employees for the purposes of the Act. The Tribunal dissent held that the plan was a multi-employer pension plan based on an agreement implied through conduct in remitting contributions to the plan and that the distributors were therefore responsible for the deficit.

The Tribunal unanimously held that any delay could not excuse payment of the deficit, since plan members' rights under the Act could not be compromised.

The Divisional Court dismissed the appeal on June 7, 2002, finding that Dustbane was estopped from claiming that it was a multi-employer pension plan after years of holding itself out as a single employer plan. The Court found that the Tribunal majority acted reasonably in interpreting the term "employer" with plan members' rights in mind, and that the Tribunal panel as a whole acted reasonably in finding that delay could not compromise members' rights under the Act.



LEGISLATIVE CHANGES/REGULATORY POLICIES

Ontario Regulation 202/02

Regulation 202/02 has been made under the *Pension Benefits Act* to implement the restructuring of the pension plans of Algoma Steel Inc.

A copy of Ontario Regulation 202/02 is available on FSCO's website at www.fSCO.gov.on.ca

Ontario Regulation 203/02

Effective June 28, 2002, Regulation 909 under the *Pension Benefits Act* was amended by Ontario Regulation 203/02 to prevent any additional employers from electing to have their pension plans treated as qualifying plans for the purposes of Section 5.1 of the Regulation.

A copy of this amendment to Ontario Regulation 909 is available on FSCO's website at www.fSCO.gov.on.ca

Financial Services Commission of Ontario

Commission des services financiers de l'Ontario

SECTION:	Benefits
INDEX NO.:	B100-206
TITLE:	Pregnancy, Parental and Emergency Leave
APPROVED BY:	Superintendent of Financial Services
PUBLISHED:	FSCO website (May 2002)
EFFECTIVE DATE:	May 1, 2002
REPLACES:	B100-200, B100-202, B100-204, B100-205

This policy replaces B100-200, B100-202, B100-204 and B100-205 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.

Section 51 of the *Employment Standards Act, 2000*, S.O. 2000, c. 41 ("ESA") sets out requirements in situations where a member of a pension plan is absent from employment as a result of pregnancy, parental or emergency leave, as defined under the ESA.

For pension plans where members are not required to make contributions under the plan, the effect of the ESA requirements is that a member who takes such leave continues to participate in and accrue benefits under the pension plan throughout the term of the leave, and the employer's contributions respecting the member must continue to be made during that time, unless the member elects in writing not to

participate in the pension plan for the term of the leave.

For pension plans where members are required to make contributions under the plan, the effect of the ESA requirements is that a member who takes such leave continues to participate in and accrue benefits under the pension plan throughout the term of the leave, and the employer's contributions respecting the member must continue to be made during that time, unless the member gives the employer written notice that the member does not intend to pay his or her contributions related to the term of the leave or elects in writing not to participate in the pension plan for the term of the leave.

Where a member of a contributory plan does not elect to stop making contributions to the plan during pregnancy, parental or emergency leave, the manner in which the member's contributions are to be made should be set out in the plan text. This could include periodic payments during the leave, a lump sum payment or some other arrangement that the plan sponsor wishes to implement.

The plan administrator should provide sufficient information for members to make informed decisions about pregnancy, parental or emergency leave. This information might include scenarios which clearly illustrate the possible results of continuing or not continuing to participate in the plan during the term of the leave. The administrator should also provide information about the method for making contributions during the leave.

The employer's obligation to continue making contributions respecting the member cannot be made conditional on the member returning to work after the leave. The continuation of employer contributions is an unconditional right.

The requirements respecting pregnancy, parental and emergency leave are set out in Part XIV (sections 45 to 53) of the ESA. Plan administrators and others involved in the management of employee benefits should familiarize themselves with the general requirements of the ESA.

Enquiries regarding these specific requirements should be directed to the Employment Practices Branch, Ministry of Labour, 9th Floor, 400 University Avenue, Toronto ON M7A 1T7, telephone (416) 326-2450 or fax (416) 314-7061.

Where the provisions of a pension plan are inconsistent with the pregnancy, parental and emergency leave provisions of the ESA, the plan should be amended to conform with the ESA requirements. In all cases, however, the ESA requirements will apply whether or not the plan is so amended.

SUPERINTENDENT OF FINANCIAL SERVICES

Appointment of Administrators – Section 71 of the PBA

1. London Life Insurance Company as the Administrator of the Canadian Sports and Fitness Employees Pension Plan, (Registration No. 452870), effective immediately.
DATED at Toronto, Ontario, this 14th day of May, 2002.
2. Sun Life Assurance Company of Canada as the Administrator of the Ward Press Limited Employees Pension Plan, (Registration No. 583187), effective immediately.
DATED at Toronto, Ontario, this 10th day of May, 2002.
3. Deloitte & Touche Inc. as the Administrator of the Fantom Technologies Inc. Salaried Pension Plan, (Registration No. 910810), effective immediately.
DATED at Toronto, Ontario, this 23rd day of April, 2002.
4. Deloitte & Touche Inc. as the Administrator of the Fantom Technologies Inc. Hourly Pension Plan, (Registration No. 348995), effective immediately.
DATED at Toronto, Ontario, this 23rd day of April, 2002.
5. Canada Life Assurance Company as the Administrator of the 174676 Canada Inc. Employees Pension Plan, (Registration No. 683201), effective immediately.
DATED at Toronto, Ontario, this 11th day of April, 2002.
6. Arthur Andersen Inc. as the Administrator of the Maksteel Hamilton – Div. of Maksteel Inc. Hourly Employees Pension Plan, (Registration No. 1059146), effective immediately.
DATED at Toronto, Ontario, this 8th day of April, 2002.
7. London Life Insurance Company as the Administrator of the Everest & Jennings Employees Pension Plan, (Registration No. 527671), effective immediately.
DATED at Toronto, Ontario, this 6th day of March, 2002.
8. Deloitte & Touche Inc. as the Administrator of the Outboard Marine Corp. of Canada Ltd. Pension Plan for Employees, (Registration No. 232967), effective immediately.
DATED at Toronto, Ontario, this 1st day of February, 2002.
9. Deloitte & Touche Inc. as the Administrator of the Outboard Marine Corp. of Canada Ltd. Retirement Plan for Employees, (Registration No. 232975), effective immediately.
DATED at Toronto, Ontario, this 1st day of February, 2002.
10. London Life Insurance Company as the Administrator of the Northern Power Control Systems Ltd. Registered Pension Plan 55606, (Registration No. 978486), effective immediately.
DATED at Toronto, Ontario, this 28th day of January, 2002.
11. Manufacturers Life Insurance Company as the Administrator of the Bracknell Corporation Plan for Salaried & Non-Union Hourly Employees, (Registration No. 956789), effective immediately.
DATED at Toronto, Ontario, this 25th day of January, 2002.

12. London Life Insurance Company as the Administrator of the Denton Technologies Inc. Retirement Plan for Employees, (Registration No. 1015171), effective immediately.
DATED at Toronto, Ontario, this 21st day of January, 2002.
13. Standard Life Assurance Company as the Administrator of the Bridge Information Systems Canada Inc. Pension Plan for Employees, (Registration No. 368720), effective immediately.
DATED at Toronto, Ontario, this 18th day of January, 2002.
14. Canada Life Assurance Company as the Administrator of the Pelee Electric Delta Revised Pension Plan for Employees, (Registration No. 363218), effective immediately.
DATED at Toronto, Ontario, this 10th day of January, 2002.
15. Sun Life Assurance Company of Canada as the Administrator of the Binks Sames Canada Ltd. Employees Pension Plan, (Registration No. 578120), effective immediately.
DATED at Toronto, Ontario, this 12th day of November, 2001.
16. Canada Life Assurance Company as the Administrator of the Bono General Construction Pension Plan for Employees, (Registration No. 499608), effective immediately.
DATED at Toronto, Ontario, this 12th day September, 2001.

Notices of Proposal to Make and Order

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 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 **Pension Plan for Salaried Employees of MTD Fasteners 1995 Ltd., Registration No. 689109;**

TO: **MTD Products Limited**
97 Kent Avenue
P.O. Box 1386
Kitchener ON N2G 4J1

Attention: Mr. John Norman
Applicant and Employer

NOTICE OF PROPOSAL

I PROPOSE TO MAKE AN ORDER under s. 78(4) of the Act, consenting to the payment out of the Pension Plan for Salaried Employees of MTD Fasteners 1995 Ltd., Registration No. 689109 (the “Plan”), to MTD Products Limited in the amount of \$31,109.00, as at May 31, 2001, plus investment earnings thereon to the date of payment.

I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:

1. MTD Products Limited is the employer as defined in the Plan (the “Employer”).
2. The Plan was wound up, effective May 15, 1996.

3. After payment of all entitlements under the pension plan, assets in the amount of \$31,109.00 remained in the pension fund, as at May 31, 2001.
4. The Plan provides for the refund to the Company of expense payments made directly by the Company.
5. Evidence of expense payments made directly by the Company in excess of \$31,109, as at May 31, 2001, have been submitted to the Financial Services Commission of Ontario.
6. The application appears to comply with section 78(4) of the Act.
7. 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 served¹ 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

¹NOTE – 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.

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 13th day of February, 2002.

K. David Gordon

Deputy Superintendent, Pension Division

c.c. Mr. Stephen A. Eadie, Robertson,
Eadie & Associates

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 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 Schrader Automotive (Canada) Inc., Registration No. 0923896;**

TO: **Schrader Automotive (Canada) Inc.**
1751 Lake Cook Road
Suite 450
Deerfield, Illinois, U.S.A.
60015

Attention: John Foote
Group Vice President
Applicant and Employer

NOTICE OF PROPOSAL

I PROPOSE TO MAKE AN ORDER under s. 78(1) of the Act, consenting to the payment out of the Pension Plan for Employees of Schrader Automotive (Canada) Inc., Registration No. 0923896 (the “Plan”), to Schrader Automotive (Canada) Inc. in the amount of \$99,218, as at December 31, 1999, plus interest and other adjustments.

I PROPOSE TO MAKE THE ORDER effective only after the Applicant satisfies me that all benefits, benefit enhancements (including benefits and benefit enhancements pursuant to the Surplus Distribution Agreement defined in paragraph 5 below) and any other persons entitled to such payments have been paid, purchased, or otherwise provided for.

I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:

1. Schrader Automotive (Canada) Inc. is the employer as defined in the Plan (the “Employer”).
2. The Plan was wound up, effective December 31, 1999.
3. As at August 31, 1996, the surplus in the Plan was estimated at \$157,414.
4. The Plan provides for payment of surplus to the Employer on the wind up of the Plan.
5. The application discloses that by written agreement made by the Employer, and 100% of the active members and other members (as defined in the application) and 100% of the former members and other persons entitled to payments, the surplus in the Plan at the date of payment, after deduction of wind up expenses is to be distributed:
 - a) 80% to the Employer; and
 - b) 20% to the beneficiaries of the Plan as defined in the Surplus Distribution Agreement.
6. The Employer has applied, pursuant to section 78 of the Act, and clause 8(1)(b) of the Regulation, for consent of the Superintendent of Financial Services to the payment of 80% of the surplus in the Plan (after adding investment earnings and deducting the expenses related to the wind up of the Plan).
7. The application appears to comply with section 78 and subsection 79(3) of the Act and with clause 8(1)(b) and subsections 28(5), 28(5.1) and 28(6) of the Regulation.
8. Such further and other reasons as come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the “Tribunal”), pursuant to subsection 89(6) of the Act, if, within thirty (30) days after this Notice of Proposal is served¹ 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 MAY MAKE THE ORDER PROPOSED HEREIN.

DATED at Toronto, Ontario, this 21st day of February, 2002.

K. David Gordon
Deputy Superintendent, Pension Division
c.c. John Marks, William M. Mercer

¹NOTE – 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 by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28 (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 Nickel Development Institute for M.O. Pearce, Registration No. 969220;**

TO: **Nickel Development Institute**
214 King St. West
Suite 510e
Toronto ON M5H 3S6

Attention: Mr. James Lilly
Vice President and Treasurer
Applicant and Employer

NOTICE OF PROPOSAL

I PROPOSE TO MAKE AN ORDER under s. 78(1) of the Act, consenting to the payment out of the Pension Plan of Nickel Development Institute for M.O. Pearce, Registration No. 969220 (the “Plan”), to Nickel Development Institute in the amount of \$45,198, as at April 1, 2001, plus 100 percent of investment earnings on the surplus to the date of payment less 100 percent of expenses relating to the wind up of the Pension Plan of Nickel Development Institute for M.O. Pearce.

I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:

1. Nickel Development Institute is the employer as defined in the Plan (the “Employer”).
2. The Plan was wound up, effective April 1, 2001.
3. As at April 1, 2001, the surplus in the Plan was estimated at \$45,198.
4. The Plan provides for payment of surplus to the Employer on the wind up of the Plan.
5. The application discloses that by written agreement made by the Employer and M.O. Pearce, the sole member of the Plan, the surplus in the Plan at the date of payment, after deduction of wind up expenses, is to be distributed 100% to the Employer.
6. The Employer has applied, pursuant to section 78 of the Act, and clause 8(1)(b) of the Regulation, for consent of the Superintendent of Financial Services to the payment of 100% of the surplus in the Plan (after adding 100% of investment earnings and deducting 100% of the expenses related to the wind up of the Plan) to the Employer.
7. The application appears to comply with section 78 and subsection 79(3) of the Act and with clause 8(1)(b) and subsections 28(5) and 28(6) of the Regulation.

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 served¹ 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 MAY MAKE THE ORDER PROPOSED HEREIN.

DATED at Toronto, Ontario, this 12th day of March, 2002.

K. David Gordon
Deputy Superintendent, Pension Division
c.c. Karen A. Zilli, William M. Mercer Limited

¹NOTE – 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 “PBA”);
AND IN THE MATTER OF a Proposal of the
Superintendent of Financial Services to Make an
Order under section 69 of the PBA relating to
the **Pension Plan for Unionized
Employees of Northern Globe Building
Materials (Thorold Division),
Registration Number 680405 (formerly
C-104311) (the “Plan”);**

TO: **Arthur Andersen Inc.**
4 King Street West
Suite 1050
Toronto ON M5H 1B6

Attention: Mr. Lawrence A. Contant
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

NOTICE OF PROPOSAL

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

PROPOSED ORDER:

The Pension Plan for Unionized Employees of
Northern Globe Building Materials, Inc.
(Thorold Division), Registration No. 680405
(formerly C-104311), be wound up in whole for
those members of the Plan who ceased to be
employed effective between November 30, 1998
and February 22, 1999.

REASONS:

1. There was a cessation or suspension of employer contributions to the pension fund, pursuant to clause 69(1)(a) of the PBA.
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, pursuant to clause 69(1)(d) of the PBA.
3. All or significant portion of the business carried on by the employer at a specific location was discontinued, pursuant to clause 69(1)(e) of the PBA.
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 PBA. To request a hearing, you must deliver to the Tribunal a written notice that you require a hearing, within thirty (30) days after this Notice of Proposal is served on you.¹

Your written notice must be delivered to:

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

Attention: The Registrar

¹NOTE – 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.



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.

THE ADMINISTRATOR IS REQUIRED pursuant to section 89(5) of the PBA, to transmit a copy of this Notice of Proposal to the following persons:

**Communications, Energy and
Paper Workers Union of
Canada**

5890 Aspen Court
Niagara Falls ON L2G 7V3

Attention: Mr. Michael Lambert
National Representative
Union

BDO Dunwoody Limited

Royal Bank Plaza
P.O. Box 33
Toronto ON M5J 2J9

Attention: Mr. Mark Chow
**Receiver and Trustee in
Bankruptcy for Striker Paper
Canada, Inc.**

DATED at North York, Ontario,
April 25th, 2002.

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 **Molson Canada Pension Plan for Hourly Employees in Ontario and Atlantic Canada, Registration Number 0334094 (the “Plan”)**;

TO: **MOLSON CANADA**
33 Carlingview Drive
Etobicoke, Ontario
M9W 5E4

Attention: **Rose Vettese**
Manager, Pension and Benefits
**Employer and Administrator
of the Molson Canada
Pension Plan for Hourly
Employees in Ontario and
Atlantic Canada, Registration
Number 0334094**

NOTICE OF PROPOSAL

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

PROPOSED ORDER:

The Molson Canada Pension Plan for Hourly Employees in Ontario and Atlantic Canada, Registration Number 0334094 (the “Plan”), be wound up in part effective August 31, 2000, in relation to those members and former members

of the Plan who were employed by Molson Inc., carrying on business as Molson Canada, formerly Molson Inc., carrying on business as Molson Breweries (the “Employer”) and who ceased to be employed by the Employer effective between October 6, 1999 and August 31, 2000, or the date the Plan member employed by the Employer ceased employment, whichever is later, as a result of the closure of the brewery plant in Barrie, Ontario.

REASONS FOR THE ORDER:

1. Molson Inc., carrying on business as Molson Canada, formerly Molson Inc., carrying on business as Molson Breweries, is the employer and administrator of the Plan.
2. All or a significant portion of the business carried on by the Employer at the brewery plant in Barrie, Ontario, was discontinued between October 6, 1999 and August 31, 2000, within the meaning of clause 69(1)(e) of the Act.
3. 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 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.¹

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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.

THE ADMINISTRATOR IS REQUIRED pursuant to subsection 89(5) of the Act, to transmit a copy of this Notice of Proposal to the following persons: all members and former members of the Plan who were employed by the Employer and who ceased to be employed by the Employer effective between October 6, 1999 and August 31, 2000.

DATED at Toronto, Ontario, this 5th day of May, 2002.

K. David Gordon
Deputy Superintendent, Pension Division
(or delegated signatory)

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 **Molson Breweries Pension Plan for Operating Engineers, Registration Number 0390666 (the “Plan”)**;

TO: MOLSON INC. and CARLING O’KEEFE BREWERIES OF CANADA LIMITED, carrying on business in partnership as MOLSON CANADA (“MOLSON CANADA”)

33 Carlingview Drive
Etobicoke, Ontario
M9W 5E4

Attention: Rose Vettese
Manager, Pension and Benefits
Employer and Administrator of the Molson Breweries Pension Plan for Operating Engineers, Registration Number 0390666

NOTICE OF PROPOSAL

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

PROPOSED ORDER:

The Molson Breweries Pension Plan for Operating Engineers, Registration Number 0390666 (the “Plan”), be wound up in part

effective August 31, 2000, in relation to those members and former members of the Plan who were employed by Molson Inc. and Carling O’Keefe Breweries of Canada Limited, carrying on business in partnership as Molson Canada (the “Employer,” or “Molson Canada”) and who ceased to be employed by Molson Canada effective between October 6, 1999 and August 31, 2000, or the date the Plan member employed by Molson Canada ceased employment, whichever is later, as a result of the closure of the brewery plant in Barrie, Ontario.

REASONS FOR THE ORDER:

1. Molson Canada is the employer and administrator of the Plan.
2. All or a significant portion of the business carried on by Molson Canada at the brewery plant in Barrie, Ontario, was discontinued between October 6, 1999 and August 31, 2000, within the meaning of clause 69(1)(e) of the Act.
3. 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 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.¹

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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.

THE ADMINISTRATOR IS REQUIRED pursuant to subsection 89(5) of the Act, to transmit a copy of this Notice of Proposal to the following persons: all members and former members of the Plan who were employed by Molson Canada and who ceased to be employed by Molson Canada effective between October 6, 1999 and August 31, 2000.

DATED at Toronto, Ontario, this 5th day of May, 2002.

K. David Gordon
Deputy Superintendent, Pension Division
(or delegated signatory)

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 **Molson Canada Pension Plan for Salaried Employees, Registration Number 0334086 (the “Plan”)**;

TO: **MOLSON INC. and CARLING O’KEEFE BREWERIES OF CANADA LIMITED, carrying on business in partnership as MOLSON CANADA (“MOLSON CANADA”)**
33 Carlingview Drive
Etobicoke, Ontario
M9W 5E4

Attention: Rose Vettese
Manager, Pension and Benefits
Employer and Administrator of the Molson Canada Pension Plan for Salaried Employees, Registration Number 0334086

NOTICE OF PROPOSAL

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

PROPOSED ORDER:

The Molson Canada Pension Plan for Salaried Employees, Registration Number 0334086 (the “Plan”), be wound up in part effective August 31, 2000, in relation to those members and former members of the Plan who were employed

by Molson Inc. and Carling O’Keefe Breweries of Canada Limited, carrying on business in partnership as Molson Canada (the “Employer,” or “Molson Canada”) and who ceased to be employed by Molson Canada effective between October 6, 1999 and August 31, 2000, or the date the Plan member employed by Molson Canada ceased employment, whichever is later, as a result of the closure of the brewery plant in Barrie, Ontario.

REASONS FOR THE ORDER:

1. Molson Canada is the employer and administrator of the Plan.
2. All or a significant portion of the business carried on by Molson Canada at the brewery plant in Barrie, Ontario, was discontinued between October 6, 1999 and August 31, 2000, within the meaning of clause 69(1)(e) of the Act.
3. 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 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.¹

Your written notice must be delivered to:

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

Attention: The Registrar

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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.

THE ADMINISTRATOR IS REQUIRED pursuant to subsection 89(5) of the Act to transmit a copy of this Notice of Proposal to the following persons: all members and former members of the Plan who were employed by Molson Canada and who ceased to be employed by Molson Canada effective between October 6, 1999 and August 31, 2000.

DATED at Toronto, Ontario, this 5th day of May, 2002.

K. David Gordon
Deputy Superintendent, Pension Division
(or delegated signatory)

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 **Molson Canada Pension Plan for Salaried Employees, Registration Number 0334086 (the “Plan”)**;

TO: MOLSON INC. and CARLING O’KEEFE BREWERIES OF CANADA LIMITED, carrying on business in partnership as MOLSON CANADA (“MOLSON CANADA”)

33 Carlingview Drive
Etobicoke, Ontario
M9W 5E4

Attention: Rose Vettese
Manager, Pension and Benefits
Employer and Administrator of the Molson Canada Pension Plan for Salaried Employees, Registration Number 0334086

NOTICE OF PROPOSAL

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

PROPOSED ORDER:

The Molson Canada Pension Plan for Salaried Employees, Registration Number 0334086 (the “Plan”), be wound up in part effective December 31, 1997, in relation to those members and former members of the Plan who were employed by Molson Inc. and Carling O’Keefe Breweries of Canada Limited, carrying on business in partnership as Molson Canada (the “Employer,” or “Molson Canada”) and who

ceased to be employed by Molson Canada effective between December 18, 1995 and December 31, 1997 or the date the Plan member employed by Molson Canada ceased employment, whichever is later, as a result of:

- i) the reorganization of the business of Molson Canada; or
- ii) the discontinuance of all or a significant portion of the business carried on by Molson Canada at one or more specific locations.

REASONS FOR THE ORDER:

1. Molson Canada is the employer and administrator of the Plan.
2. A significant number of members of the Plan ceased to be employed by Molson Canada as a result of the reorganization of the business of Molson Canada effective between December 19, 1995 and December 31, 1997, within the meaning of clause 69(1)(d) of the Act. This reorganization included: the decentralization measures taken in Ontario in 1995 and 1996; the decentralization measures taken in Quebec in 1996 and 1997; and the closure of the Winnipeg, Manitoba brewery in 1997.
3. All or a significant portion of the business carried on by Molson Canada at one or more specific locations was discontinued between December 19, 1995 and December 31, 1997, within the meaning of clause 69(1)(e) of the Act.
4. 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 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.¹

Your written notice must be delivered to:

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

Attention: The Registrar

FOR FURTHER INFORMATION, 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.

THE ADMINISTRATOR IS REQUIRED pursuant to subsection 89(5) of the Act to transmit a copy of this Notice of Proposal to the following persons: all members and former members of the Plan who were employed by Molson Canada and who ceased to be employed by Molson Canada effective between December 19, 1995 and December 31, 1997.

DATED at Toronto, Ontario, this 5th day of May, 2002.

K. David Gordon
Deputy Superintendent, Pension Division
(or delegated signatory)

¹NOTE – 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 to Make an Order under section 69 of the Act relating to the **Molson Canada Pension Plan for Salaried Employees, Registration Number 0334086 (the “Plan”)**;

TO: MOLSON INC. and CARLING O’KEEFE BREWERIES OF CANADA LIMITED, carrying on business in partnership as MOLSON CANADA (“MOLSON CANADA”)
33 Carlingview Drive
Etobicoke, Ontario
M9W 5E4

Attention: Rose Vettese
Manager, Pension and Benefits
Employer and Administrator of the Molson Canada Pension Plan for Salaried Employees, Registration Number 0334086

NOTICE OF PROPOSAL

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

PROPOSED ORDER:

The Molson Canada Pension Plan for Salaried Employees, Registration Number 0334086 (the “Plan”), be wound up in part effective May 23, 2001, in relation to those members and former members of the Plan who were employed by Molson Inc. and Carling O’Keefe Breweries of

Canada Limited, carrying on business as Molson Canada (the “Employer,” or “Molson Canada”) and who ceased to be employed by Molson Canada effective between September 8, 1999 and May 23, 2001, or the date the Plan member employed by Molson Canada ceased employment, whichever is later, as a result of the reorganization of the business of the Molson Canada.

REASONS FOR THE ORDER:

1. Molson Canada is the employer and administrator of the Plan.
2. A significant number of members of the Plan ceased to be employed by Molson Canada as a result of the reorganization of the business of Molson Canada within the meaning of clause 69(1)(d) of the Act, effective between September 8, 1999 and May 23, 2001.
3. All or a significant portion of the business carried on by Molson Canada at one or more specific locations was discontinued between September 8, 1999 and May 23, 2001, within the meaning of clause 69(1)(e) of the Act.
4. 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 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.¹

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Your written notice must be delivered to:

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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.

THE ADMINISTRATOR IS REQUIRED pursuant to subsection 89(5) of the Act to transmit a copy of this Notice of Proposal to the following persons: all members and former members of the Plan who were employed by Molson Canada and who ceased to be employed by Molson Canada effective between September 8, 1999 and May 23, 2001.

DATED at Toronto, Ontario, this 5th day of May, 2002.

K. David Gordon
Deputy Superintendent, Pension Division
(or delegated signatory)

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 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 Salaried Employees of Newman Steel Ltd. and its Associated Companies, Registration No. 283481;**

TO: **PricewaterhouseCoopers Inc.**
c/o Blake, Cassels & Graydon LLP
Box 25, Commerce Court West
199 Bay Street
Toronto ON M5L 1A9

Attention: Elizabeth Boyd
Counsel to
PricewaterhouseCoopers Inc.
Reesha Hosein
Counsel to
PricewaterhouseCoopers Inc.
**Applicant and receiver
and manager of Newman
Steel Ltd.**

KPMG Inc.
Suite 3300, Commerce Court West
P.O. Box 31 Stn. Commerce Court
Toronto ON M5L 1B2

Attention: Michael Creber
Senior Vice-President
Plan Administrator

NOTICE OF PROPOSAL

I PROPOSE TO MAKE AN ORDER under s. 78(1) of the Act, consenting to the payment out of the Pension Plan for Salaried Employees of Newman Steel Ltd. and its Associated Companies, Registration No. 283481 (the

“Plan”), to PricewaterhouseCoopers Inc. in the amount of \$206,400 (representing 40% of the surplus of \$516,000 determined to be in the Plan as at November 4, 1991), plus the gains (net losses) thereon from November 4, 1991 to the date of payment, less 40% of all expenses incurred in connection with the administration of the wind up of the Plan, including, without limitation, 40% of the reasonable legal and actuarial fees and expenses of those Plan members included in the surplus sharing group who are represented by Anthony Wellenreiter of the law firm Wellenreiter & Wellenreiter.

I PROPOSE TO MAKE THE ORDER effective only after the Applicant satisfies me that all benefits, benefit enhancements (including benefits and benefit enhancements pursuant to the Surplus Sharing Agreement described in paragraph #5 below) 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.

I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:

1. Newman Steel Ltd., the company which sponsored the Plan, was placed in receivership on October 2, 1991. PricewaterhouseCoopers Inc. was appointed receiver and manager of Newman Steel Ltd. on that date.
2. Newman Steel Ltd. was adjudged bankrupt on December 5, 1991, with Arthur Andersen Inc. being appointed trustee in bankruptcy. Arthur Andersen Inc., who was discharged as trustee in bankruptcy on April 24, 1997, has stated that it has no interest in the surplus assets of the Plan.
3. The Plan was wound up, effective November 4, 1991.



4. As at November 4, 1991, the surplus in the Plan was estimated at \$516,000. The Plan provides for payment of surplus to the Employer on the wind up of the Plan.
5. The application discloses that by written agreement made by the Applicant, 85.7% of the Ontario members and 86.67% of Quebec members, and 100% of the former members in Ontario and 75% of annuitants in Quebec, the surplus in the Plan at the date of payment, after deduction of wind up expenses and other adjustments described in 6. below, is to be distributed:
 - a) 40% to the Employer; and
 - b) 60% to the beneficiaries of the Plan as defined in the Surplus Distribution Agreement.
6. The applicant has provided certification that the application complies with the requirements of the *Quebec Supplemental Pension Plans Act*. Ten of the Quebec members and annuitants did not consent to the Surplus Sharing Agreement. These represent less than 30% of the 57 Quebec members and annuitants entitled to payments under the Plan.
7. The Employer has applied, pursuant to section 78 of the Act, and clause 8(1)(b) of the Regulation, for consent of the Superintendent of Financial Services to the payment of 40% of the surplus in the Plan (after adding 40% of investment earnings and deducting 40% of the expenses related to the wind up of the Plan and 40% of the fees and expenses of those Plan members represented by Anthony Wellenreiter).

8. The application appears to comply with section 78 and subsections 79(3)(a) and 79(3)(b) of the Act, and with clause 8(1)(b) and subsections 28(5), 28(5.1) and 28(6) of the Regulation.
9. Such further and other reasons as come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the “Tribunal”), pursuant to subsection 89(6) of the Act, if, within thirty (30) days after this Notice of Proposal is served¹ 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 MAY MAKE THE ORDER PROPOSED HEREIN.

DATED at Toronto, Ontario, this 28th day of May, 2002.

K. David Gordon
Deputy Superintendent, Pensions

c.c. Mr. Husein Djuk
P.O. Box 312
North Rustico PEI
C0A 1X0

¹NOTE – 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 by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28 (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 **Wajax Industries Limited Pension Plan, Registration No. 281006**;

TO: **Wajax Limited**
3280 Wharton Way
Mississauga, Ontario L4X 2C5

Attention: Barbara Haddad
Manager, Compensation & Benefits
Applicant and Employer

NOTICE OF PROPOSAL

I PROPOSE TO MAKE AN ORDER under s. 78(4) of the Act, consenting to the payment out of the Wajax Industries Limited Pension Plan, Registration No. 281006 (the “Plan”), to Wajax Limited in the amount of \$21,160.44, as at November 30, 2001, plus investment earnings thereon to the date of payment.

I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:

1. Wajax Limited is the employer as defined in the Plan (the “Employer”).
2. The actuarial report effective January 1, 2001, has been filed and indicates a surplus of \$11,152,000 on a solvency basis. The actuary has certified that the Employer is not able to make any normal actuarial cost contributions with respect to the defined benefit provisions of the Plan until such excess surplus has been drawn down.

3. The Employer made a total of three overpayments into the pension fund on June 18, 2001 in the amount of \$8,580.82, on June 18, 2001 in the amount of \$8,694.04 and on July 26, 2001 in the amount of \$3,885.58.
4. Evidence of the overpayment to the fund for the months of June and July 2001 have been submitted to the Financial Services Commission of Ontario.
5. The application appears to comply with section 78(4) of the Act.
6. Such further and other reasons as come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the “Tribunal”), pursuant to subsection 89(6) of the Act, if, within thirty (30) days after this Notice of Proposal is served¹ 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 MAY MAKE THE ORDER PROPOSED HEREIN.

DATED at Toronto, Ontario, this 10th day of June, 2002.

K. David Gordon
Deputy Superintendent, Pension Division

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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 **Staff Pension Plan for Hourly Paid Employees of Vulcan Packaging Inc. (the "Pension Plan")**, Registration Number 0379214;

TO: **Morneau Sobeco** as agent for
Deloitte & Touche Inc.
1500 Don Mills Road
Suite 500
Toronto ON M3B 3K4

Attention: Mr. Al Kiel
Partner
Administrator of the Staff Pension Plan for Hourly Paid Employees of Vulcan Packaging Inc.

AND TO: **Vulcan Packaging Inc.**
15 Bethridge Road
Rexdale ON M9W 1M6

Attention: Mr. Alex Telfer
President
Employer

AND TO: **Ernst & Young Inc.**
175 Commerce Valley Drive West
Suite 600
Thornhill ON L3T 7P6

Attention: Mr. Harold Reiter
**Trustee in Bankruptcy,
Vulcan Packaging Inc.**

AND TO: **CAW Local 1008**
467 St. Clair Street
Chatham ON N7L 3K6

Attention: Mr. Joe McCabe
Union

NOTICE OF PROPOSAL TO MAKE A DECLARATION

WHEREAS:

1. The Staff Pension Plan for Hourly Paid Employees of Vulcan Packaging Inc., Registration No. 0379214 (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 May 15, 1997; and
4. The Superintendent of Pensions appointed Deloitte & Touche Inc. as the administrator (the "Administrator") of the Pension Plan on August 1, 1997.

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 Supplement to the Actuarial Valuation Report filed by the Administrator indicates an estimated funding deficiency of \$861,100 as at August 1, 2001 and an estimated claim against the Guarantee Fund as at August 1, 2001 of \$768,500.00.
2. Ernst & Young Inc. was appointed Trustee in Bankruptcy of Vulcan Packaging Inc. on May 15, 1997.
3. The Administrator has advised that they filed a proof of claim for the asset shortfall but is of the opinion that no recovery will be realized on the proof of claim.

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.¹

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 12th day of February, 2002.

K. David Gordon

Deputy Superintendent, Pension Division

¹NOTE – 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 document 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 **Revised Pension Plan for Employees of the Employer, (the "Pension Plan"), Registration Number 0224923;**

TO: The Canada Life Assurance Company

330 University Avenue
Toronto ON M5G 1R8

Attention: Ms. Milica Stojšin
Plan Wind-up Consultant
Administrator of the Revised Pension Plan for Employees of the Employer

AND TO: Brown & Collett Limited
2365 Matheson Blvd.
Mississauga ON L4W 5C2

Attention: Mr. R.W. Bernard
Controller
Employer

AND TO: PricewaterhouseCoopers Inc. (formerly Price Waterhouse Limited)

5700 Yonge Street
Suite 1900
North York ON M4M 4K7

Attention: Mr. Craig Munro
Receiver and Trustee in Bankruptcy, Brown & Collett Limited

NOTICE OF PROPOSAL TO MAKE A DECLARATION

WHEREAS:

1. The Revised Pension Plan for Employees of the Employer, Registration No. 0224923 (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 1, 1996; and
4. The Superintendent of Pensions appointed Canada life Assurance Company as the administrator (the "Administrator") of the Pension Plan on June 10, 1996.

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 Supplement to the Actuarial Report filed by the Administrator indicates an estimated claim against the Guarantee Fund of \$436,300 as at March 1, 2002.
2. PricewaterhouseCoopers Inc. was appointed Trustee in Bankruptcy of Brown & Collett Limited on March 1, 1996 and as Receiver on April 22, 1996.
3. The Trustee in Bankruptcy has advised the Administrator that there are no funds available from the estate of Brown & Collett Limited to make payment to the Pension Plan.

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.¹

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 15th day of February, 2002.

K. David Gordon
Deputy Superintendent, Pensions

¹NOTE – 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 document 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 **Retirement Plan for Salaried Employees of Airvector Inc. (the "Pension Plan"), Registration Number C-9339;**

TO: **Deloitte & Touche Inc.**
c/o Morneau Sobeco
1500 Don Mills Road
Suite 500
Toronto ON M3B 3K4

Attention: Mr. Al Kiel
Partner
Administrator of the Retirement Plan for Salaried Employees of Airvector Inc.

AND TO: **Airvector Inc.**
201 Speers Road
P.O. Box 430
Oakville ON L6J 5A8

Attention: Camile Adib
President
Employer

NOTICE OF PROPOSAL TO MAKE A DECLARATION

WHEREAS:

1. The Retirement Plan for Salaried Employees of Airvector, Registration No. C-9339 (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 December 31, 1986 by the Employer; and
4. The Superintendent of Pensions appointed Deloitte & Touche Inc. as the administrator (the "Administrator") of the Pension Plan on March 20, 1997.

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 Addendum to the Supplemental Actuarial Report filed by the Administrator indicates an estimated claim against the Guarantee Fund of \$258,900.00 as at December 31, 2001.
2. The place of business of the Employer is closed due to the bankruptcy of the Employer.
3. The Administrator has advised that since the Employer is no longer in business, there are no further funds expected from the Employer or from any other sources for the Pension Plan.

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.¹



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 1st day of March, 2002.

K. David Gordon
Deputy Superintendent, Pensions

¹NOTE – 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 document 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, 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 **Gallaher Thorold Paper Co. Salaried Pension Plan, Registration Number 1039999;**

TO: **Arthur Andersen Inc.**
Suite 1050
4 King Street West
Toronto ON M5H 1B6

Attention: Mr. David R. Kearney
Administrator

Gallaher Thorold Paper Co.
67 Front Street North
Thorold ON L2V 3Z7

Attention: Mr. David Rennie
Vice President, Human Resources
Employer

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

Attention: Mr. Felix Hsu
Manager
**Trustee in Bankruptcy for
Gallaher Thorold Paper Co.**

NOTICE OF PROPOSAL TO MAKE A DECLARATION

WHEREAS:

1. The Gallaher Thorold Paper Co. Salaried Pension Plan, Registration Number 1039999 (the "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, S.O. 1997, c. 28 (the "Act"); 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 Pensions issued an Order that the Plan be wound up effective May 25, 1999; and
4. The Superintendent of the Financial Services Commission appointed Arthur Andersen Inc. as the administrator (the "Administrator") of the Plan on September 27, 1999.

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

1. The funded ratio of the Plan has been estimated to be 55.46%.
2. The employer, Gallaher Thorold Paper Co., was assigned into bankruptcy on June 15, 1999.
3. The trustee in bankruptcy for Gallaher Thorold Paper Co. has advised the Administrator that there are no funds available from the estate of Gallaher Thorold Paper Co. to make payment to the Plan.

4. The Administrator advised that it is of the opinion that there are reasonable and probable grounds for concluding 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.¹

Any notice requiring a hearing shall be delivered to:

Financial Services Tribunal
5160 Yonge Street
14th Floor
North York, Ontario 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 2nd day of April, 2002.

K. David Gordon
Deputy Superintendent, Pension Division
Financial Services Commission of Ontario

¹NOTE – 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.

Notices of Proposal to Refuse to Approve

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 89(2)(e) of the Act relating to the **Ontario Teachers’ Pension Plan, Registration Number 0345785 (the “Plan”)**;

TO: **Donna Marie Sloan**
c/o Koskie Minsky
Barristers & Solicitors
20 Queen Street West
Suite 900, Box 52
Toronto, Ontario
M5H 3R3

Attention: Ari N. Kaplan
Counsel to the Complainant

AND TO: **Teachers’ Pension Plan Board**
5650 Yonge Street
Toronto, Ontario
M2M 4H5

Attention: Anne Slivinskis
Counsel to the Plan

NOTICE OF PROPOSAL

I PROPOSE TO REFUSE TO issue a Notice of Proposal to make an Order under sections 87(2)(a) and (c) of the Act requiring the administrator of the Plan (the “Board”) to comply with subsections 45(3) and 48(1), (3) and (10) of the Act.

REASONS:

1. Mrs. Donna Marie Sloan (the “claimant”) was the recipient of a survivor pre-retirement death benefit from the Plan in respect of the pensionable service of the deceased member, Patrick Sloan (the “member”).

2. The member and the claimant had been married in 1964 and had four children. The member died on June 1, 1993. At the time of the member’s death, one of the children qualified as a “dependent child” within the meaning of the Plan.
3. In August 1993, the claimant applied for a survivor pre-retirement death benefit. The administrator’s files showed the couple as separated. The Board therefore initiated an inquiry into the claimant’s marital status. In a letter dated October 23, 1993, a representative of the Board requested that the claimant provide the Board with a sworn affidavit regarding the marital relationship which included “the dates of separation, the nature of the separation, and any other information that [she] may feel is relevant.”
4. The claimant sent the Board a commissioned solemn declaration sworn by her on October 22, 1993, attached to which was a letter in which she stated that while she had moved out of the matrimonial home in May 1991 due to the member’s alcohol abuse, she and the member still spent time together, shared meals and continued to receive professional counselling. She stated that she had continued to do household chores at both residences. She also continued to receive mail at the matrimonial home. A supporting letter was sent to the Board from her former clergyman.
5. On the basis of the information provided by the claimant in the sworn declaration, the Board concluded that the marital relationship had not come to an end and paid the pension benefit in respect of the member’s service to the claimant.

6. The Board subsequently received a copy of a petition for divorce which had been filed by the claimant in May 1993. The affidavit accompanying the petition stated that the parties had been separated since November 1990, that there was no reasonable prospect of reconciliation, and that the member was living in the matrimonial home with a girlfriend.
7. On the basis of the May 1993 affidavit, the Board determined that the claimant was not entitled to spousal death benefits after all. The claimant's pension was terminated effective December 1999 and the Board advised her that it would be taking steps to recover the pension benefits paid to her between 1993 and 1999 and to redistribute it to the dependent child or otherwise as required by the Act and the Plan.
8. The claimant, through her counsel submits that the Board is precluded from reversing its original decision by virtue of the discharge provisions in section 45(3) and 48(10) of the Act and that, in any event, she was not living separate and apart from the member at the time of his death and that, even if she was, the Board is estopped from terminating the pension on the basis of delay or some other limitation period.
9. The Board is under a statutory obligation to ensure that the Plan is administered in accordance with the Act, Regulation 909, R.R.O. 1990, as amended (the "Regulations") and the Plan. The Act and the Plan both require that for a spouse to be eligible for a pre-retirement spousal benefit the spouse and the member must not be living separate and apart at the time of the member's death. This involves a factual determination based on the evidence. If the spouses are living separate and apart, the pension benefit of the deceased member must be distributed in accordance with the Act and the Plan (i.e., to include the dependent children of the deceased member, if any).
10. Sections 45(3) and 48(10) do not operate to prevent the Board from reversing its original decision with respect to the claimant's marital status. "To be discharged" means to be relieved of obligation or liability. The purpose of the discharge provisions is to relieve a plan administrator from further responsibility on paying the pension or pension benefit if it is paid based upon the information provided by the recipient. The existence of the statutory "safe harbour" in sections 45(3) and 48(10) does not preclude a plan administrator from revisiting and, if necessary reversing, a decision with respect to benefit entitlement if it discovers that the facts on which it based its original decision were inaccurate or incomplete. The Act does not impose any time limits or other constraints on an administrator in this regard.
11. There is no evidence that the Board, in reversing its original decision, breached its fiduciary obligations to the claimant by taking into account irrelevant considerations or failing to take into account relevant considerations or making a decision that was so unreasonable that no plan administrator, properly directing him- or her-self could ever have reached it.
12. In the absence of any contravention of the Act, the Regulations or the Plan, there is no basis to issue a Notice of Proposal to make an Order under sections 87(2)(a) and/or (c) of the Act.
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.¹

Your written notice must be delivered to:

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

Attention: The Registrar

FOR FURTHER INFORMATION, 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 4th day of March, 2002.

K. David Gordon
Deputy Superintendent, Pension Division
(or delegated signatory)

¹NOTE – 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 to Refuse to Approve the actuarial report on the partial wind up submitted by Bauer Nike Hockey Inc. to the Superintendent of Financial Services under sections 70(5) and 89(4) of the Act in respect of the **Pension Plan for Employees of Bauer Nike Hockey Inc., Registration Number 257337 (the “Plan”)**;

TO: **Bauer Nike Hockey Inc.**
6185 McLaughlin Road
Mississauga, ON
L5R 3W7

Attention: Lorraine Banton
Corporate Director, Human
Resources
**Employer and Administrator
of the Plan**

NOTICE OF PROPOSAL

I PROPOSE TO REFUSE TO APPROVE the actuarial report prepared on December 23, 1998 in respect of the partial wind up of the Plan as at November 1, 1998 (the “Report”), under sections 70(5) and 89(4) of the Act.

REASONS:

1. Bauer is the employer and administrator of the Plan.
2. Bauer decided to partially wind up the Plan and submitted the Report to the Superintendent of the Financial Services Commission of Ontario in February 1999, for approval.
3. The partial wind up arose as a result of the closure of Bauer’s location at 445 Dobbie Drive, in Cambridge, Ontario (the “Closure”).
4. As a result of the Closure, 275 members of the Plan were laid off during the period from November 18, 1997 to May 22, 1998 (the “Partial Windup Group”).
5. Bauer filed the Report on February 3, 1999.
6. The Report indicates that it reflects the grow-in benefit provisions set out in section 74(1) of the Act.
7. Section 74(1) of the Act provides certain benefits to plan members whose combination of age and continuous employment or membership in the plan equals at least fifty-five (55), upon the wind up of a pension plan. These members may receive a pension in accordance with the terms of the plan. Where the consent of the employer is a requirement for eligibility for an ancillary benefit, such as the Early Retirement Provisions of the Plan (as defined below), section 74(7) of the Act deems the employer to have given that consent.
8. Section 5.3 (c) of the Plan provides, at the discretion of Bauer, for a special unreduced early retirement pension for long-serving Plan members, defined for the purpose of this section as a member who has completed thirty (30) years of service, or a member whose combination of age and years of service with the company adds up to at least eighty (80) years (the “Early Retirement Provisions of the Plan”).
9. Pursuant to section 74(1)(a) of the Act, and pursuant to the terms of the Plan, those members of the Plan whose combination of age plus years of continuous employment or membership in the Plan equalled at least fifty-five (55) at the effective date of the wind up have a right to immediately receive an unreduced early retirement pension in accordance with the Early Retirement

Provisions of the Plan provided they are eligible for immediate payment of the pension benefit.

10. Pursuant to section 74(1)(b) of the Act, and pursuant to the terms of the Plan, those members of the Plan whose combination of age plus years of continuous employment or membership in the Plan equalled at least fifty-five (55) at the effective date of the wind up have a right to receive an unreduced early retirement pension beginning at the earliest date when they would have completed thirty (30) years of service or attained a combination of age and years of service equal to at least eighty (80) (the "Grow-in Benefits").
11. The Report fails to reflect the Early Retirement Provisions of the Plan and the Grow-In Benefits provided under section 74(1) of the Act.
12. The Report identifies \$244,406 in surplus assets related to the Partial Wind Up Group, as at January 1, 1998.
13. The Report indicates (at p. 1 and at p. 16) that Bauer intends to leave any excess assets attributable to the Partial Wind Up Group in the Plan.
14. The Report fails to provide for the distribution of the surplus assets related to the partial wind up group, as required by the Act. Partial wind up is defined under the Act as "the termination of part of a pension plan and the distribution of the assets related to that part of the pension plan."
15. Subsection 70(6) of the Act states that "on the partial wind up of a pension plan, members, former members and other persons entitled to benefits under the pension plan shall have rights and benefits that are not less than the rights and benefits on the full wind up of a pension plan on the effective date of the partial wind up."
16. As a result, the Report does not meet the requirements of the Act and regulations and does not protect the interests of the members and former members of the pension plan.
17. 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.
18. 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 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.¹

¹NOTE – 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
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 REFUSE TO APPROVE THE REPORT FOR THE REASONS OUTLINED IN THIS NOTICE.

DATED at North York, Ontario,
March 8th, 2002.

K. David Gordon
Deputy Superintendent, Pension Division



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 **Gallagher Thorold Paper Co. Salaried Pension Plan, Registration Number 1039999 (the “Plan”)**;

TO: **Arthur Andersen Inc.**
1 King Street West
Suite 1050
Toronto ON M6H 1B6

Attention: Mr. Lawrence A. Contant
Administrator

AND TO: **Gallagher Thorold Paper Co.**
67 Front Street North
Thorold ON L2V 3Z7

Attention: Mr. David Rennie
Vice-President, Human Resources
Employer

ORDER

ON December 10, 2001, the Superintendent of Financial Services issued a Notice of Proposal to Make an Order dated December 3, 2001, to the Employer and to the Administrator of the Gallagher Thorold Paper Co. Salaried Pension Plan, Registration Number 1039999 (the “Plan”), pursuant to section 69(1) of the Act, that the Plan be wound up in whole effective May 25, 1999.

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 May 25, 1999.

REASONS:

1. There was a cessation or suspension of employer contributions to the pension fund, pursuant to clause 69(1)(a) of the Act.
2. The employer failed 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 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, pursuant to clause 69(1)(d) of the Act.
4. All or a significant portion of the business carried on by the employer at a specific location was discontinued, pursuant to clause 69(1)(e) of the Act.

DATED at North York, Ontario, this 18th day of February, 2002.

Tom Golfetto
Director, Pension Plans Branch
By Delegated Authority from
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 a
Superintendent of Financial Services to Make an
Order pursuant to section 69 of the Act, respecting
the **Pension Plan for Litorque of
Canada Ltd., Registration No. 979187;**

TO: **Canadian Worchester
Controls Limited**
(formerly known as Litorque of
Canada Ltd.)
c/o InvenSys Inc.
33 Commercial Street
B52-S1 Foxboro,
Massachusetts 02035
U.S.A.

Attention: Ms. Allyn Jerome
Benefits Specialist
**Employer and Administrator
of the Plan**

ORDER

ON June 13, 2001, the Superintendent of
Financial Services issued a Notice of Proposal to
Make an Order that the Pension Plan for
Litorque of Canada Ltd., Registration No.
979187 (the “Plan”), be wound up in part,
pursuant to section 69 of the Act, in relation to
those members and former members of the Plan
who were employed by Litorque of Canada
Ltd. (the “Employer”) and who ceased to be
employed by the Employer, effective between
February 1, 1995 and January 31, 1996, or the
date the last Plan member employed by the
Employer ceased employment, whichever is
later, and as a result of:

- (i) the discontinuance of all or part of the
business of the Employer; or
- (ii) the discontinuance of all or a significant
portion of the business carried on by the
Employer at a specific location.

NO REQUEST for a hearing has been received
by the Financial Services Tribunal in connection
with this matter.

I THEREFORE ORDER that, pursuant to sec-
tion 69 of the Act, the Plan be wound up in part
in relation to those members and former mem-
bers of the Plan who were employed by the
Employer and who ceased to be employed by
the Employer effective between February 1, 1995
and January 31, 1996, or the date the last Plan
member employed by the Employer ceased em-
ployment, whichever is later, and as a result of:

- (i) the discontinuance of all or part of the
business of the Employer; or
- (ii) the discontinuance of all or a significant
portion of the business carried on by the
Employer at a specific location.

REASONS:

1. Litorque of Canada Ltd. is the Employer
and administrator of the Plan.
2. A significant number of members of the
Plan ceased to be employed by the Employer
as a result of the discontinuance of all or
part of the business of the Employer
between February 1, 1995 and January 31,
1996 within the meaning of s. 69(1)(d) of
the Act.
3. All or a significant portion of the business
carried on by the Employer at a specific
location was discontinued between February
1, 1995 and January 31, 1996, within the
meaning of s. 69(1)(e) of the Act.

DATED at North York, Ontario, this 28th day of
March, 2002.

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 Deputy Superintendent, Pensions, to Make an Order pursuant to section 69 of the Act, respecting **The Pension Plan for the Employees of Genicom Canada Inc., Registration No. 924829 (the “Plan”);**

TO: Mackenzie Financial Company
150 Bloor Street W., Suite M111
Toronto ON M5S 3B5

Attention: Ms. Grace Tait
Senior Pension Analyst
Administrator

AND TO: Genicom Canada Inc.
7 Paget Road
Brampton ON L6T 5S2

Attention: Beverley Gardner
Payroll Administrator
Employer

ORDER

ON January 10, 2002, the Deputy Superintendent, Pensions, issued a Notice of Proposal to Make an Order dated December 21, 2001, to the Employer and to the Administrator of the Pension Plan for the Employees of Genicom Canada Inc., Registration No. 924829 (the “Plan”), pursuant to section 69(1) of the Act that the Plan be wholly wound up effective October 12, 2000 through November 30, 2000.

NO REQUEST for a hearing has been received by the Financial Services Tribunal in connection with this matter.

I THEREFORE ORDER, pursuant to section 69(1) of the Act, that the Plan be wholly wound up effective October 12, 2000 through November 30, 2000.

REASONS:

1. There was a cessation or suspension of employer contributions to the pension fund, within the meaning of clause 69(1)(a) of the Act.
2. The employer is bankrupt within the meaning of the *Bankruptcy and Insolvency Act* (Canada). R.S.C. 1985, c. B-3, as amended.
3. All or part of the employer’s business or all or part of the assets of the employer’s business were sold, assigned or otherwise disposed of and the person who acquired the business or assets did not provide a pension plan for the members of the employer’s Pension Plan who became employees of the person.

THE ADMINISTRATOR IS REQUIRED pursuant to section 69(2) of the Act, to give notice of this Order to the following persons:

Deloitte & Touche Inc.
c/o Morneau Sobeco as Agents
1500 Don Mills Road
Suite 500
Toronto ON M3B 3K4

Attn: B. Bethune Whiston
Principal
Receiver and Trustee in Bankruptcy for Genicom Canada Inc.

DATED at North York, Ontario, this 1st day of March, 2002.

Tom Golfetto
Director, Pension Plans Branch
By Delegated Authority from
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 pursuant to section 69 of the Act, respecting the **Employee Retirement Plan for the Employees of Bestway Truck Centre Division of 604888 Ontario Inc., Registration No. 0958942;**

TO: **London Life Insurance Company**
Group Retirement Services
255 Dufferin Avenue
London ON N6A 4K1

Attention: Nancy Galpin
Windup Specialist
Administrator

AND TO: **Bestway Truck Centre Division of 604888 Ontario Inc.**
P.O. Box 1170, North Bay
Stn. Main,
Highway 11s at Fisher Street
North Bay ON P1B 8K4

Attention: Peter Woodgate, Office Manager
Employer

ORDER

ON January 7, 2002, the Superintendent of Financial Services issued a Notice of Proposal to Make an Order dated December 21, 2001, to the Employer and to the Administrator of the Employee Retirement Plan for the Employees of Bestway Truck Centre Division of 604888 Ontario Inc., Registration No. 0958942 (the "Plan"), pursuant to section 69(1) of the Act to wind up the Plan in whole.

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 1, 2000, for the following reasons:

REASONS:

There was a cessation or suspension of employer contributions to the pension fund, pursuant to clause 69(1)(a) of the Act.

THE ADMINISTRATOR IS REQUIRED pursuant to section 69(2) of the Act, to give notice of this Order to the following persons:

PricewaterhouseCoopers Inc.
5700 Yonge St., Suite 1900
North York ON M2M 4K7

Attn: David Filice
Vice President
Receiver and Manager for Bestway Truck Centre Division of 604888 Ontario Inc.

A. Farber & Partners Inc.
1200 Sheppard Ave. East
North York ON M2K 2R8

Attn: Avron Mintz
Trustee In Bankruptcy for Bestway Truck Centre
Division of 604888 Ontario Inc.

DATED at North York, Ontario, 11th day of March, 2002.

Tom Golfetto
Director, Pension Plans Branch
By Delegated Authority from
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 pursuant to section 69 of the Act, respecting the **Retirement Plan Sponsored by Diversified International Products Limited for Bruce McLarty, Registration No. 1022482;**

TO: **William M. Mercer Limited**
BCE Place, 161 Bay Street
P.O. Box 501
Toronto ON M5J 2S5

Attention: William K. Simon
Actuary
Administrator

AND TO: **Diversified International Products Limited**
66 West Wilmont Street
Richmond Hill ON L4B 1H8

Attention: Bruce McLarty
President
Employer

ORDER

ON February 1, 2002, the Superintendent of Financial Services issued a Notice of Proposal to Make an Order dated November 13, 2001, to the Employer and to the Administrator of the Retirement Plan Sponsored by Diversified International Products Limited for Bruce McLarty, Registration No. 1022482 (the “Plan”), pursuant to section 69(1) of the Act, to wind up the Plan in whole.

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 February 19, 1999, for the following reasons:

REASONS:

1. There was a cessation or suspension of employer contributions to the pension fund, pursuant to clause 69(1)(a) of the Act.
2. The employer failed 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 and Insolvency Act (Canada)*, R.S.C. 1985, c. B-3, as amended, pursuant to clause 69(1)(c) of the Act.
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, pursuant to clause 69(1)(d) of the Act.
5. All or a significant portion of the business carried on by the employer at a specific location was discontinued, pursuant to clause 69(1)(e) of the Act.



THE ADMINISTRATOR IS REQUIRED

pursuant to section 69(2) of the Act, to give notice of this Order to the following persons:

BDO Dunwoody Limited

Royal Bank Plaza
P.O. Box 33
200 Bay Street, 32nd Floor
Toronto ON M5J 2J9

Attention: D.R. McConnell
Vice President

**Trustee in Bankruptcy and
Receiver and Manager for
Diversified International
Products Limited**

DATED at North York, Ontario, 12th day of
March, 2002.

Tom Golfetto
Director, Pension Plans Branch
By Delegated Authority from
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 pursuant to section 69 of the Act, respecting the **Retirement Plan for the Employees of Alloy Wheels International (Canada) Ltd., Registration No. 1036029;**

TO: **Arthur Andersen Inc.**
Suite 1050
4 King Street West
Toronto ON M5H 1B6

Attention: Lawrence A. Contant
Manager
Administrator

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

Attention: Joan Oickle
Compensation and Benefits
Coordinator
Employer

ORDER

ON January 25, 2002, the Superintendent of Financial Services issued a Notice of Proposal to Make an Order dated January 24, 2002, to the Employer and to the Administrator of the Retirement Plan for the Employees of Alloy Wheels International (Canada) Ltd., Registration No. 1036029 (the “Plan”), pursuant to section 69(1) of the Act to wind up the Plan in whole.

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 January 19, 2001, for the following reasons:

REASONS:

1. There was a cessation or suspension of employer contributions to the pension fund, pursuant to clause 69(1)(a) of the Act.
2. The employer failed 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 and Insolvency Act* (Canada), R.S.C. 1985, c. B-3, as amended, pursuant to clause 69(1)(c) of the Act.
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, pursuant to clause 69(1)(d) of the Act.
5. All or a significant portion of the business carried on by the employer at a specific location was discontinued, pursuant to clause 69(1)(e) of the Act.

THE ADMINISTRATOR IS REQUIRED

pursuant to section 69(2) of the Act, to give notice of this Order to the following persons:

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.



DATED at North York, Ontario, 27th day of
March, 2002.

Tom Golfetto

Director, Pension Plans Branch

By Delegated Authority from

Superintendent of Financial Services

c.c. **CAW Canada – Local 1991**

178 Dunlap Street

Barrie ON L4M 4S6

Attention: Ed Little

President, Skill Trades Rep.



Consent 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 by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28 (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 **Ilford Anitec (Canada) Limited Plan B Employees' Pension Plan, Registration No. 481218;**

TO: **Kodak Polychrome Graphics LLC**
401 Merrit 7
Norwalk, CT 06851

Attention: Mr. John B. Wooley
Director of Human Resources
Applicant and Employer

CONSENT

ON or about December 10, 2001, the Superintendent of Financial Services caused to be served on Kodak Polychrome Graphics LLC a Notice of Proposal dated December 5, 2001, to consent, pursuant to subsection 78(1) of the Act, to payment out of the Ilford Anitec (Canada) Limited Plan B Employees' Pension Plan, Registration No. 481218 (the "Plan"), to Kodak Polychrome Graphics LLC in the amount of \$164,850, as of December 31, 1998.

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 Ilford Anitec (Canada) Limited Plan B Employees' Pension Plan, Registration No. 481218, of \$164,850, as of December 31, 1998, subject to adjustment for investment earnings or losses and expenses, to the date of payment to Kodak Polychrome Graphics LLC.

THIS CONSENT IS EFFECTIVE ONLY

AFTER the Applicant satisfies me that all benefits and benefit enhancements (including benefits and benefit enhancements pursuant to the Surplus Distribution Agreement defined in paragraph 5 below) among members, former members and any other persons entitled to such payments have been paid, purchased, or otherwise provided for.

DATED at Toronto, Ontario, this 13th day of February, 2002.

Tom Golfetto
Director, Pension Plans Branch
by delegated authority from
the Superintendent of Financial Services
c.c. Mr. Robert G. Coyle

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 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 Schrader Automotive (Canada) Inc., Registration No. 0923896;**

TO: Schrader Automotive (Canada) Inc.

c/o The Gates Group of Companies
990 South Broadway
Denver, Colorado, USA
80209-401

Attention: John Barker
Director Retirement Benefits
Applicant and Employer

CONSENT

ON or about March 12, 2002, the Superintendent of Financial Services caused to be served on Schrader Automotive (Canada) Inc. a Notice of Proposal dated February 21, 2002, to consent, pursuant to subsection 78(1) of the Act, to payment out of the Pension Plan for Employees of Schrader Automotive (Canada) Inc., Registration No. 0923896 (the “Plan”), to Schrader Automotive (Canada) Inc. in the amount of \$99,218, as at December 31, 1999, plus interest and adjustments.

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 Schrader Automotive (Canada) Inc., Registration No. 0923896, of \$99,218, as at December 31, 1999, plus interest and adjustments, to Schrader Automotive (Canada) Inc.

THIS CONSENT IS EFFECTIVE ONLY

AFTER the Applicant satisfies me that all benefits, benefit enhancements (including benefits and benefit enhancements pursuant to the Surplus Distribution Agreement made by the Applicant on behalf of Schrader Automotive (Canada) Inc. and 100% of the active members and other members (defined in the application) and 100% of the former members at the date of wind up) and any other persons entitled to such payments have been paid, purchased, or otherwise provided for.

DATED at Toronto, Ontario, this 29th day of May, 2002.

Tom Golfetto

Director, Pension Plans Branch

by delegated authority from

the Superintendent of Financial Services

c.c. Mr. John Marks,

Mercer Human Resource Consulting

Mr. Tyrone Medley,

Mercer Human Resource Consulting





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 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 Nickel Development Institute for M.O. Pearce, Registration No. 969220;**

TO: **Nickel Development Institute**
214 King St. West
Suite 510
Toronto ON M5H 3S6

Attention: Mr. James Lilly
Vice President and Treasurer
Applicant and Employer

THE SUPERINTENDENT OF FINANCIAL SERVICES THEREFORE CONSENTS to the payment out of the Pension Plan of Nickel Development Institute for M.O. Pearce, Registration No. 969220, of \$45,198, as at April 1, 2001, plus 100 percent of investment earnings on the surplus to the date of payment less 100 percent of expenses relating to the wind up of the Pension Plan of Nickel Development Institute for M.O. Pearce, to Nickel Development Institute.

DATED at Toronto, Ontario, this 6th day of June, 2002.

Tom Golfetto
Director, Pension Plans Branch
by delegated authority from
the Superintendent of Financial Services
c.c. Karen A. Zilli, William M. Mercer Limited

CONSENT

ON April 3, 2002, the Superintendent of Financial Services caused to be served on Nickel Development Institute a Notice of Proposal dated March 12, 2002, to consent, pursuant to subsection 78(1) of the Act, to payment out of the Pension Plan of Nickel Development Institute for M.O. Pearce, Registration No. 969220 (the "Plan"), to Nickel Development Institute in the amount of \$45,198, as at April 1, 2001, plus 100 percent of investment earnings on the surplus to the date of payment less 100 percent of expenses relating to the wind up of the Pension Plan of Nickel Development Institute for M.O. Pearce.

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.

Declaration that the Pension Benefits Guarantee Fund Applies to Pension Plans – Subsection 83(1) of the PBA

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 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 **Gallaher Thorold Paper Co. Salaried Pension Plan, Registration Number 1039999**;

TO: **Arthur Andersen Inc.**
Suite 1050, 4 King Street West
Toronto ON M5H 1B6

Attention: Mr. David R. Kearney
Administrator

Gallaher Thorold Paper Co.
67 Front Street North
Thorold ON L2V 3Z7

Attention: Mr. David Rennie
Vice President, Human Resources
Employer

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

Attention: Mr. Felix Hsu, Manager
**Trustee in Bankruptcy for
Gallaher Thorold Paper Co.**

DECLARATION

WHEREAS:

1. The Gallaher Thorold Paper Co. Salaried Pension Plan, Registration Number 1039999 (the "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*, S.O. 1997, c. 28 (the "Act"); 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 Pensions issued an Order that the Plan be wound up effective May 25, 1999; and
4. The Superintendent of the Financial Services Commission appointed Arthur Andersen Inc. as the administrator (the "Administrator") of the Plan on September 27, 1999; and
5. On April 2, 2002, the Deputy Superintendent, Pension Division, issued a Notice of Proposal, dated April 2, 2002, to Make a Declaration that the Guarantee Fund applies to the 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 Plan for the following reasons:

1. The funded ratio of the Plan has been estimated to be 55.46%.
2. The employer, Gallaher Thorold Paper Co., was assigned into bankruptcy on June 15, 1999.
3. The trustee in bankruptcy for Gallaher Thorold Paper Co. has advised the Administrator that there are no funds

available from the estate of Gallaher Thorold Paper Co. to make payment to the Plan.

4. The Administrator advised that it is of the opinion that 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 29th day of May, 2002.

Tom Golfetto, Director

Pension Plans Branch

By Delegated Authority from
the Superintendent of Financial Services



TRIBUNAL ACTIVITIES

Appointments of FST Board Members

Name and O.C.	Effective Appointment Date	Expiry Date
Milczynski , Martha (Chair)		
O.C. 1622/2001	June 20, 2001	June 19, 2004
O.C. 1665/99	October 6, 1999	July 7, 2001
O.C. 1808/98	July 8, 1998	October 6, 1999
McNairn , Colin (Vice-Chair)		
O.C. 1623/2001	June 20, 2001	June 19, 2004**
O.C. 1809/98	July 8, 1998	July 7, 2001
Corbett , Anne (Vice-Chair, Acting)		
O.C. 1438/2001	June 20, 2001	June 19, 2004**
Erlichman , 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
Greville , M. Elizabeth		
O.C. 441/2002	January 23, 2002	January 22, 2005**
O.C. 222/99	January 27, 1999	January 26, 2002
O.C. 2405/95	February 8, 1996	February 7, 1999
Martin , Joseph P.		
O.C. 1626/2001	June 20, 2001	June 19, 2004**
O.C. 1810/98	July 8, 1998	July 7, 2001
Moore , C.S. (Kit)		
O.C. 1625/2001	June 20, 2001	June 19, 2004**
O.C. 1591/98	July 1, 1998	June 30, 2001
Short , David A.		
O.C. 2118/2001	October 24, 2001	October 23, 2004**
Vincent , J. David		
O.C. 2119/2001	October 24, 2001	October 23, 2004**
Wires , David E.		
O.C. 2166/99	February 26, 2000	February 25, 2003
O.C. 257/97	February 27, 1997	February 26, 2000

** Or on the day FSCO/OSC merges, if earlier.

Pension Hearings Before the Financial Services Tribunal

Brewers Retail Pension Plan for Bargaining Unit Employees, Registration Number 336081, FST File Number P0099-2000;

On February 24, 2000, Mr. Patrick J. Moore, President of the United Brewers' Warehouse Workers, Local 375W, requested a hearing seeking an Order directing "the Superintendent to order the administrator of the Plan (Brewers Retail Inc.) to cease administering the Plan with an improperly constituted advisory committee and to cause the creation of a properly constituted advisory committee pursuant to the Act and formulating documents." The hearing request arose as a result of a letter from the Superintendent dated January 26, 2000, in which the Superintendent stated that there were no grounds under the *Pension Benefits Act* and Plan to order the establishment of an advisory committee. The letter also stated that any issue that Mr. Moore may have with the letter of understanding, which is part of the agreement between Brewers Retail Inc. and United Food and Commercial Worker's Provincial Board (the "UBWW/UFCW"), wherein Brewers Retail Inc. acknowledges that the UBWW/UFCW has a right to appoint a pension committee with membership, roles and responsibilities as set out in the *Pension Benefits Act*, would be a labour issue and not within the Superintendent's jurisdiction.

At a pre-hearing conference held on May 17, 2000, Brewer's Retail Inc. and the UBWW/UFCW were granted full party status. At the pre-hearing conference the parties agreed that before the Financial Services Tribunal considered the matter on its merits, it was necessary for it to determine the preliminary issue of whether it had jurisdiction to grant the relief

sought in Mr. Moore's Request for Hearing. At the pre-hearing conference, the Superintendent raised the issue of whether notice to former members of the Plan ought to be provided as it appeared that former members of the Plan were not represented.

In a telephone conference held on November 16, 2000, the hearing on the notice issue was scheduled for March 7, 2001. The hearing on the jurisdictional issue was scheduled for September 28, 2001.

On March 7, 2001, the Tribunal decided that former members had received adequate notice of the proceeding through the existing parties to the proceeding. The written reasons for Decision dated April 10, 2001, were published in Volume 10, Issue 2 of the Pension Bulletin.

On September 28, 2001, the Tribunal decided that it did not have jurisdiction to grant the relief sought by Mr. Moore. Written Reasons for Decision dated June 3, 2002, are published in this bulletin on page 112.

Imperial Oil Limited

Imperial Oil Limited Retirement Plan (1988), Registration Number 347054 and the Imperial Oil Limited Retirement Plan for Former Employees of McColl-Frontenac Inc. Registration Number 344002, FST File Number P0130-2000;

On October 31, 2000, Imperial Oil Limited requested a hearing with respect to the Superintendent's Notice of Proposal dated October 3, 2000, proposing to refuse to approve a partial wind up report in respect of two Plans of which Imperial Oil is the Administrator.

The stated reasons for the proposed refusal include the failure of each wind up report to do the following: (a) reflect the liabilities

associated with all of the members of the Plan whose employment was terminated by Imperial Oil during the wind up period; (b) apply the grow-in provisions of section 74 of the *Pension Benefits Act* in a proper manner; (c) provide benefits in accordance with elections made, as required under subsection 72(1) of the *Pension Benefits Act*, among various options including those available as a result of partial wind up; and (d) provide for the distribution of assets related to the partial wind up group.

A pre-hearing conference was held on June 19, 2001. At the pre-hearing conference, the Superintendent agreed to amend the Notice of Proposal in this matter to delete reference to (d) above.

A hearing and preliminary motion with respect to answers to interrogatories was held on July 25, 2001. The Tribunal ordered the Superintendent to respond to the first and second set of the Applicant's interrogatories within six weeks of the date of the Order subject to the qualification that the Superintendent need not produce any documents or reveal any communications to which the law of privilege applies. Written Reasons for Order dated September 10, 2001, were published in Volume 11, Issue 1 of the Pension Bulletin.

A continuation of the pre-hearing conference was held on December 20, 2001. The pre-hearing conference was adjourned to allow the parties to bring a motion with respect to answers to interrogatories. The June 4, 2002 motion date was adjourned to July 24, 2002.

Marshall-Barwick (formerly Marshall Steel Limited), Registration Number 0968081, FST File Number P150-2001;

On January 16, 2001, Marshall-Barwick Inc. (formerly Marshall Steel Limited) requested a hearing in respect of the Superintendent's

Notice of Proposal dated December 12, 2000. The Superintendent is proposing to refuse to approve a Partial Wind Up Report as at August 28, 1992, respecting the Retirement Plan for Salaried Employees of Marshall Steel Limited and Associated Companies in relation to employees who ceased to be employed by Marshall Steel Limited as a result of the closure of its plant in Milton, Ontario. The Superintendent's basis for the Notice of Proposal is that the Report does not protect the interests of all those affected by the partial wind up, specifically, Mr. Jeffrey G. Marshall, an employee who was terminated during the wind up period. On June 4, 2001, Jeffrey G. Marshall applied for party status.

A pre-hearing conference was held on August 13, 2001, at which time Mr. Marshall was granted full party status. The hearing scheduled for November 29 and 30, 2001, was adjourned as a result of a joint request made by the parties on November 6, 2001. The reason for the request was due to the applicant providing Mr. Marshall with actuarial data in respect of Mr. Marshall's benefit entitlements. Mr. Marshall required additional time to obtain expert advice in respect of the information. The hearing is scheduled for September 9-10, 2002.

National Steel Car Limited, Registration Numbers 0215020 and 0215038, FST File Number P154-2001;

On March 7, 2001, representatives for members of the Pension Plan for Salaried Employees of National Steel Car Limited requested a hearing regarding the Superintendent's consent to the transfer of all of the assets of the Pension Plan for Salaried Employees of National Steel Car Limited to the Pension Plan for Hourly-Paid Employees of National Steel Car Limited. The Salaried Plan is in a surplus position and the Hourly-Paid Plan has an unfunded liability.

Applications for Party Status were filed on behalf of National Steel Car Limited and certain representatives of the United Steel Workers of America, Local 7135, on behalf of the members of the Hourly-Paid Plan. The two applicants for party status were joined as parties by order at the pre-hearing conference held on June 21, 2001. The main issues in this case were whether the Tribunal had the jurisdiction to entertain the applicant's request for a hearing and whether the Superintendent's consent to the transfer of assets should be set aside or varied. A settlement conference was held September 24, 2001. The hearing was held January 15, 16 and 17, 2002. Reasons for Decision were released on May 31, 2002. The Tribunal decided, by a 2-1 majority, that it did not have jurisdiction to entertain the applicant's request for a hearing and, by a unanimous decision, that the Superintendent's consent to the transfer of assets should stand. The Reasons for Decision are published in this bulletin on page 99.

**Independent Order of Foresters
Fieldworkers, Registration Number
0354399, FST File Number P155-2001;**

On August 12, 2001, The Independent Order of Foresters ("IOF") requested a hearing with respect to the Superintendent's Notice of Proposal dated March 19, 2001, to refuse to consent to an application for the payment of the surplus of the IOF Fieldworkers Pension Plan to the employer. The Superintendent proposed to refuse consent on the basis that she was not satisfied that the Plan had a surplus and provides for the payment of any surplus to the employer on the wind up of the Plan.

A pre-hearing conference was held on July 4, 2001, at which Mr. Irvin Grainger was joined as a party to the proceeding. The pre-hearing conference continued on July 27, 2001, at which

time it was agreed that a settlement conference would be held on November 13, 2001. A motion by IOF for a determination of the appropriate manner and form of giving notice of the hearing in this matter was heard on December 7, 2001 by a panel of the Tribunal, and was followed by a further continuation of the pre-hearing conference. At the motion hearing it was ordered that notice of hearing be by way of national newspaper publication, and that the notice also be provided by ordinary mail to all members and former members affected by the wind up. Written reasons for Orders made on December 7, 2001, were published in Volume 11, Issue 2 of the Pension Bulletin. On June 12, 2001, the Superintendent and IOF made a joint request that the hearing in this matter proceed in respect of the issue of whether the Plan provided for the payment of surplus to IOF but that the hearing in respect of the issue of whether there was any surplus in the Plan be deferred. The request was granted and the panel held a hearing on the first of the two issues on June 18, 2002, reserving its decision.

**Cooper Industries (Canada) Inc.,
Registration Number 0240622, FST File
Number P156-2001;**

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 14, 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.

Pension Plan for the Employees of Dymont Limited, Registration Number 0242735, FST File Number P0157-2001;

On April 18, 2001, Dymont Limited requested a hearing with respect to the Superintendent's Notice of Proposal dated March 19, 2001, to make an Order that the Pension Plan for the Employees of Dymont Limited, Registration Number 0242735, be wound up in full effective August 23, 1996, and to refuse to approve the actuarial report prepared in April 1997 in relation to the partial wind up of the Plan as at August 23, 1996.

The basis for the Notice of Proposal was that as of August 23, 1996, there were no remaining active members in the Plan and Dymont was no longer required to make contributions. The basis for refusing to approve the actuarial report

is that the report does not meet the requirements of the *Pension Benefits Act* and the Regulations and does not protect the interests of the members or former members of the Plan. On May 22, 2001, Mr. Mobeen Khaja applied for Party Status. Mr. Khaja was part of a group of employees who were subject to the partial wind up of the Plan, and would be affected by a full wind up of the Plan.

A pre-hearing conference was held on July 13, 2001, at which Mr. Khaja was joined as a party to the proceeding. Hearing dates originally scheduled for January 24 and 25, were changed to April 15 and 16, 2002 and were subsequently adjourned at the parties' request so that settlement discussions may continue.

Camco Inc. Pension Plan Number 4, Registration Number 0583302 to Camco Inc. Pension Plan Number 7, Registration Number 0583336, FST File Number P160-2001;

On May 14, 2001, Camco Inc. requested a hearing with respect to the Superintendent's Notice of Proposal dated March 30, 2001, to Refuse to Consent to a Transfer of Assets from the Camco Inc. Pension Plan 4, Registration Number 0583302 to the Camco Inc. Pension Plan No. 7, Registration Number 0583336.

The basis for the Notice of Proposal was that the asset transfer does not protect the pension benefits and other benefits of the former members of Plan 4 under subsection 81 (5) of the *Pension Benefits Act*.

A pre-hearing conference was held on September 24, 2001. The settlement conference scheduled for December 17, 2001, was rescheduled to February 7, 2002. Settlement discussions are continuing.

Consumers Packaging Inc., Pension Plan II, Registration Number 0998682, FST File Number P162-2001;

On May 17, 2001, Consumers Packaging Inc. requested a hearing with respect to the Superintendent's Notice of Proposal dated April 20, 2001, to Refuse to Approve a Partial Wind Up Report filed by Consumers Packaging Inc. on May 19, 2000, with respect to a partial wind up of the Consumers Packaging Inc. Pension Plan II, Registration Number 0998682, as at May 7, 1997, and to Refuse to Register an amendment to such Pension Plan filed by Consumers Packaging Inc. on May 19, 2000, titled Amendment #2.

The basis for the Notice of Proposal was that Consumers Packaging Inc. filed a partial wind up report in 1997. The Superintendent issued two Notices of Proposal in 1999 ordering Consumers Packaging Inc. to accept as members of the Plan certain replacement call-in employees and refusing to approve the 1997 partial wind up report on the grounds that the replacement call-in employees were not included in the report and that "grow-in" to plant closure benefits was not provided to unionized hourly employees affected by the partial wind up. Consumers Packaging Inc. requested a hearing before the Financial Services Tribunal with respect to both Notices of Proposal. The hearing concerning the call-in employees was settled by the parties and Consumers Packaging Inc. accepted as members of the Plan those replacement call-in employees who met certain conditions. The hearing request regarding the "grow-in" benefits was withdrawn. Consumers Packaging Inc. was ordered to file an amended partial wind up report. In addition, in 1997 Consumers Packaging filed an application to register Amendment #2 to the Plan which provided enhanced bridge benefits to some members.

On May 19, 2000, Consumers Packaging filed a revised partial wind up report (the "revised report") and a revised application to register Amendment #2 (the "revised Amendment"). The Superintendent issued the April 20, 2001 Notice of Proposal stating reasons that the revised Amendment is void pursuant to clause 14(1)(c) of the *Pension Benefits Act*, and that the revised report does not meet the requirements of the *Pension Benefits Act* pursuant to subsection 70(5), because the commuted value of the pension benefits and ancillary benefits for the affected members is calculated based on the revised Amendment, which is void under the Act. The revised report does not protect the interests of the members and former members of the Plan for the same reason.

The Superior Court of Justice, Commercial List issued an Order, dated May 23, 2001, stating that any suit, action, enforcement process, extra-judicial proceeding, regulatory, administrative or other proceeding against or in respect of Consumers Packaging Inc. already commenced be stayed and suspended until and including June 22, 2001. A further Order was issued on June 18, 2001 extending the stay period until August 15, 2001 and again until October 1, 2001. On October 1, 2001, a Pension Assumption Agreement was made. A pre-hearing conference was held on February 19, 2002.

On April 18, 2002, a motion was brought by Consumers Packaging for an order compelling the Superintendent to answer certain interrogatories. The motion was dismissed. The hearing is scheduled for July 29 and 31, 2002.

CBS Canada Co., Westinghouse Canada Inc. Pension Plan Registration Numbers 348409 and 526632, FST File Number P164-2001;

On June 8, 2001, CBS Canada Co., the

successor to Westinghouse Canada Inc., requested hearings in connection with the Superintendent's Notices of Proposal dated May 9 and 15, 2001, to Refuse to Approve various partial wind up reports in respect of the Salaried Employees Pension Plan and the Hourly Paid Employees Pension Plan of Westinghouse Canada Inc. The partial wind ups were triggered by the closure by ABB Canada Inc. of its plants in London, Ontario; St. Jean, Quebec; and Burlington, Ontario, at which it carried on businesses acquired from Westinghouse Canada Inc., and by the closure by Westinghouse Canada Inc. of its Motor Division plant in Hamilton, Ontario.

The basis for each Notice of Proposal was that the relevant partial wind up report failed to provide employer request early retirement benefits and related bridge benefits, contemplated by each Plan, to all members of the partial wind up group whose age plus years of service equaled at least 55 and because the report failed to provide for the distribution of surplus relating to the partial wind up group.

On June 19, 2001, CAW Canada, which represented the employees who were members of the Westinghouse Hourly Paid Employees Pension Plan filed an application for party status in these proceedings. At a pre-hearing conference on November 5, 2001, CAW Canada was granted party status in the proceedings concerning the Notices of Proposal relating to the Hourly Employees Pension Plan and was given limited rights to participate in the proceedings concerning the Notices of Proposal relating to the Salaried Employees Pension Plan. The various proceedings were directed to be heard together.

At a continuation of the pre-hearing conference, held on November 29, 2001, a hearing

was scheduled for February 4-5, 2002 to deal with several jurisdictional issues to be brought on by motion of CBS Canada Co. Those issues included the following:

1. whether the Superintendent was entitled to rescind the initial approvals that she had given with respect to several of the partial wind up reports, for failure to adhere to the doctrine of fairness, and for which she subsequently substituted Notices of Proposal to refuse approval;
2. whether the Tribunal could direct the Superintendent to refuse approval of certain of the wind up reports on the basis of a ground that was not specifically recited in the relevant Notices of Proposal;
3. whether the Tribunal could determine the responsibility for any special benefits payable to the former Westinghouse employees at the facilities that were closed by ABB Inc. as between CBS Canada Co. and ABB Inc.; and
4. whether the Tribunal could order that ABB Inc. be added as a party to the proceedings against its will.

At the hearing on the jurisdictional motion, the Tribunal refused to order that ABB Inc. be added as a party, but otherwise reserved its determination of the issues raised by the motion.

The Tribunal released its Reasons for Decision on the jurisdictional motion on March 4, 2002. Those Reasons are published in this bulletin on page 75.

A settlement conference is scheduled for August 7-8, 2002. The hearing is scheduled for December 2-5 and 10-12, 2002.

**Crown Cork & Seal Canada Inc.
Registration Numbers 474205, 595371 &
338491, FST File Number P0165-2001;**

On June 29, 2001, Crown Cork & Seal Canada Inc. requested a hearing with respect to the Superintendent's Notice of Proposal dated May 29, 2001, to refuse to consent to a transfer of assets proposed by Crown Cork & Seal Canada Inc. from the Crown Cork & Seal Canada Inc. Pension Plan for Salaried Employees, Registration No. 0474205 and the Pension Plan for Clerical Employees of Crown Cork & Seal Canada Inc., Registration No. 0595371 into the Crown Cork & Seal Canada Inc. Pension Plan for Employees, Registration No. 338491.

The basis for the refusal is that the asset transfer does not protect the pension benefits and other benefits of the members and former members of the Plans.

At the request of both parties a settlement conference was held on October 30, 2001, prior to the scheduling of the pre-hearing conference. The parties agreed to adjourn this matter *sine die* pending discussions between the parties.

**Samsonite Canada Inc.
Samsonite Canadian Service Related
Pension Plan, Registration Number
398578, FST File Number P0166-2001 and
FST File Number P175-2001;**

On July 3, 2001, Samsonite Canada Inc. requested a hearing with respect to the Superintendent's Notice of Proposal dated June 1, 2001, to refuse to consent to the application of Samsonite Canada Inc. dated November 13, 2000, for the payment of surplus to the Employer under subsection 78(1) of the *Pension Benefits Act* from the Samsonite Canadian Service Related Pension Plan, Registration No. 398578.

On November 2, 2001, Samsonite Canada Inc. requested a hearing with respect to the

Superintendent's Notice of Proposal dated October 11, 2001, to refuse to consent to the application of Samsonite Canada Inc. dated November 13, 2000, for the payment of surplus to the Employer under subsection 78(1) of the *Pension Benefits Act* from the Samsonite Canadian Retirement Income Plan, Registration No. 373225.

At the pre-hearing conference held on November 9, 2001, the parties requested that these two matters be joined and heard together. The matters were joined and the hearing was held on June 3, 2002. At the hearing, the Tribunal gave the parties 30 days to file any additional written submissions.

**James MacKinnon
(Labourers' Pension Fund of Central and
Eastern Canada), Registration Number
573188, FST File Number P0167-2001;**

On July 13, 2001, James MacKinnon requested a hearing with respect to the Superintendent's Notice of Proposal dated June 20, 2001, to refuse to make an Order regarding Mr. MacKinnon's request that he is entitled to receive a "Thirty and Out" pension benefit from the Labourers' Pension Fund of Central and Eastern Canada. The basis for the refusal is that in refusing to grant Mr. MacKinnon a "Thirty and Out" pension, the Plan administrators have administered the Plan in compliance with requirements of the *Pension Benefits Act* (the "Act"), the Regulations and the filed documents in respect of which the Superintendent has issued a certificate of registration. Subsection 87(2) of the Act allows the Superintendent to make an Order only if the Superintendent is of the opinion, upon reasonable and probable grounds, that the pension plan or fund is not being administered in accordance with the Act, the Regulations or the pension plan.

On July 31, 2001, the Board of Trustees of the Labourers' Pension Fund of Central and Eastern Canada filed for party status on the basis that they are the Administrators of the Plan and wish to fulfill their fiduciary duties to all beneficiaries to ensure that only valid and proper claims for benefits are paid out from the Fund to protect the interests of all beneficiaries.

At the pre-hearing conference held on November 22, 2001, party status was granted to the Labourers' Pension Fund of Central and Eastern Canada. The April 2002 settlement conference was rescheduled to June 11, 2002, and the hearing was scheduled for July 17-18 and August 16, 2002. On July 10, 2002, the hearing dates were adjourned *sine die* on consent of the parties.

Imperial Oil Limited Retirement Plan, Registration Number 347054, FST File Number P0169-2001;

In this matter, the Superintendent alleges that, effective April 28, 1995, Imperial Oil Limited ("IOL") sold its credit card operations to General Electric Capital Canada Inc. ("GE Capital"), at which time 37 individuals, who had been employed by IOL in that business and were members of the IOL Retirement Plan, became employees of GE Capital and members of its Pension Plan, while maintaining their accrued benefits in the IOL Retirement Plan.

On August 3, 2001, the Superintendent issued Notices of Proposal to Make Orders requiring:

- that the IOL Retirement Plan be wound up in relation to those members and former members of the Plan who ceased to be employed by GE Capital, between March 2000 and July 2000, as a result of the closure of its Markham, Ontario credit card facility; and
- that such members and former members of the IOL Retirement Plan be given credit for

both age and service at the time they ceased to be employed by GE Capital when determining their benefits, in accordance with section 80(1)(c) of the *Pension Benefits Act*, under the IOL Retirement Plan.

On August 24, 2001, IOL requested a hearing in respect of these Notices of Proposal.

A pre-hearing conference was held on January 9, 2002. The evidence phase of the hearing was held on June 13, 2002 and the submission phase is scheduled for August 1-2, 2002.

Stanley Canada Inc., Pension Plan for Designated Employees of Stanley Canada Inc., Registration Number 456897, FST File Number P0170-2001;

On August 27, 2001, Stanley Canada Inc. requested a hearing with respect to the Superintendent's Notice of Proposal dated July 26, 2001, to refuse to consent to the application for payment of surplus to the Employer dated April 1999, pursuant to section 78(1) of the *Pension Benefits Act*.

An Application for party status was filed on November 20, 2001 by Mr. Blaine Mitton, a Member of the Plan.

The pre-hearing conference scheduled for November 28, 2001 was rescheduled to January 10, 2002 at which time Mr. Mitton was granted party status. On January 11, 2002, an Application for Party Status was filed by Mr. Edward Holba, a Member of the Plan. The parties consented to Mr. Holba's Application for Party Status and full party status was granted by Order dated April 4, 2002. The May 2002 hearing dates were adjourned at the request of the parties for a motion to be brought by the Superintendent concerning expert evidence. The Motion was heard on May 22, 2002. The hearing is scheduled for November 19-22, 2002.

Canadian Tack & Nail Ltd. Pension Plan for Salaried Employees, Registration Number 0581306, FST File Number P0171-2001;

On September 14, 2001, Canadian Tack & Nail Ltd. requested a hearing regarding the Superintendent's Notice of Proposal dated August 14, 2001, to Make an Order under section 87 of the *Pension Benefits Act*, requiring the Employer or Administrator of the Plan to remit within 30 days of receiving the Notice of Proposal, outstanding contributions in the amount of \$67,933 as of December 31, 1999 owed to the Pension Fund, together with interest payable under section 24 of the Regulation 909 under the Act.

The basis for the Notice of Proposal is that subsection 87(2) of the Act allows the Superintendent to make an Order if the Superintendent is of the opinion, upon reasonable and probable grounds, that the pension plan or fund is not being administered in accordance with the Act, the Regulations or the pension plan or if the employer, administrator of a pension plan, or any other person is contravening a requirement of the Act or the Regulations.

At a pre-hearing conference on February 7, 2002, the parties agreed to a settlement conference. The settlement conference was scheduled for June 27, 2002.

The Corporation of the City of Kitchener Pension Plan for Fire Department Employees, Registration Number 239475, FST File Number P0172-2001;

On September 20, 2001, The Corporation of the City of Kitchener requested a hearing regarding the Superintendent's Notice of Proposal dated August 23, 2001, to refuse to consent to the application for payment of surplus to the Employer, pursuant to section 78(1) of the

Pension Benefits Act from The City of Kitchener Pension Plan for Fire Department Employees, Registration No. 239475.

A pre-hearing conference was held on April 25, 2002, at which time the parties agreed to a settlement conference. The settlement conference date of July 16, 2002, was adjourned at the parties' request to be rescheduled in September 2002.

Pension Plan for Employees of Proctor & Redfern Limited, Registration Number 0289579, FST File Number P0173-2001;

On November 5, 2001, certain former members requested a hearing regarding the Superintendent's Notice of Proposal dated October 3, 2001, to refuse to make an Order under sections 69 and 87 of the *Pension Benefits Act*. The Superintendent is proposing to refuse to make an Order that the Plan be partially wound up with respect to former employees of Proctor & Redfern Limited whose employment was terminated between and including 1994 and 1998; to refuse to make an Order that the former employees whose employment was terminated between and including 1994 and 1998 as well as former employees who had their pension benefits annuitized in 1998 and 1999 be included in the surplus sharing group identified in the Revised Wind Up Report dated December 2000 and, to refuse to make an Order that they be entitled to share in the surplus distribution on an equitable basis; and to refuse to make an Order that Earth Tech (Canada) Inc. refund to the Plan any funds improperly withdrawn from the Plan to fund its own legal and actuarial costs.

On November 26, 2001, Earth Tech (Canada) Inc. filed for party status on the basis that it is the Administrator of the Plan and has a duty to ensure that the Plan is properly wound up.

The pre-hearing conference scheduled for May 1, 2002, was rescheduled to August 26, 2002.

Retirement Pension Plan for Employees of Twin Oak Credit Union Ltd., Registration Number 284257, FST File Number P0178-2002;

On January 11, 2002, Twin Oak Credit Union Ltd. requested a hearing regarding the Superintendent's Notice of Proposal dated December 13, 2001, proposing to make and Order under section 87 of the *Pension Benefits Act*, with respect to Carol Joseph and any other part-time employee eligible for membership in the Plan. The Superintendent has proposed that the Administrator of the Plan pay to Ms. Joseph her pension benefit determined on the basis that Ms. Joseph was eligible for membership and should have been enrolled in the Plan effective January 1, 1978. The Superintendent also proposed to order the Administrator to provide, to any other part-time employee who was eligible to participate in the Plan, the monthly pension benefit determined on the basis that the part-time employee was eligible for membership and should have been enrolled in the Plan effective January 1, 1978 or later if employed at a later date. The Superintendent also proposed that any lump sum owing to Ms. Joseph or any other eligible part-time employee representing retroactive payments shall also be credited with interest payable pursuant to subsection 21(11) of Regulation 909 made under the Act. Applications for Party Status were filed by Carol Lynne Joseph, Mary Lynn Feenan, Sharon Wiese, Donna Fredricks and Wendy Edmunds.

At the pre-hearing conference on April 24, 2002, full party status was granted to Ms. Joseph, Ms. Feenan, Ms. Wiese and Ms. Fredricks. Party status was not granted to Ms. Edmunds.

The parties agreed to a settlement conference which was held on June 4, 2002. The parties also agreed that a preliminary motion will be brought to decide whether or not the Tribunal has the jurisdiction to deal with the proposed issue of whether or not the employer is entitled to a credit for payments made in lieu of benefits to part-time employees under the collective agreements during the period January 1, 1978 to January 1, 1988, and whether the *Limitations Act* bars this proceeding. The Motion is scheduled for November 6, 2002. The hearing is scheduled for February 24, 26-28, 2003 and March 26-28, 2003.

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 is scheduled for August 27, 2002.

Molson Canada, Molson Breweries Pension Plan for Operating Engineers, Registration Number 0390666; Molson Canada Pension Plan for Hourly Employees in Ontario and Atlantic Canada, Registration Number 0334094; and Molson Canada Pension Plan for Salaried Employees, Registration Number 0334086, FST File Number P0187-2002;

On June 7, 2002, Molson Canada requested a hearing regarding the five Notices of Proposal issued by the Superintendent each dated May 5,

2002, proposing to make orders that the various Molson Canada pension plans be wound up in part.

The pre-hearing conference date is pending.

Donna Marie Sloan, Ontario Teachers' Pension Plan, Registration Number 0345785, FST File Number P0188-2002;

A survivor pre-retirement death benefit that was being paid to Donna Marie Sloan under the Plan was discontinued when the Ontario Pension Plan Board, the Administrator of the Plan, concluded that she was living separate and apart from her husband, the Plan member, at the time of his death, thereby disqualifying her from receiving the benefit. On March 4, 2002, the Superintendent issued a Notice of Proposal refusing to make an Order, pursuant to section 87 of the *Pension Benefits Act*, requiring the Administrator to take action in respect of the Plan by reinstating the death benefit. On April 2, 2002, Donna Marie Sloan requested a hearing. On April 23, 2002, the Ontario Teachers' Pension Plan Board filed an Application for Party Status.

A pre-hearing conference is scheduled for August 20, 2002.

Bauer Nike Hockey Inc. Pension Plan for Employees of Bauer Nike Hockey Inc., Registration Number 257337, FST File Number P0189-2002;

On April 3, 2002, Bauer Nike Hockey Inc., requested a hearing regarding the Superintendent's Notice of Proposal dated March 8, 2002, to refuse to approve the actuarial report prepared on December 23, 1998 in respect of the partial wind up as at November 1, 1998, submitted by Bauer Nike Hockey Inc., to the Superintendent under sections 70(5) and 89(4) of the *Pension Benefits Act*, relating to the

Pension Plan for Employees of Bauer Nike Hockey Inc., Registration Number 257337.

The pre-hearing conference is scheduled for October 28, 2002.

Kerry (Canada) Inc., Pension Plan for the Employees of Kerry (Canada) Inc., Registration Number 238915, FST File Number P0191-2002;

On May 22, 2002, Kerry (Canada) Inc., requested a hearing regarding the Superintendent's Notice of Proposal dated April 22, 2002, to make an Order that the Employer reimburse the pension fund (the "Fund") of the Plan for all amounts paid out of the Fund after January 1, 1985 for expenses which were not incurred for the exclusive benefit of the members and retired members of the Plan, their beneficiaries or estates and their contingent annuitants (other than taxes, interest and penalties levied against the Fund or the income thereof); and to reimburse the Fund for all income that would have been earned by the Fund if those expenses had not been paid from the Fund; and that the Employer amend the Plan and the Trust in respect of the Fund so that all amendments to the terms of the Plan and the Trust which permit expenses to be deducted from the Fund are consistent with the 1954 Trust Agreement and the 1954 Plan Document.

The pre-hearing conference date is pending.

DCA Employees Pension Committee and William Fitz, Pension Plan for the Employees of Kerry (Canada) Inc., Registration Number 238915, FST File Number P0192-2002;

On May 27, 2002, William Fitz and the DCA Employees Pension Committee, requested a hearing regarding the Superintendent's Notice of Proposal, dated April 22, 2002, to refuse to

make an Order that the Plan be wound up, effective December 31, 1994, under section 69 of the *Pension Benefits Act*; to refuse to order, under section 87 of the Act, that Kerry (Canada) Inc. pay to the pension fund of the Plan all employer contributions for which a contribution holiday have been taken since January 1, 1985, in connection with the service of employees who joined the Plan either before or after December 31, 1994, together with income that would have been earned by the Fund of the Plan if those contributions had been made; and to refuse to order that registration of the Revised and Restated Plan Text dated January 1, 2000, and all amendments to the Plan included therein, be refused under section 18(1)(d) of the Act.

The pre-hearing conference date is pending.

**Plumbers Local 463 Pension Plan,
Registration Number 0598532, FST File
Number P0190-2002;**

On May 16, 2002, the Board of Trustees of the Plumbers Local 463 Pension Plan Trust Fund (the "Board of Trustees"), requested a hearing regarding an Order dated April 11, 2002 of the Deputy Superintendent, Pensions, to make an Order under subsection 106(13) of the *Pension Benefits Act*. In his Order, the Deputy Superintendent ordered that the Board of Trustees pay the cost of an examination, investigation or inquiry in respect of the Plan and pension fund for the Plan; and the cost of any opinion, report or professional attestation prepared following the examination, investigation or inquiry.

The pre-hearing conference date is pending.

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
U0177-2002	To Refuse to Consent, dated November 22, 2001	Withdrawn March 11, 2002
U0179-2002	To Refuse to Consent, dated November 22, 2001	Reasons for Decision dated May 29, 2002
U0180-2002	To Refuse to Consent, dated December 21, 2001	Reasons for Decision dated June 20, 2002
U0184-2002	To Refuse to Consent, dated January 25, 2002	Reasons for Decision dated May 14, 2002
U0185-2002	To Refuse to Consent, dated January 17, 2002	Reasons for Decision dated April 19, 2002
U0186-2002	To Refuse to Consent, dated January 11, 2002	Reasons for Decision dated May 29, 2002
U0189-2002	To Refuse to Consent, dated March 4, 2002	Reasons for Decision dated May 9, 2002

Decisions to be Published

Brewers Retail

CBS Canada Co.

National Steel Car

U0179-2002 Reasons

U0180-2002 Reasons

U0184-2002 Reasons

U0185-2002 Reasons

U0186-2002 Reasons

U0189-2002 Reasons

Financial Services Tribunal Decisions with Reasons

INDEX NO.:	FST File Number P0164-2001
PLAN:	Westinghouse Canada Inc. Pension Plan, Registration Numbers 348409 and 526632
DATE OF DECISION:	March 4, 2002
PUBLISHED:	Bulletin 11/3 and FSCO website

(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 proposal by the Superintendent of Financial Services (the "Superintendent") to refuse to approve the Partial Wind Up Report for Westinghouse Canada Inc. Pension Plan, Registration No. 348409, in respect of business carried on by Westinghouse Canada Inc. at its Burlington, Ontario plant;

AND IN THE MATTER OF a proposal by the Superintendent to refuse to approve the Partial Wind Up Report for the Westinghouse Canada Inc. Pension Plan, Registration No. 348409, in respect of business carried on by Westinghouse Canada Inc. at its London, Ontario and St. Jean, Quebec plants;

AND IN THE MATTER OF a proposal by the Superintendent to refuse to approve the Partial Wind Up Report for the Westinghouse Canada Inc. Pension Plan, Registration No. 348409, in respect of business carried on by Westinghouse Canada Inc. at its Motors Division plant;

AND IN THE MATTER OF a proposal by the Superintendent to refuse to approve the Partial Wind Up Report for the Westinghouse Canada Inc. Pension Plan, Registration No. 348409, in respect of business carried on by Westinghouse Canada Inc. at its Beach Road plant in Hamilton, Ontario;

AND IN THE MATTER OF a proposal by the Superintendent to refuse to approve the Partial Wind Up Report for the Westinghouse Canada Inc. Pension Plan, Registration No. 526632, in respect of business carried on by Westinghouse Canada Inc. at its London, Ontario and St. Jean, Quebec plants;

AND IN THE MATTER OF a proposal by the Superintendent to refuse to approve the Partial Wind Up Report for the Westinghouse Canada Inc. Pension Plan, Registration No. 526632, in respect of business carried on by Westinghouse Canada Inc. at its Motors Division plant;

AND IN THE MATTER OF a hearing in accordance with subsection 89(8) of the Act.

BETWEEN:

CBS CANADA CO.

Applicant

– and –

SUPERINTENDENT OF FINANCIAL SERVICES

Respondent

– and –

**NATIONAL, AUTOMOBILE, AEROSPACE,
TRANSPORTATION**

**AND GENERAL WORKERS UNION OF
CANADA (CAW-CANADA)**

AND ITS LOCAL 504

**A Party in Relation to Certain of the
Proceedings**

BEFORE:

Mr. Colin H.H. McNairn,
Vice Chair of the Tribunal and
Chair of the Panel

Mr. Louis Erlichman,
Member of the Tribunal and of the Panel

Mr. C.S. Moore,
Member of the Tribunal and of the Panel

APPEARANCES:

For CBS Canada Co.

Mr. Andrew K. Lokan
Mr. Steve Fruitman

For the Superintendent of Financial Services

Ms. Deborah McPhail
Mr. Mark Bailey

For the CAW-Canada and its Local 504

Mr. Louis Gottheil

For ABB Inc.

Ms. Elizabeth M. Brown

HEARING DATES:

February 4-5, 2002

REASONS FOR DECISION ON JURISDICTIONAL MOTION

Facts

CBS Canada Co. (“CBS”), the applicant in these proceedings, is the successor to Westinghouse Canada Inc. (“Westinghouse”). CBS requested hearings before this Tribunal in respect of six separate Notices of Proposal, issued by the Superintendent of Financial Services (the “Superintendent”), to refuse to approve six Partial Wind Up Reports filed by CBS. Four of the reports concern partial wind ups of Westinghouse Pension Plan Registration No. 348409, being a plan for the hourly paid employees of Westinghouse (the “Westinghouse Hourly Plan”). Two of the reports concern partial wind ups of Westinghouse Plan Registration No. 526632, being a plan for the salaried employees of Westinghouse (the “Westinghouse Salaried Plan”). The grounds for the proposed refusals, relied on in each of the Notices of Proposal, are a failure of the partial wind up reports,

- a) to treat company request early retirement benefits, and related bridge benefits, under the relevant Plan as consent benefits under section 74 of the Act, and
- b) to provide for the distribution of the surplus assets related to the affected partial wind up group.

At a pre-hearing conference, the various requests for hearing were directed to be heard together. At the same conference, CAW-Canada and its Local 504 (“CAW-Canada”), which was the bargaining agent for the hourly paid employees of Westinghouse, was added as a party to the proceedings involving the Westinghouse Hourly Plan. CAW-Canada was also given the right to participate in the proceedings involving the Westinghouse Salaried

Plan to the extent of cross-examining witnesses and making submissions.

The partial wind ups of the Plans, to which the reports relate, occurred against the following background. In the 1980s and early 1990s, Westinghouse went through a significant restructuring of its operations. In some cases, Westinghouse sold certain of its plants, or parts of its plants, as going concerns. In one case, the sale related to the plant of a joint venture in which Westinghouse was a participant and to which it had sold one of its businesses. In other cases, it closed plants, or parts of plants, or simply reduced the workforces in its facilities. Specifically, it closed its Motors Division operations at a plant in Hamilton, Ontario and sold the balance of the business at that plant, which was operated by a joint venture, part of a plant in St. Jean, Quebec and plants in London and Burlington, Ontario to Asea Brown Boveri Inc., now called ABB Inc. ("ABB"), pursuant to an asset purchase agreement. Effective upon the sale, ABB created two wrap-around pension plans (the "ABB Hourly Plan" and the "ABB Salaried Plan"), providing virtually identical benefits to those under the Westinghouse Hourly Plan and the Westinghouse Salaried Plan, for employees who transferred to ABB in connection with the sale. CAW-Canada continued to represent the transferred employees as their bargaining agent, now in connection with the collective bargaining relationship to their new employer, ABB.

During the period from 1991 to 1994, ABB closed the various plants that it had acquired from Westinghouse, terminating the remaining employees who had transferred from Westinghouse in connection with that acquisition. ABB declared partial wind ups of the ABB Hourly Plan and the ABB Salaried Plan in respect of the closure of the London and St. Jean

plants. In February of 1994, the Superintendent approved the reports in respect of those partial wind ups that were filed by ABB, although those reports did not treat company request early retirement benefits provided for by the Plans as consent benefits under section 74 of the Act. In July of 1996, the Superintendent issued a Notice of Proposal to refuse to approve a report filed by ABB on the wind up of the ABB Hourly Plan, upon the closure of the Burlington plant, in part because company request early retirement benefits had not been treated as consent benefits under section 74 of the Act. ABB requested a hearing before the Pension Commission of Ontario (the "PCO") in respect of that Notice of Proposal. CAW-Canada is a party in that proceeding. In January 1999, a pre-hearing conference was held in the PCO proceeding at which ABB took the position that the issue relating to company request early retirement benefits was addressed by a revised wind up report that it had filed and that the pre-hearing conference should be adjourned because ABB's liabilities under the ABB Hourly Plan could not be finally calculated until Westinghouse had filed reports in relation to the partial wind ups of the Westinghouse Hourly Plan. The PCO pre-hearing conference was, in fact, adjourned and continues to stand adjourned.

Upon the closure of its Motors Division in June of 1995, Westinghouse declared partial wind ups of the Westinghouse Hourly Plan and the Westinghouse Salaried Plan. The reports that were filed in respect of those partial wind ups were conditionally approved by the Superintendent in February of 1999, subject to further adjustment upon determination of whether company request early retirement benefits were payable. In September of 1999, CAW-Canada made detailed submissions to the

Superintendent on the reports, addressing at length its position that company request early retirement benefits ought to be paid.

In January of 1999, the Superintendent ordered partial wind ups of the Westinghouse Hourly Plan and the Westinghouse Salaried Plan, on the basis of the closure by ABB of its London, St. Jean, Hamilton and Burlington plants. By this time, it had been established in *Gencorp Canada Inc. v. Ontario (Superintendent of Pensions)* (1998), 39 O.R. (3d) 38 (C.A.), that a wind up of an employer's pension plan could be triggered by the closure of a plant by a successor employer.

CBS filed four reports in respect of these partial wind ups in March of 2000 and counsel for CAW-Canada was advised of these filings. On September 8, 2000, copies of three of the reports – those relating to the Westinghouse Hourly Plan – were provided to CAW-Canada. On September 28, 2000, the Superintendent, acting through her delegate the Director of the Pension Plans Branch of the Financial Services Commission of Ontario, approved all four of the reports. On October 4, 2000, counsel for CAW-Canada, apparently unaware of those approvals, wrote to counsel for the Superintendent indicating that CAW-Canada intended to make submissions with respect to the reports relating to the Westinghouse Hourly Plan.

On November 17, 2000, the Director of the Pension Plans Branch advised CBS, CAW-Canada and ABB in writing that he was of the view that all four approvals were granted in breach of the duty of fairness and were, therefore, null and void. On December 8, 2000, after receiving written submissions from CBS, CAW-Canada and ABB, the Director, acting once again as delegate of the Superintendent, reaffirmed the view he had expressed earlier to

the effect that the approvals were null and void for breach of fairness, thereby effectively rescinding the approvals.

On May 9, 2001, following further submissions from CBS and CAW-Canada, the Superintendent issued four Notices of Proposal to refuse to approve the reports filed by CBS, in respect of one or the other of the Westinghouse Hourly Plan and the Westinghouse Salaried Plan, relating to the four partial wind ups triggered by the ABB plant closures. On May 16, 2001, the Superintendent issued two Notices of Proposal to refuse to approve the reports filed by CBS, in respect of one or the other of the Westinghouse Plans, relating to the partial wind ups triggered by the closure by Westinghouse of its Motors Division. These six Notices of Proposal are the Notices of Proposal that are the subject of these proceedings. The grounds for the proposed refusals in each of the Notices are as recited at the beginning of this statement of facts.

The current motion before the Tribunal was brought by CBS with a view to obtaining the determination of the Tribunal on four preliminary or jurisdictional issues. At the pre-hearing conference, ABB was granted limited party status for the purpose of enabling it to participate in the hearing on the motion in so far as it concerns the issues that could have a direct impact on ABB, namely the first two issues considered below.

Issue No. 1

Does the Tribunal have jurisdiction to consider:

- (i) whether CBS or ABB bears responsibility for payment of the benefits in issue under the terms of their respective pension plans; or**

(ii) to the extent that CBS is responsible, is ABB required to indemnify CBS?

It was accepted by all of the parties that the Tribunal is not entitled to make an order in these proceedings that would determine the responsibility of ABB, under its pension plans, to the former employees of Westinghouse who had become its employees. The Notices of Proposal that have been challenged in these proceedings relate only to partial wind up reports that have been filed in respect of the Westinghouse plans. The question that this Tribunal will ultimately have to answer is whether those reports should be approved by the Superintendent having regard, particularly, to the criteria set out in subsection 70(5) of the Act. After making that determination, the Tribunal will be constrained, in deciding what order it should make, by subsection 89(9) of the Act. That provision would allow the Tribunal to direct the Superintendent to carry out the proposal in one or other of the Notices of Proposal, or to refrain from carrying out any such proposal, “and to take such action as the Tribunal considers the Superintendent ought to take in accordance with” the Act and the regulations under it. We are of the opinion that any direction by the Tribunal to the Superintendent to take particular action, in accordance with the Act or regulations, must be closely related to the subject matter of, or the circumstances underlying, the proposal that the Tribunal has directed the Superintendent to carry out or to refrain from carrying out. In these proceedings, an order directing the Superintendent to take action in respect of the wind up, in whole or in part, of ABB’s pension plans would be too far removed from the Notices of Proposal that are before the Tribunal to be authorized by subsection 89(9) of the Act.

However, CBS maintained that the Tribunal had what it characterized as “plan text jurisdiction.” By this, it meant that the Tribunal, in interpreting the Westinghouse pension plans, could properly look at the ABB pension plans and consider the inter-relationships between the pension plans of the successive employers of the plan members affected by certain of the partial wind ups of the Westinghouse plans. It would be logical, CBS said, to take this approach with a view to trying to avoid a situation where those employees could “double-dip” by getting a duplication of benefits under the pension plans of the two employers on the wind up of those plans. One might add that a similar logic would support this approach in order to try to avoid a situation, if at all possible, where those employees would be denied a particular type of benefit, which one would expect would be available on a wind up, under both of their employers plans.

We agree that the Tribunal might well find it appropriate, in the course of these proceedings, to assume “plan text jurisdiction” over the ABB plans in this limited sense, i.e., a jurisdiction that allows it to consider one or other of the ABB plans as an aid to interpreting the Westinghouse plans. This is not to say that the Pension Commission of Ontario, in its proceeding concerning the Superintendent’s Notice of Proposal to refuse to approve the wind up report in respect of ABB’s Hourly Plan, would be bound by an interpretation of that plan or a factual finding in relation to that plan arrived at by this Tribunal in the course of these proceedings. It would be a matter for that Commission to determine how persuasive this Tribunal’s interpretation or finding should be, having regard, among other things, to the fact that ABB was given the opportunity to participate in these proceedings (a similar approach

was taken, in *obiter* comments, by the arbitration board in *Re Scarborough General Hospital and C.U.P.E., Loc. 1487* (1999), 79 L.A.C. (4th) 246, see esp. at pp. 258-260 (Ont.; L.M. Davie, J. Solberg and R. Charney)). There can certainly be no advance assurance that determinations made by this Tribunal, in these proceedings, will not affect the interests of ABB in any way or that ABB will be given notice and the opportunity to make representations if and when any determination that might affect its interests is about to be made by this Tribunal.

We were also asked, by the terms of the motion, if the Tribunal has jurisdiction to consider whether ABB is required to indemnify CBS for the amount of any of the benefits at issue in this case the payment of which we might find to be the responsibility of CBS. There are, in fact, a number of indemnity provisions in the asset purchase agreement under which ABB acquired the businesses of Westinghouse. Some of these indemnities run from ABB in favour of CBS, including an indemnity that is specific to the situation where Westinghouse incurs costs, beyond those for which it retains responsibility, as a result of a partial wind up of a Westinghouse pension plan that is triggered by the actions of ABB (paragraph 5.3(f)). ABB pointed out, in argument, that the enforceability of these indemnity provisions will involve consideration of the potential application of limitation periods within which indemnity claims must be made and that, in any event, the asset purchase agreement provides for the resolution of any disputes arising out of the agreement or its interpretation by arbitration (section 17.11).

The parties were in apparent agreement that the Tribunal could not make a binding determination as to whether the asset purchase agreement imposed an enforceable obligation on ABB to indemnify CBS if we were to find CBS

responsible for payment of the benefits at issue in this case. However, CBS maintained that the Tribunal had, at least, “agreement jurisdiction” with the result that it could look to the asset purchase agreement – not just its indemnity provisions – as an aid to interpreting the Westinghouse plans. It was important, CBS argued, for this Tribunal to make it abundantly clear what latitude it has to interpret the terms of the asset purchase agreement since a court would be likely to defer to the Tribunal for an initial view of the meaning of those terms to the extent that they are relevant in these proceedings. In this respect, it relied particularly on the decision of the Ontario Court General Division in *Ontario Hydro v. Kelly* (1998), 39 O.R. (3d) 107. We do not think that the interpretation of any of the terms of the asset purchase agreement is sufficiently connected to the subject matter of these proceedings, or within the special expertise of this Tribunal, that a court would be likely to defer to the Tribunal in this way.

Although the foreword to each of the ABB pension plans refers to the sale of the Westinghouse businesses to ABB as the reason for the establishment of the ABB plan, it also makes it clear that the plan provides for benefits accruing to eligible members after the effective date of the sale, reciting that benefits accrued to the credit of those same individuals before the effective date of the sale remain the sole responsibility of the comparable Westinghouse plan. The asset purchase agreement is not incorporated into either employer’s plan so as to be subject, for that reason, to interpretation by this Tribunal in any determination of responsibility for payment of the benefits that are at issue in this case.

All of this said, we are of the opinion that some of the provisions of the asset purchase

agreement might prove to be relevant in these proceedings and that the Tribunal might have occasion to use the agreement in some way to interpret the Westinghouse plans. The persuasive force of the Tribunal's conclusions about that agreement, in any subsequent proceeding before an adjudicator to resolve a dispute under the agreement, would be for the adjudicator to determine. The situation would not be materially different from that where the Tribunal has expressed its views about the terms of one or the other of the ABB pension plans and those terms subsequently come directly into issue in another proceeding.

Issue No. 2

Does the Tribunal have jurisdiction to add ABB as a party without ABB's consent when ABB has not sought party status?

In the course of the hearing on the motion, we indicated that we had decided to refuse to make an order adding ABB as a party to these proceedings and that our reasons for this decision would be included in the reasons for our dispositions on the motion generally.

CBS argued that the Tribunal has jurisdiction to add ABB as a party under the broad authority of subsection 89(11) of the Act, which says that:

The Superintendent, the person who requires a hearing and such other persons as the Tribunal specifies are parties to the proceeding before the Tribunal under this section.

Although the Interim Rules of Practice and Procedure for Proceedings before the Financial Services Tribunal only provide, in specific terms, for the addition of a party on application to the Tribunal, CBS maintained that a party could be added in the absence of such an application pursuant to Rule 2.02. That Rule says that:

Where procedures are not provided for in these Rules, the Tribunal may do whatever is necessary and permitted by law to effectively determine the matter before it.

ABB argued that it would be illogical to treat Rule 2.02 as available for this purpose given the right of any party to bring a motion to discontinue its participation in a proceeding before the Tribunal under Rule 42.02. Relying on Rule 42.03, it suggested that any such motion could not be denied, although the granting of the motion could be subject to conditions, such as the payment of costs by the party seeking to discontinue participation. As to subsection 89(11) of the Act, ABB maintained that the power that it conferred on the Tribunal to specify parties to a proceeding should be read narrowly, so as to avoid its use as a coercive measure, as simply allowing the Tribunal to specify parties from among those who may have applied for such status.

We do not find it necessary to decide whether the Tribunal has the jurisdiction to order that ABB be added as a party since we do not think that it would be necessary or appropriate to join ABB against its will in these proceedings should we have the jurisdiction to do so. CBS supported the addition of ABB as a party on the basis that it has information relevant to these proceedings that is not also in the possession of CBS, such as that pertaining to the severance of ABB employees who were members of the Westinghouse Plans. That information might be difficult to obtain if ABB were not a party as ABB does not currently have a presence within this jurisdiction. However, ABB advised, through its counsel, that it would co-operate by causing the appropriate officers to respond to subpoenas from this Tribunal, subject to the usual rules about attendance in response to a subpoena. As the responsibility of ABB under

its plans and under the asset purchase agreement are not directly at issue in these proceedings, we do not think it appropriate to take the unusual step of mandating ABB's participation as a party, especially given its offer of co-operation.

Issue No. 3

a) With respect to the September 28, 2000 approvals of four wind up reports filed by CBS with respect to the Westinghouse Hourly Plan (London/St. Jean, Burlington and Beach Road) and with respect to the Westinghouse Salaried Plan (London/St. Jean):

- (i) Did the Superintendent have jurisdiction to rescind the approvals;**
- (ii) If so, did the Superintendent err in rescinding such approvals;**
- (iii) If so, what procedural consequences should flow from such refusals?**

There is nothing in the Act or the *Financial Services Commission of Ontario Act, 1997* that gives the Superintendent the authority to reconsider, and revise or revoke, a decision that he or she has made. There is no general authority to do so and there is no authority to do so when the decision involves the approval of a partial wind up report.

In the absence of such authority, the doctrine of *functus officio* comes into play. That doctrine is to the effect that an adjudicator – whether a court or an administrative body – once having made its final decision cannot alter that decision except in very limited circumstances (see Brown & Evans, *Judicial Review of Administrative Action in Canada* (looseleaf), at pp. 12-80 to 12-90). The doctrine, at least as it applies to

administrative bodies, is based on policy considerations that favour the finality of decisions (see *Chandler v. Alberta Association of Architects* (1989), 62 D.L.R. (4th) 577, at p. 596 (S.C.C.)). The exceptions from the doctrine include one that enables an administrative body to re-visit and correct a decision that was made in error where the error is of a kind that makes the decision null and void (see *Chandler, supra*, at p. 597). When an administrative body is subject to a duty of procedural fairness, under common law principles, in coming to a particular decision, the failure to adhere to that duty renders the decision a nullity (see Jones & de Villars, *Principles of Administrative Law* (3rd ed., 1999), at pp. 231-234). Thus, a breach of the duty of fairness in arriving at a “final” decision provides a proper basis for the administrative body that made the decision rescinding it and substituting a new decision that is arrived at in accordance with that duty.

The Superintendent acts as an adjudicator in deciding whether to approve a partial wind up report under the Act and is subject to a duty of fairness in exercising that function. This follows from the decision of the Ontario Divisional Court in *Re Collins & Pension Commission of Ontario* (1986), 56 O.R. (2d) 274, esp. at pp. 289-290 & 295-296. In that case, the court held that the Pension Commission of Ontario, a predecessor of the Superintendent, owed a duty of fairness to pension plan members in considering an application by their employer, under the Act, for consent to the withdrawal of surplus from their pension plan. That decision was recently followed in *Retirement Income Plan for Salaried Employees of Weavexx Corp. v. Ontario (Superintendent of Pensions)* (2000), 24 C.C.P.B. 154 (addendum to reasons for judgment at (2000), 26 C.C.P.B. 290) (Ont. Div. Ct.) (the decision of the

Divisional Court was affirmed, with a variation in remedy, in an unreported decision of the Court of Appeal dated February 14, 2002).

The real dispute among the parties on this Issue No. 3 is as to what is required by the duty of fairness in the circumstances of this case and as to whether the applicable requirements were breached by the Superintendent in arriving at the initial decisions to approve four of the wind up reports filed by Westinghouse.

The Supreme Court of Canada has stated, in *Baker v. Canada (Minister of Citizenship and Immigration)*, [1991] 2 S.C.R. 817, that the “duty of fairness is flexible and variable and depends on an appreciation of the particular statute and the rights affected ...” The court set out five factors that should be taken into account in determining what procedural rights the duty of fairness requires. Underlying all of these factors, the court noted,

is the notion that the purpose of the participatory rights contained within the duty of procedural fairness is to ensure that administrative decisions are made using a fair and open procedure, appropriate to the decision being made and its statutory, institutional and social context, with an opportunity for those affected by the decision to put forward their views and evidence fully and have them considered by the decision-maker. (At p. 837.)

The factors listed by the court are as follows:

- (a) the nature of the decision being made and the process followed in making it (the closer to the judicial model, the more likely that procedural protections akin to those in a trial setting will be required);
- (b) the statutory scheme and the terms of the statute pursuant to which the decision-making body operates (for example, greater

procedural protections will be required when no appeal process is provided within the statute);

- (c) the importance of the decision to the individual or individuals affected (the more important the decision is to the lives of those affected, the greater the procedural protections that will be required);
- (d) the legitimate expectations of the person challenging the decision (this factor takes account of promises and regular practices of administrative decision-makers, recognizing that it would be generally unfair to act in contravention of representations as to procedure); and
- (e) the choice of procedure made by the decision-making body itself, in light of relevant institutional constraints (this factor recognizes that some deference should be paid to the choice of procedure made by the decision-maker, particularly if the chosen procedure is within the range of those procedures contemplated by the governing statute or if the decision-maker has expertise in deciding on the appropriate procedure).

In the earlier case of *Wiswell v. Metropolitan Corporation of Greater Winnipeg* (1965), 51 D.L.R. (2d) 754, the Supreme Court of Canada concluded that a “known opponent” to particular action that was taken after a hearing by a quasi-judicial body should have been given specific notice of the hearing. The action in question in this case was that of a city council in “down-zoning” a particular property, which the “known opponent” – a homeowners association – could be expected to oppose given previous representations it had made to the city and its zoning board against potential high density development of the subject property. Although notice of the hearing was published

in two local daily newspapers, the failure of the city to give specific notice to the association, along with a failure to post the notice on the property in accordance with the city's own procedures, amounted to a breach of the city's duty to act in good faith and fairly listen to both sides in a dispute. The failure to give notice directly to the association in this case was particularly telling given that the city had communicated with the association a few months before the hearing in a manner that would suggest that there was nothing further that could be done by the association at that stage to further its opposition to the high density development of the property.

We now have to consider the application of the principles in *Wiswell* and *Baker* to the circumstances of this case.

It seems to us that CAW-Canada, prior to the initial approval by the Director of the Pension Plans Branch of the three wind up reports relating to the Westinghouse Hourly Plan, was in a similar position to the "known opponent" in *Wiswell* given the fact that it was on record with the office of the Superintendent as having an interest in making submissions to the effect that company request early retirement benefits were payable under the Westinghouse Hourly Plan upon a partial wind up. In August of 1999, in response to certain inquiries that had been made by CAW-Canada about four of the partial wind ups of the Westinghouse Plans, counsel for the Superintendent asked CAW-Canada if it intended to make submissions on the issue of whether company request early retirement benefits were payable in relation to the partial wind up of the Westinghouse Hourly Plan that was occasioned by the closure of the Motors Division. Counsel for CAW-Canada responded by saying that his client did, indeed, want to make such submissions. In September of 1999,

CAW-Canada made extensive written submissions to counsel for the Superintendent to the effect that such benefits were payable.

On April 3, 2000, counsel for the Superintendent advised CAW-Canada of receipt of the four reports relating to the partial wind up of the Westinghouse Plans arising out of the ABB plant closures, promising to keep CAW-Canada "advised of the progress." However, in the case of these reports, CAW-Canada received no inquiry from the office of the Superintendent about its intention to make submissions and the reports were approved on September 28, 2000, without the apparent knowledge of CAW-Canada.

CBS argued that CAW-Canada had had the opportunity to make its submissions on the company request early retirement benefits issue in the context of the Superintendent's consideration of the partial wind up of the Westinghouse Hourly Plan that was occasioned by the closure of the Motors Division. But there may have been differences in the underlying facts, or in the position taken by CBS, in relation to the partial wind ups triggered by the ABB plant closures that might have dictated different submissions from CAW-Canada in that context or, indeed, CAW-Canada may have simply chosen to remind the Superintendent of its earlier submissions if it had been given the chance to do so. In either event, the opportunity to make submissions could have proven to be meaningful and could conceivably have influenced the decision of whether the wind up reports should be approved.

CAW-Canada cannot, however, be properly treated as a "known opponent" in relation to the approval of the report on the partial wind up of the Westinghouse Salaried Plan that was later rescinded by the Superintendent.

CAW-Canada did not represent any of the members of that Plan. The common language of the two Westinghouse Plans on the subject of company request early retirement benefits and the common circumstances that gave rise to the partial wind ups of the two Plans do not give CAW-Canada the status of a party in opposition or dispute in any of the proceedings before the Superintendent in respect of a partial wind up of the Westinghouse Salaried Plan.

We now turn to the factors outlined in *Baker* in their application to the circumstance of this case.

(a) The Nature of the Decision

The decision of the Superintendent to approve a partial wind up report is clearly one in which employees who have lost their jobs as a result of the event giving rise to the partial wind up have a direct interest. Thus, given the nature of the decision, there may well be a *lis* or dispute between parties, in this case between a union that represents employees affected by the partial wind up and the employer, that is similar to the *lis* or dispute that characterizes judicial proceedings.

(b) The Statutory Scheme

It is significant that the Act is, in the words of the Ontario Court of Appeal in *Firestone Canada Inc. v. Ontario (Pension Commission)* (1990), 1 O.R. (3d) 122, “clearly intended to benefit employees” and “[i]n particular ... evinces a special solicitude for employees affected by plant closures” (at p. 127). Indeed, when in receipt of a request for approval of a wind up report, the Superintendent is directed, by subsection 70(5) of the Act, to refuse approval if the report “does not protect the interests of the members and former members of the pension plan.” All of this suggests that the procedural protections that the Superintendent affords

employees, particularly those affected by plant closures and resulting pension plan wind ups, as in this case, should be more than minimal.

In the course of the hearing on this motion, we heard differing views on whether the Act allows for a review by this Tribunal, at the instigation of plan members or their bargaining agent, of a decision of the Superintendent to approve a partial wind up report. If it does, this would suggest that the procedural rights of CAW-Canada before the Superintendent, in this case, should be tempered by the fact that they would not give CAW-Canada its only opportunity (at least short of going to court by way of judicial review) to make submissions against the approval of the partial wind up reports for the Westinghouse Hourly Plan. However, as CAW-Canada pointed out in argument, it is dangerous to attribute too much to the existence of any right to request a hearing before the Tribunal as the pursuit of such a request involves a commitment of resources that a would-be requester may not have. Of course, a considerable delay is also involved in having to await a Tribunal hearing before being accorded the right to make submissions.

We do not find it necessary, in this case, to decide whether anyone would have the right, under the Act, to request a hearing before the Tribunal in respect of an approval by the Superintendent of a partial wind up report since there are other considerations that provide adequate support for our conclusions on Issue No. 3.

(c) The Importance of the Decision to the Individuals Affected

It goes without saying that any decision of the Superintendent to approve a partial wind up report could be extremely important to affected employees, such as those represented by CAW-Canada. The older members of that group

and their families may be particularly dependent on early retirement benefits which CAW-Canada would, most likely, have put in issue in this case, upon the Superintendent's initial consideration of the reports relating to the partial wind ups of the Westinghouse Hourly Plan, had it been given the opportunity to do so.

(d) The Legitimate Expectations of the Person Challenging the Decision

We have concluded that CAW-Canada had a legitimate expectation that it would be given the opportunity to make submissions to the Superintendent in connection with CBS's request for approval of the reports on the partial wind ups of the Westinghouse Hourly Plan occasioned by the ABB plant closures. A letter of October 4, 2000, written by counsel for CAW-Canada to counsel for the Superintendent, indicates that CAW-Canada was reviewing those reports, which it had recently received, and intended to file written submissions shortly. CAW-Canada was apparently unaware, at the time, that the reports had already been approved – on September 28, 2000.

The expectation that CAW-Canada had that it would be given the opportunity to make submissions was legitimate given the conduct of the office of the Superintendent. First, that office had given CAW-Canada that very opportunity in connection with its consideration of the report relating to the partial wind up of the Westinghouse Hourly Plan occasioned by the closure of the Motors Division. CAW-Canada had availed itself of that opportunity, making submissions about entitlement to company request early retirement benefits, which could reasonably be expected to be an issue for CAW-Canada in connection with the partial wind ups of the same Plan occasioned by the ABB plant closures. Second, counsel for the

Superintendent told CAW-Canada, by letter of April 3, 2000, that the reports on those partial wind ups had been received and that CAW-Canada would be kept advised.

(e) The Choice of Procedure by the Superintendent in Light of Institutional Constraints

While the Superintendent chose not to invite CAW-Canada to make submissions with respect to the reports on the partial wind ups of the Westinghouse Hourly Plan occasioned by the ABB plant closures, it doesn't appear to us that providing such an opportunity in this and similar situations would unduly constrain the approval process before the Superintendent. If the Superintendent had to give notice and an opportunity to make representations individually to all plan members affected by a wind up, that might unduly constrain the approval process. But that is not this case.

We have therefore concluded that the Superintendent did have jurisdiction to rescind the approvals of the three wind up reports relating to the Westinghouse Hourly Plan in that there was a breach of the duty of fairness in the granting of those approvals for failure to give CAW-Canada the opportunity to make written submissions. We do not believe that the Superintendent erred in exercising that jurisdiction. We have concluded, however, that there was no breach of the duty of fairness in the granting of approval of the wind up report relating to the Westinghouse Salaried Plan. Accordingly, there was no basis for the Superintendent rescinding that approval. The consequence is that this approval must be reinstated.

Issue No. 4

Does the Tribunal have jurisdiction to direct the Superintendent to refuse to approve the partial wind up reports for the Westinghouse Hourly Plan on the basis that they do not provide for special early retirement benefits under Article 6.06 of the Plan when this is not a ground raised in the relevant Notices of Proposal?

The four Notices of Proposal to refuse to approve partial wind up reports in respect of the Westinghouse Hourly Plan do not refer to a failure to provide for special early retirement benefits as a reason for the proposed refusals. However, after reciting the specific reasons for the proposals, the Notices purport to rely, as well, on such further and other reasons as come to the attention of the Superintendent. The Act requires that a notice of proposal be accompanied by written reasons (see subsection 89(4)), but does not expressly limit any requested hearing before the Tribunal, with respect to such notice, to a consideration of those reasons.

Before the issue of the Notices of Proposal, on May 9, 2001, CAW-Canada made submissions to the Superintendent to the effect that the wind up reports to which three of those Notices (those concerning the Westinghouse Hourly Plan) relate were deficient, among other reasons, for failure to provide for the payment of special early retirement benefits. These submissions were copied to counsel for CBS and counsel for ABB. In its application for party status in these proceedings, CAW-Canada also indicated that it would submit that the relevant wind up reports should not be approved because they failed to provide the special early retirement benefits contemplated by the Westinghouse Hourly Plan. CBS cannot, therefore, claim to be

taken by surprise if this Tribunal were to entertain arguments in these proceedings that the four partial wind up reports relating to the Westinghouse Hourly Plan should not be approved because they don't make provision for special early retirement benefits.

We have concluded that we have the jurisdiction to consider that possible ground for refusal by virtue of subsection 89(9) of the Act, as read with subsection 70(5) of the Act. Subsection 89(9) authorizes the Tribunal to order the Superintendent "to take such action as the Tribunal considers the Tribunal ought to take in accordance with the Act and the regulations," in association with an order to the Superintendent to carry out or refrain from carrying out a particular proposal.

In the case of a request for approval of a wind up report, we believe that, generally speaking, the action the Superintendent ought to take is to refuse such approval, in accordance with subsection 70(5), if the report "does not meet the requirements of [the] Act and the regulations or ... protect the interests of the members and former members of the pension plan." Should a partial wind up report fail to provide for the payment of special early retirement benefits to qualifying members of the partial wind up group that are called for by the plan, we think that the report would, indeed, fail to "protect the interests of the members and former members of the pension plan." Even if the Superintendent can be said to have implicitly rejected the argument that special early retirement benefits are payable under the Westinghouse Hourly Plan, that does not preclude this Tribunal from re-considering that argument since the Tribunal is entitled, under subsection 89(9) of the Act, to "substitute its opinion for that of the Superintendent" in ordering the Superintendent "to take such

action as the Tribunal considers the Superintendent ought to take in accordance with [the] Act and regulations.” As the Tribunal said in its Reasons for Orders, dated January 8, 2002, in *Independent Order of Foresters v. Superintendent of Financial Services et al.*, FST File No. P0155-2001, “the Tribunal ... does not simply review decisions or proposed decisions of the Superintendent but hears each case ‘de novo’” (at p. 4).

When an issue is raised before the Tribunal without the benefit of any findings on the underlying facts, if they are disputed, or without any considered opinion of the Superintendent, the Tribunal would be entitled, under subsection 89(9), to refer the matter back to the Superintendent to make the appropriate findings and take a position on the issue. However, we think that the referral approach is in the discretion of the Tribunal and that subsection 89(9) also permits the Tribunal to address such an issue as one of first impression. If any fact finding is required, the Tribunal is not without its own processes for engaging in that exercise.

We therefore conclude that the Tribunal does have jurisdiction to direct the Superintendent to refuse to approve the partial wind up reports for the Westinghouse Hourly Plan on the basis that they do not provide for special early retirement benefits under Article 6.06 of that Plan, even though this was not a ground for refusal that was raised in the relevant Notices of Proposal. Of course, the question of whether such benefits are required to be paid under that Plan, in the circumstances of this case, remains to be addressed at the hearing on the merits in these proceedings.

ORDER

Having regard to our conclusions on Issue No. 3, we order the Superintendent to refrain from carrying out the proposal to refuse to approve the partial wind up report for Westinghouse Pension Plan Registration No. 526632 (the Salaried Plan) in respect of business carried on by Westinghouse at its London, Ontario and St. Jean, Quebec plants. We further order the Superintendent to issue forthwith a new approval of that partial wind up report under current date. Consequently, the style of cause, describing the matters to which these proceedings relate and identifying the parties, shall be amended by deleting the sixth paragraph, which refers to that particular partial wind up report.

As noted in our discussion of Issue No. 2, we refused, at the hearing of this motion, to make an order adding ABB as a party to these proceedings. That refusal shall be deemed to speak from the date of these reasons.

DATED at Toronto, this 4th day of March, 2002.

Colin H.H. McNairn,
Vice Chair of the Tribunal and
Chair of the Panel

Louis Erlichman,
Member of the Tribunal and of the Panel
C.S. Moore,
Member of the Tribunal and of the Panel

INDEX NO.: FST File Number U0185-2002

DATE OF DECISION: April 19, 2002

PUBLISHED: Bulletin 11/3 and FSCO website

(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 Notice of Proposal to Refuse to Consent by the Superintendent of Financial Services (the "Superintendent"), dated January 17, 2002, with respect to an application for withdrawal of money from a life income fund, locked-in retirement account, or a locked-in retirement income fund (a "locked-in account") based on financial hardship;

AND IN THE MATTER OF a Hearing under subsection 89(8) of the Act;

REASONS:

1. The Applicant in this matter requested a hearing in respect of the Superintendent's Notice of Proposal to Refuse to Consent, dated January 17, 2002, that denied the Applicant access to funds associated with a locked-in account. The Applicant had applied to withdraw these funds, pursuant to subsection 67(5) of the Act, which reads as follows:

67.-(5) Despite subsections 1 and 2, upon application, the Superintendent may consent to the commutation or surrender, in whole or in part, of a prescribed retirement savings arrangement of a type that is

prescribed for the purposes of this subsection if the Superintendent is satisfied as to the existence of such circumstances of financial hardship as may be prescribed.

2. The Superintendent's ground for denial was that this application (the "December 2001 Application"), which was made on the basis of low income, was made within 12 months after the date of another successful application (the "March 2001 Application") made on the basis of low income, contrary to the conditions imposed by subsections 89(4) and 89(5) of Ontario Regulation 909 as amended (the "Regulation"), as follows:

89.-(4) Only one application may be made during each 12-month period.

(5) An unsuccessful application is not counted for the purposes of subsection (4).

3. The issue to be determined by the Tribunal is whether or not the Superintendent should have consented to the December 2001 Application.
4. The March 2001 Application was signed by the Applicant on March 23, 2001. On March 26, 2001, the Superintendent consented to withdrawal of \$7,000.00 from the Applicant's locked-in account, on the basis of the Applicant's low income. Therefore, the March 2001 Application was a successful application.
5. On December 10, 2001, the Applicant signed the December 2001 Application, in which she applied to withdraw the

maximum amount allowed from her locked-in account on the basis of low income. As this application was made within 12 months after the successful March 2001 Application, which was made on the basis of low income, the December 2001 Application does not meet the conditions set out in subsections 89(4) and 89(5) of the Regulation.

6. This Tribunal does not have the authority to direct the Superintendent to allow an application for a withdrawal from a locked-in account that does not meet the requirements of the Regulation. Although the evidence of financial hardship on the part of the Applicant may be compelling, the December 2001 Application cannot be granted because it fails to meet one of those requirements. **However, as of today's date of April 19, 2002, more than 12 months have passed since the date of the successful March 2001 Application, with the result that a further application for withdrawal of locked-in funds can now be made to the Superintendent. If the circumstances of the Applicant are such that she wishes to do so, a new application should be submitted for consideration by the Superintendent without further delay.**
7. In the circumstances, the Tribunal must affirm the Superintendent's Notice dated January 17, 2002 in respect of the December 2001 Application.

ORDER:

The Superintendent is hereby directed to carry out the proposal contained in the Notice of Proposal to Refuse to Consent, dated January 17, 2002, directed to the Applicant.

DATED at Toronto, this 19th day of April, 2002.
Mr. C. S. Moore,
Member, Financial Services Tribunal

INDEX NO.: FST File Number U0189-2002

DATE OF DECISION: May 9, 2002

PUBLISHED: Bulletin 11/3 and FSCO website

(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 Notice of Proposal to Refuse to Consent by the Superintendent of Financial Services (the "Superintendent"), dated March 4, 2002 with respect to an application for withdrawal of money from an Ontario locked-in retirement account, life income fund or locked-in retirement income fund (a "locked-in account") based on financial hardship;

AND IN THE MATTER OF a Hearing under subsection 89(8) of the Act;

REASONS:

1. The Applicant in this matter requested a hearing in respect of the Superintendent's Notice of Proposal to Refuse to Consent dated March 4, 2002 that denied the Applicant access to funds associated with a locked-in account. The Applicant had applied to withdraw these funds, pursuant to subsection 67(5) of the Act, which reads as follows:

67.-(5) Despite subsections 1 and 2, upon application, the Superintendent may consent to the commutation or surrender, in

whole or in part, of a prescribed retirement savings arrangement of a type that is prescribed for the purposes of this subsection if the Superintendent is satisfied as to the existence of such circumstances of financial hardship as may be prescribed.

2. The Superintendent's ground for denial was that this application (the "January 2002 Application"), which was made on the basis of low income, was made within 12 months after the date of another successful application (the "August 2001 Application") made on the basis of low income, contrary to the conditions imposed by subsections 89(4) and 89(5) of Ontario Regulation 909 as amended (the "Regulation"), as follows:

89.-(4) Only one application may be made during each 12-month period.

(5) An unsuccessful application is not counted for the purposes of subsection (4).

3. The issue to be determined by the Tribunal is whether or not the Superintendent should have consented to the January 2002 Application.
4. The August 2001 Application was signed by the Applicant on August 30, 2001. On September 11, 2001, the Superintendent consented to withdrawal of \$19,150.00 from the Applicant's locked-in account, on the basis of the Applicant's low income. Therefore, the August 2001 Application was a successful application.

5. On January 10, 2002, the Applicant signed the January 2002 Application, in which he applied to withdraw the maximum amount allowed from his locked-in account on the basis of low income. As this application was made within 12 months after the successful August 2001 Application, which was made on the basis of low income, the January 2002 Application does not meet the conditions set out in subsections 89(4) and 89(5) of the Regulation.
6. This Tribunal does not have the authority to direct the Superintendent to allow an application for a withdrawal from a locked-in account that does not meet the requirements of the Regulation. Although the evidence of financial hardship on the part of the Applicant may be compelling, the January 2002 Application cannot be granted because it fails to meet one of those requirements. If 12 months after the date of the successful August 2001 Application, the circumstances of the Applicant are such that he could meet the qualifications for reliance on low income, a further such application for withdrawal of locked-in funds can then be made to the Superintendent.
7. In the circumstances, the Tribunal must affirm the Superintendent's Notice dated March 4, 2002, in respect of the January 2002 Application.

ORDER

The Superintendent is hereby directed to carry out the proposal contained in the Notice of Proposal to Refuse to Consent, dated March 4, 2002, directed to the Applicant.

DATED at Toronto, this 9th day of May, 2002.

Ms. K.M. Bush,
Vice-Chair, Financial Services Tribunal

INDEX NO.: FST File Number U0184-2002

DATE OF DECISION: May 14, 2002

PUBLISHED: Bulletin 11/3 and FSCO website

(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 Notice of Proposal to Refuse to Consent by the Superintendent of Financial Services (the "Superintendent"), dated January 25, 2002, with respect to an application for withdrawal of money from a life income fund, locked-in retirement account, or a locked-in retirement income fund (a "locked-in account") based on financial hardship;

AND IN THE MATTER OF a Hearing under subsection 89(8) of the Act;

REASONS:

1. The Applicant in this matter requested a hearing in respect of the Superintendent's Notice of Proposal to Refuse to Consent, dated January 25, 2002, that denied the Applicant access to funds associated with a locked-in account. The Applicant had applied to withdraw these funds, pursuant to subsection 67(5) of the Act, which reads as follows:

67.-(5) Despite subsections 1 and 2, upon application, the Superintendent may consent to the commutation or surrender, in whole or in part, of a prescribed retirement

savings arrangement of a type that is prescribed for the purposes of this subsection if the Superintendent is satisfied as to the existence of such circumstances of financial hardship as may be prescribed.

2. The Superintendent's ground for denial was that this application (the "September 2001 Application"), which was made on the basis of low income, was made within 12 months after the date of another successful application, made on the basis of low income and signed by the Applicant on June 11, 2001 (the "June 2001 Application"), contrary to the conditions imposed by subsections 89(4) and 89(5) of Ontario Regulation 909 as amended (the "Regulation"), as follows:

89.-(4) Only one application may be made during each 12-month period.

(5) An unsuccessful application is not counted for the purposes of subsection (4).

3. The issue to be determined by the Tribunal is whether or not the Superintendent should have consented to the September 2001 Application.
4. The June 2001 Application was signed by the Applicant on June 11, 2001. On June 25, 2001, the Superintendent consented to withdrawal of \$9,000.00 from the Applicant's locked-in account, on the basis of the Applicant's low income. Therefore, the June 2001 Application was a successful application.

5. On September 10, 2001, the Applicant signed the September 2001 Application, in which he applied to withdraw the maximum amount allowed from his locked-in account on the basis of low income. As this application was made within 12 months after the successful June 2001 Application, which was also made on the basis of low income, the September 2001 Application does not meet the conditions set out in subsections 89(4) and 89(5) of the Regulation.
6. This Tribunal does not have the authority to direct the Superintendent to allow an application for a withdrawal from a locked-in account that does not meet the requirements of the Regulation. Although the evidence of financial hardship on the part of the Applicant may be compelling, the September 2001 Application cannot be granted because it fails to meet one of those requirements. However, on June 11, 2002, 12 months will have passed since the date of the June 2001 Application. If the circumstances of the Applicant are such that he wishes to do so, a new application can then be submitted for consideration by the Superintendent.
7. In the circumstances, the Tribunal must affirm the Superintendent's Notice dated January 25, 2002 in respect of the September 2001 Application.

ORDER

The Superintendent is hereby directed to carry out the proposal contained in the Notice of Proposal to Refuse to Consent, dated January 25, 2002, directed to the Applicant.

DATED at Toronto, this 14th day of May, 2002.

Mr. C. S. Moore,
Member, Financial Services Tribunal

INDEX NO.: FST File Number U0179-2002

DATE OF DECISION: May 29, 2002

PUBLISHED: Bulletin 11/3 and FSCO website

(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 Notice of Proposal to Refuse to Consent by the Superintendent of Financial Services (the "Superintendent"), dated November 22, 2001, with respect to an application for withdrawal from a life income fund, locked-in retirement account, or a locked-in retirement income fund (a "locked-in account") based on financial hardship;

AND IN THE MATTER OF a Hearing under subsection 89(8) of the Act;

REASONS:

1. The Applicant in this matter requested a hearing in respect of the Superintendent's Notice of Proposal to Refuse to Consent dated November 22, 2001 that denied the Applicant access to funds held in a locked-in account. The Applicant had applied to withdraw these funds, pursuant to subsection 67(5) of the Act, which reads as follows:

67.(5) Despite subsections 1 and 2, upon application, the Superintendent may consent to the commutation or surrender, in whole or in part, of a prescribed retirement savings arrangement of a type that is

prescribed for the purposes of this subsection if the Superintendent is satisfied as to the existence of such circumstances of financial hardship as may be prescribed.

2. The Superintendent's ground for denial was that the Applicant did not meet the conditions prescribed in Subsection 89(6) of the Regulation for a withdrawal based on low income.
3. The Superintendent also questioned the jurisdiction of the Tribunal to hold a hearing on the basis that the Applicant did not meet the time limit for requesting a hearing under Subsection 89(6) of the Act. The Tribunal has, however, received evidence that the Applicant did in fact request a hearing within the prescribed time limit. Therefore, the Tribunal has jurisdiction to hold a hearing.
4. The only issue to be determined by the Tribunal is therefore whether the Superintendent should have consented to the application.
5. An application for withdrawal based on financial hardship is subject to conditions and requirements prescribed in sections 83 through 89 of the Regulation. The relevant sections for this application are:
88(2) Subject to section 89...the owner is entitled to withdraw an amount calculated using the formula, $A - (B - C) = D$, in which "A" is the amount the owner applies to withdraw;

“B” is the market value of all assets of the owner...

“C” is the total of the liabilities of the owner...

“(B–C)” cannot be less than 0;

“D” is the amount the owner is entitled to withdraw, net of any withholding tax and fee.

89(6) The amount the owner may apply to withdraw under section 88 is the amount by which “E” exceeds “F: where,

“E” is 50 per cent of the Year’s Maximum Pensionable Earnings (YMPE) for the year in which the application is signed; and

“F” is 75 per cent of the owner’s expected total income from all sources before taxes for the 12-month period following the date of signing the application.

6. This application was signed in the year 2001, for which the Canada Pension Plan’s YMPE was \$38,300. 50 per cent of the YMPE is \$19,150. In the application dated August, 2001, the Applicant stated that his expected total income from all sources before taxes for the 12 months following the date of the application was \$30,000. 75 per cent of this amount is \$22,500. Following 89(6), the amount that the Applicant can therefore apply to withdraw is \$19,150 – \$22,500, which is a negative amount.
7. In the Applicant’s Request for Hearing, the Applicant expressed a desire to pay off debts and noted a recent reduction in his income to \$23,000. There is no discretionary in the Act or Regulation for the approval of a withdrawal which does not meet the prescribed requirements. A reduction in expected income to \$23,000 would allow for some withdrawal of locked-in funds under the

terms of the Act (though not the full amount previously requested). The Applicant is not precluded from re-applying for a withdrawal on that basis.

ORDER

The Superintendent’s Notice of Proposal to Refuse to consent, dated November 22, 2001, is affirmed and this application is dismissed.

DATED at Toronto, this 29th day of May, 2002.

Mr. Louis Erlichman

Member, Financial Services Tribunal

INDEX NO.: FST File Number U0186-2002

DATE OF DECISION: May 29, 2002

PUBLISHED: Bulletin 11/3 and FSCO website

(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 Notice of Proposal to Refuse to Consent by the Superintendent of Financial Services (the "Superintendent"), dated January 11, 2002, with respect to an application for withdrawal from a life income fund, locked-in retirement account, or a locked-in retirement income fund (a "locked-in account") based on financial hardship;

AND IN THE MATTER OF a Hearing under subsection 89(8) of the Act;

REASONS:

1. The Applicant in this matter requested a hearing in respect of the Superintendent's Notice of Proposal to Refuse to Consent dated January 11, 2002 that denied the Applicant access to funds held in a locked-in account. The Applicant had applied to withdraw these funds, pursuant to subsection 67(5) of the Act, which reads as follows:

67.(5) Despite subsections 1 and 2, upon application, the Superintendent may consent to the commutation or surrender, in whole or in part, of a prescribed retirement

savings arrangement of a type that is prescribed for the purposes of this subsection if the Superintendent is satisfied as to the existence of such circumstances of financial hardship as may be prescribed.

2. The Superintendent's ground for denial was that the Applicant did not meet the conditions prescribed in Subsection 89(6) of the Regulation for a withdrawal based on low income.
3. The issue to be determined by the Tribunal is whether or not the Superintendent should have consented to the application.
4. An application for withdrawal based on financial hardship is subject to conditions and requirements prescribed in sections 83 through 89 of the Regulation. The relevant sections for this application are:

88(2) Subject to section 89... the owner is entitled to withdraw an amount calculated using the formula, $A - (B - C) = D$, in which "A" is the amount the owner applies to withdraw;

"B" is the market value of all assets of the owner...

"C" is the total of the liabilities of the owner...

"(B-C)" cannot be less than 0;

"D" is the amount the owner is entitled to withdraw, net of any withholding tax and fee.

89(6) The amount the owner may apply to withdraw under section 88 is the amount by which “E” exceeds “F: where, “E” is 50 per cent of the Year’s Maximum Pensionable Earnings (YMPE) for the year in which the application is signed; and “F” is 75 per cent of the owner’s expected total income from all sources before taxes for the 12-month period following the date of signing the application.

5. This application was signed in the year 2001, for which the Canada Pension Plan’s YMPE was \$38,300. 50 per cent of the YMPE is \$19,150. In the application dated November 1, 2001, the Applicant stated that his expected total income from all sources before taxes for the 12 months following the date of the application was \$55,000. 75 per cent of this amount is \$41,250. Following 89(6), the amount that the Applicant can therefore apply to withdraw is \$19,150 – \$41,250, which is a negative amount.
6. In the Applicant’s Request for Hearing, the Applicant referred to a large debt load creating a difficult financial situation. There is, however, no discretionary in the Act or Regulation for the approval of a withdrawal which does not meet the prescribed requirements.

ORDER

The Superintendent’s Notice of Proposal to Refuse to consent, dated January 11, 2002, is affirmed and this application is dismissed.

DATED at Toronto, this 29th day of May, 2002.

Mr. Louis Erlichman,
Member, Financial Services Tribunal

INDEX NO.: FST File Number P0154-2001
PLAN: Amended Pension Plan for the Hourly-Paid Employees of National Steel Car Limited, Registration Number 0215038
DATE OF DECISION: May 31, 2002
PUBLISHED: Bulletin 11/3 and FSCO website

(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 "PBA");

AND IN THE MATTER OF the Consent of the Superintendent of Financial Services (the "Superintendent"), pursuant to the PBA, to the transfer of assets from the Amended Pension Plan for Salaried Employees of National Steel Car Limited, Registration No. 0215020, to the Amended Pension Plan for the Hourly-Paid Employees of National Steel Car Limited, Registration No. 0215038;

AND IN THE MATTER OF a Hearing in accordance with subsection 89(8);

BETWEEN:

T. STEWART BAXTER, GARY HOTRUM, GEORGE WILBUR and JUNE WILLIAMS, Representatives of Certain Members and Former Members of the Amended Pension Plan for Salaried Employees of National Steel Car Limited

Applicants

– and –

SUPERINTENDENT OF FINANCIAL SERVICES

Respondent

– and –

NATIONAL STEEL CAR LIMITED

Respondent

– and –

MAURICE ROZON, CHRIS WINTERBURN and AL REICHERT of the UNITED STEEL-WORKERS OF AMERICA, LOCAL 7135 (the "USWA") on their own behalf and on behalf of the USWA Members of the Amended Pension Plan for Hourly-Paid Employees of National Steel Car Limited Respondents

BEFORE:

Mr. Colin H.H. McNairn,
Vice Chair of the Tribunal and
Chair of the Panel

Mr. William Forbes,
Member of the Tribunal and of the Panel

Mr. C.S. Moore,
Member of the Tribunal and of the Panel

APPEARANCES:

For the Applicants, Stewart Baxter, Gary Hortum, George Wilbur and June Williams

Mr. Warren S. Rapoport

For the Respondent Superintendent

Ms. Deborah McPhail

For the Respondent National Steel Car Limited

Mr. Andrew K. Lokan

**For the Respondents, Maurice Rozon,
Chris Winterburn and Al Reichert**

Ms. Dona Campbell

HEARING DATES:

January 15–17, 2002

MAJORITY REASONS FOR DECISION**Background**

National Steel Car Limited (“NSC”) applied on February 2, 2000, for the consent of the Superintendent to the transfer of assets in the amount of \$45,188,000 from the Amended Pension Plan for Salaried Employees of National Steel Car Limited (the “Salaried Plan” or the “Plan”) to the Amended Pension Plan for the Hourly-Paid Employees of National Steel Car Limited (the “Hourly Plan”) to be effective March 1, 1999. The actuarial reports filed in support of the transfer application indicated that, as at March 1, 1999, the Salaried Plan had a surplus of \$23,681,800 and the Hourly Plan had an unfunded liability of \$3,088,000. Those reports also indicated that immediately after the transfer, the merged plan would have a surplus of \$20,593,800 on a going concern basis and no solvency deficiency.

On March 2, 2001, after receiving submissions from the Applicants, NSC and the USWA, the Superintendent gave consent to the transfer of assets, as requested in NSC’s application, pursuant to section 81 of the PBA. The Applicants, who are members of the Salaried Plan, filed a request for a hearing by the Tribunal in respect to that consent in apparent reliance on section 89 of the PBA. Applications were then filed by NSC and by certain USWA members of the Hourly Plan for party status in the hearing before the Tribunal. Those two applications were duly granted.

The Hourly and Salaried Plans were originally

established, effective June 30, 1952, as a single plan. In 1966, NSC divided the original plan, effective July 1, 1965, into separate Salaried and Hourly Plans. The 1966 version of the Salaried Plan reserved to NSC the right, in its discretion, to amend, merge or terminate the Plan (section 18.1), subject to the following qualification;

The Company shall have no power to make any change in or amendment to the Plan which would cause or permit any portion of the contributions made prior to that date to be diverted to purposes other than the exclusive benefit of the Members of the Plan ... (section 18.3).

This version of the Plan also provided that should the Plan be terminated, all contributions to the Plan would vest absolutely in the members (section 18.4).

The Plan was, in fact, amended in 1973, effective January 1, 1972, to substitute the following provision for the provision recited above;

No amendment or suspension of this Plan shall operate to reduce the benefits which have accrued to the Members of the Plan in respect of service prior to the date of such amendment or suspension as the case may be, nor shall the Company have the power to make any amendment to the Plan which would cause or permit any portion of the contributions made prior to such date to be diverted to purposes other than the exclusive benefit of Members of the Plan, Pensioners, their estates, designated beneficiaries or joint annuitants until all liabilities of the Plan have been fully met. ... (new section 18.3).

The 1973 amendment also replaced the provision dealing with the vesting of contributions on Plan termination with a provision to the effect that any surplus on termination of the Plan should revert to NSC (new section 18.5).

At the hearing in this matter, the Tribunal heard arguments on two main issues that were identified in advance by the parties. We address those issues in the next two parts of these Reasons.

Issue No. 1

Does the Tribunal have jurisdiction under the PBA to hear this matter?

Unlike a superior court, this Tribunal has no inherent jurisdiction. It is simply a creature of statute (namely, the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28 (the “FSCO Act”), see esp. section 6) and derives its authority from statute, namely the FSCO Act and statutes such as the PBA that govern particular financial service sectors. The scope of that authority is to be determined from the express provisions of any relevant statute or by necessary implication from such a statute (as to the authority of statutory agencies generally, see Macaulay and Sprague, *Practice and Procedure before Administrative Tribunals*, looseleaf, vol. 3, c. 29). In the present case, this means that we have to look to the PBA in order to decide whether the Tribunal is entitled to entertain a request for a hearing from the Applicants in relation to the Superintendent’s consent to the transfer of assets from the Salaried Plan to the Hourly Plan. While we sometimes refer, in these Reasons, to the right to a hearing before the Tribunal, that is really the obverse side of the jurisdiction coin. Consequently, whether we speak of the jurisdiction of the Tribunal to entertain a request for a hearing or the right of a person to a hearing before the Tribunal, the PBA must confer that jurisdiction or that right, either expressly or by necessary implication.

Section 89 (formerly section 90) of the PBA is the source of the Tribunal’s jurisdiction to hold hearings in relation to decisions – or, more

precisely, proposed decisions – of the Superintendent under the PBA. The fact that the determination of the Superintendent in this case was framed as an actual consent to the transfer of assets rather than a proposal to consent should not, however, be taken to exclude the possibility of a right to a hearing; it is the nature rather than the form of the determination that should be controlling. Nor should there be an automatic right to a hearing in this case simply because the Superintendent’s consent letter advised recipients – such as the Applicants – that they had a right to request a hearing before the Tribunal. The Superintendent cannot confer jurisdiction on this Tribunal to entertain a request for a hearing; the Tribunal must have that jurisdiction under the PBA.

Various subsections of section 89 deal with proposed decisions of the Superintendent that will take the form of plan registrations, orders, approvals and consents, sometimes but not always referring to the specific provisions of the PBA that contemplate those decisions. There is some jurisprudence, from the Ontario Divisional Court and the Pension Commission of Ontario (the “PCO”), on the extent of the authority to hold a hearing that section 89 formerly conferred on the PCO and now confers on this Tribunal. The arguments before the Tribunal in the present case centred around the question of whether that jurisprudence applies here notwithstanding the difference in the precise subsection of section 89 primarily in question and the subsequent amendments to section 89 that were effected by the FSCO Act.

In this case, we are concerned primarily with subsection (4), as read with subsections (6) and (8), of section 89. To provide the context, however, we set out the first nine subsections of section 89, underlining the changes introduced by the FSCO Act:

89.-(1) Where the Superintendent proposes to refuse to register a pension plan or an amendment to a pension plan or to revoke a registration, the Superintendent shall serve notice of the proposal, together with written reasons therefor, on the applicant or administrator of the plan.

(2) Where the Superintendent proposes to make or to refuse to make an order in relation to,

- (a) subsection 42(9) (repayment of money transferred out of a pension fund);
- (b) subsection 43(5) (repayment of money paid to purchase pension, deferred pension or ancillary benefit);
- (c) subsection 80(6) (return of assets transferred to new pension fund);
- (d) subsection 81(6) (return of assets transferred to new pension fund);
- (d.1) section 83 (the Guarantee Fund applies to a pension plan);
- (e) section 87 (administration of pension plan in contravention of Act or regulations); or

(f) section 88 (preparation of report), 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.

(3) Where the Superintendent proposes to make or to refuse to make an order requiring an administrator to accept an employee as a member of a class of employees for whom a pension plan is established or maintained, the Superintendent shall serve notice of the proposal, together with written reasons therefor, on the administrator, and the Superintendent shall serve or require the

administrator to serve a copy of the notice and the written reasons on the employee.

(3.1) Where an application is filed in accordance with subsection 78(2) for the payment of surplus to the employer and the Superintendent proposes to consent or refuse to consent under subsection 78(1), the Superintendent shall serve notice of the proposal, together with written reasons therefor, on the applicant and on any person who made written representations to the Superintendent in accordance with subsection 78(3).

(3.2) Where an application is filed in accordance with subsection 78(4) and the Superintendent proposes to consent or refuse to consent under subsection 78(4), the Superintendent shall serve notice of the proposal, together with written reasons therefor, on the applicant and the Superintendent may require the applicant to transmit a copy of the notice and the written reasons on such other persons or classes of persons or both as the Superintendent specifies in the notice to the applicant.

(4) When the Superintendent proposes to refuse to give an approval or consent or proposes to attach terms and conditions to an approval or consent under this Act or the regulations, other than a consent referred to in subsection (3.1) or (3.2), the Superintendent shall serve notice of the proposal, together with written reasons therefor, on the applicant for the approval or consent.

(5) Where the Superintendent proposes to make an order requiring the wind up of a pension plan or declaring a pension plan wound up, the Superintendent shall serve notice of the proposal, together with written reasons therefor, on the administrator and

the employer, and the Superintendent may require the administrator to transmit a copy of the notice and the written reasons on such other persons or classes of persons or both as the Superintendent specifies in the notice to the administrator.

(6) A notice under subsection (1), (2), (3), (3.1), (3.2), (4) or (5) 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 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 the person requires a hearing by the Tribunal in accordance with subsection (6), the Tribunal shall appoint a time for and hold a hearing.

(9) At or after the hearing, the Tribunal by order may direct the Superintendent to carry out or to refrain from carrying out the proposal and to take such action as the Tribunal considers the Superintendent ought to take in accordance with this Act and the regulations, and for such purposes, the Tribunal may substitute its opinion for that of the Superintendent.

Before the FSCO Act came into effect in 1998, the references to the Tribunal in section 89 of the PBA were references to the PCO and “the Superintendent” meant the Superintendent of Pensions rather than the Superintendent of Financial Services.

In *C.U.P.E. v. Ontario Hospital Association* (1990), PCO Bulletin 1/4 (PCO), and (1992), 91 D.L.R.

(4th) 436 (Ont. Div. Ct.) (the “*Ontario Hospitals*” case), the “key issue,” as described by the PCO (Bulletin 1/4, at p. 5), was whether the phrase “proposes to make an order” in subsection (2) of section 89 (then section 90) could be read so as to include “proposes to refuse to make an order.” The PCO said that it could and the Divisional Court agreed, noting that “there is ample authority to support the proposition that a dismissal of an application [for an order] can constitute an order” (91 D.L.R. (4th) 435, at p. 441). At the time of this decision, subsection (2) was limited to situations where there is a proposal to make an order. It was subsequently amended by the FSCO Act so that it also applies to situations where there is a proposal to refuse to make an order. That amendment effectively confirms the result in the *Ontario Hospitals* case and eliminates the need for finding a necessary implication that the subsection covers a proposal to refuse to make an order since the subsection now extends to that situation explicitly.

Subsection (4) of section 89 does not lend itself to the same sort of implication that was drawn from subsection (2) of that section in the *Ontario Hospitals* case. The phrase “proposes to refuse to give ... consent” cannot be read so as to include “proposes to give consent” without stretching the language beyond reason.

Moreover, it cannot be said, adapting the words of the Divisional Court in the *Ontario Hospitals* case to the circumstances of this case, that there is ample authority for the proposition that giving consent can constitute refusing to give consent. It was suggested in argument that refusing to give consent includes “refusing to refuse” consent and, therefore, covers the granting of consent. But this unduly strains language and logic. Counsel for the Superintendent argued that the Superintendent’s

action in this case was tantamount to a refusal since the giving of consent to the transfer of assets could be construed as an implicit refusal to order the return of assets transferred in violation of subsection (4) of section 81 of the PBA. However, there was no evidence that the assets had actually been transferred at any time before the hearing in this matter and, if they had been transferred after the Superintendent gave unconditional consent, the Superintendent would have had no jurisdiction to order the return of those assets. An order to return assets can only be made where those assets have been transferred without consent or in breach of a prescribed term or condition of a consent to transfer (see subsection (6) of section 81).

We, therefore, conclude that subsection (4) of section 89 is limited to proposals to refuse to give approvals or consents, or to impose terms and conditions on an approval or consent, and does not admit of an implication that it also covers proposals to give approvals or consents. This interpretation is reinforced by the fact that the subsection says that the relevant notice of proposal is to be served on the applicant for approval or consent, while subsection (6) indicates that the person who is entitled to a hearing is the person on whom the notice is served. The Applicants in the present case, therefore, do not qualify, under subsection (6), as persons who are entitled to a hearing before the Tribunal since they did not apply to the Superintendent for any consent or approval.

In opting for a broad interpretation of the PCO's jurisdiction to hold hearings in the *Ontario Hospitals* case, the Divisional Court noted the PCO's "watchdog" role under the PBA and the subordinate role of the Superintendent of Pensions, who was obliged to follow the directions of the PCO as well as the terms of the PBA. The relationship between

this Tribunal and the Superintendent of Financial Services is quite different. The Tribunal does not have general responsibility for the administration of the PBA and its only authority over the Superintendent is to make orders against that official, under subsection (9) of section 89, directing that certain action be taken or not taken, in relation to any of the various kinds of proposals referred to elsewhere in section 89. Such orders can only be made by way of remedy at or after a hearing in a matter that is brought before the Tribunal through a request for hearing made under the PBA. Therefore, the consideration which supported a broad interpretation by the Divisional Court of the PCO's jurisdiction to hold hearings that was in question in the *Ontario Hospitals* case is not at play in relation to the comparable jurisdiction of this Tribunal.

One of the factors that influenced the PCO and the Divisional Court in their decisions in the *Ontario Hospitals* case was the inequity of an interpretation of section 89 that would give a losing party on one side of a contested matter before the Superintendent the right to a formal hearing under the PBA but no similar right to a losing party on the other side (the latter party being remitted to the more limited scope of judicial review through an application to court). The PCO said that it would take very clear language in the PBA to lead to the conclusion that inequitable treatment of this sort was envisaged by the PBA. We think that the language of subsection (4) of section 89 is abundantly clear and forecloses the possibility of any implication that it extends to proposals by the Superintendent to give consent. In determining the scope of the jurisdiction of this Tribunal to hold hearings, we are not entitled to read something into the PBA that cannot be supported by a necessary implication from the

language the Legislature has chosen to use. If the result is one-sided, we must respect the unambiguous decision of the Legislature to embrace that lack of symmetry.

The decision in the *Ontario Hospitals* case was followed by the PCO in three other cases where that tribunal assumed jurisdiction to hold a hearing. Those cases were like the *Ontario Hospitals* case in that the PCO concluded that a provision of section 89 of the PBA providing for a hearing where there is proposal to make a certain kind of decision could be taken to relate, as well, to a proposal to refuse to make such a decision (see *Maynard v. Ontario (Superintendent of Pensions)* and *McDonnell Douglas Canada Ltd.*, a decision of the PCO dated May 25, 1998, PCO Index No. XDEC-38 (affirmed by the Divisional Court at [2000] O.J. No. 881), *C.U.P.E. v. Ontario (Superintendent of Pensions)* and *Sisters of St. Joseph*, a decision of the PCO dated May 29, 1998, PCO Index No. XDEC-39, and *The Entitlement 55 Group v. Ontario (Superintendent of Pensions)* and *Imperial Oil Limited*, a decision of the PCO dated April 28, 1995, PCO Bulletin 6/2 (Summer 1995)). Therefore, like the *Ontario Hospitals* case, these cases are readily distinguishable since we are concerned, in the present case, with the interpretation of a provision of section 89 that confers jurisdiction to hold a hearing where there is a proposal to refuse to make a certain kind of decision.

The amendments to section 89 of the PBA effected by the FSCO Act in 1997 also militate against the conclusion that subsection (4) of section 89 implicitly covers a proposal to give consent. Through these amendments, the Legislature expressly extended the situations in which there is a right to a hearing under section 89 so that the right now applies in respect of proposals;

- to refuse to make, as well as to make, orders under specified sections of the PBA (subsection (2)),
- to consent or refuse to consent to the payment of surplus in a pension plan to the employer (new subsection (3.1)),
- to consent or refuse to consent to the return or reimbursement of certain amounts to the employer from a pension plan (new subsection (3.2)).

In other words, if any of these kinds of decisions were to be proposed, the right to a hearing would apply whether the proposal of the Superintendent was favourable or unfavourable to the person who brought the matter before the Superintendent. At the same time, subsection (4) of section 89 was left to apply, by its express terms, only to proposals to refuse to give an approval or consent, or to attach terms and conditions to an approval or consent, although the exceptions from the operation of the subsection were supplemented by the insertion of cross-references to the new subsections (3.1) and (3.2) of section 89. All of this suggests that subsection (4) was deliberately left to extend only to decisions of the Superintendent going one way, namely against the person making the request to the Superintendent. In these circumstances, we would be reluctant to conclude that the subsection extends, by implication, to decisions in favour of the person making the request.

Although we have concluded, for a number of reasons, that we do not have jurisdiction to entertain the Applicants' request for a hearing in this matter, we proceed, nonetheless, to consider the merits of the Applicants' case in the event that we are wrong in our conclusion as to jurisdiction.

Issue No. 2

If the Tribunal has jurisdiction, should the Superintendent's consent to the asset transfer under section 81 of the PBA be set aside or varied?

Section 81 of the PBA provides as follows;

81.-(1) Where a pension plan is established by an employer to be a successor to an existing pension plan and the employer ceases to make contributions to the original plan, the original pension plan shall be deemed not to be wound up and the new pension plan shall be deemed to be a continuation of the original pension plan.

(2) the benefits under the original pension plan in respect of employment before the establishment of the new pension plan shall be deemed to be benefits under the new pension plan.

(3) Subsection (2) applies whether or not the assets and liabilities of the original pension plan are consolidated with those of the new pension plan.

(4) No transfer of assets shall be made from the pension fund of the original pension plan to the pension fund of the new pension plan without the prior consent of the Superintendent or contrary to the prescribed terms and conditions.

(5) The Superintendent shall refuse to consent to a transfer that does not protect the pension benefits and any other benefits of the members and former members of the original pension plan or that does not meet the prescribed requirements and qualifications.

(6) The Superintendent by order may require the transferee to return to the pension fund assets, with interest calculated in the

prescribed manner, transferred without the prior consent of the Superintendent or transferred contrary to a prescribed term or condition.

(7) Subject to section 89 (hearing and appeal), an order for return of assets under subsection (6), exclusive of the reasons therefor, may be filed in the Ontario Court (General Division) and is thereupon enforceable as an order of that court.

(8) No transfer of assets shall be made from one pension fund to another pension fund in circumstances where subsections (1) to (7) do not apply or where section 42 or 80 does not apply, without the prior written consent of the Superintendent or contrary to the prescribed terms and conditions and for the purpose, subsections (5) to (7) apply with necessary modifications.

The Superintendent concluded in the present case that there were no grounds, under subsection (5) of section 81 of the PBA, for refusing NSC's request for consent to the transfer of assets from the Salaried Plan to the Hourly Plan. Since no requirements and qualifications in respect of such a transfer have been prescribed by regulation, the only circumstance that would require the Superintendent to refuse consent, under subsection (5) of section 81, is if the proposed transfer of assets failed to "protect the pension benefits and any other benefits of the members and former members" (collectively the "members") of the Salaried Plan. The Applicants did not suggest that the "pension benefits" of those members were not protected as the assets in the merged plan were more than sufficient to satisfy the pension benefits (as defined in section 1 of the PBA) of the members of the Salaried Plan. In fact, the actuarial report filed by NSC with the

Superintendent, in support of its request for consent to the transfer of assets, indicated that the merged plan would have a surplus of \$20,593,800 on a going concern basis. The Applicants maintained, however, that the transfer of assets in this case did not protect “other benefits” of the members of the Salaried Plan.

The Applicants maintained that the 1966 version of the Salaried Plan had the effect of establishing a trust in respect of the Plan assets, or pension fund, for the benefit of the members of the Plan. We will assume for the purposes of our analysis, but without deciding, that there was such a trust and that the 1973 amendment to the Plan did not effectively revoke it.

Assuming the continued existence of a trust, the members of the Plan might be said to have enjoyed benefits in the form of beneficial interests in the trust to which the Plan assets were subject.

The “other benefits” of the members of the Salaried Plan that the Applicants say were unprotected in the transfer of assets, and accompanying plan merger, are really interests in the excess of,

- (i) the contributions to the Plan, taken together with
 - (ii) the income generated by those contributions, over and above
 - (iii) what would be required to satisfy pension benefits under the Plan
- in other words, interests in the nature of claims to surplus. However, no member of the Salaried Plan can be said to have anything more than a contingent claim to surplus since an actual claim to surplus pre-supposes a wind up or termination of the Plan; see *Schmidt v. Air Products of Canada* (1994), 115 D.L.R. (4th) 631 (S.C.C.). The PBA says specifically that on a merger of pension plans under

section 81, the merging plan is deemed not to be wound up and the merged plan is deemed to be a continuation of the merging plan (see subsection (1)).

The Supreme Court of Canada in *Schmidt* refers to the potential claim of plan members to the surplus remaining upon termination of a pension plan – by virtue of the terms of the plan or any trust in respect of the pension fund – as a “benefit” to which members may be entitled (at p. 665). However, the court also makes it clear that the amount of that benefit is never certain during the continuation of the plan and that the right to any surplus is crystallized only when the surplus becomes ascertainable on termination of the plan (at p. 665). In our view, a member’s interest in surplus, which is contingent upon termination of the plan and the existence of an actual surplus at that time, does not fall within the expression “other benefits of members” in subsection (5) of section 81 of the PBA. While the plan continues, the plan sponsor has the benefit of the surplus in the sense that it can use it to justify contribution holidays (see *Schmidt*, at pp. 656-657). That benefit pertains even if the pension fund is subject to a trust in favour of the members. Thus, it would be inaccurate to say that the interest of the members in the surplus of an ongoing plan is a benefit of the members, in the sense of subsection (5) of section 81 of the PBA, given that the plan sponsor has the current benefit of that surplus, albeit for the limited purpose of taking contribution holidays.

There is nothing inherently objectionable about a merger of a pension plan that is in a surplus position with one that is not, even if the assets of the former plan are subject to a trust for the benefit of the members; see *Re Heilig and Dominion Securities Pitfield Ltd.* (1989), 67 O.R. (2d) 577, at p. 582 (Ont. C.A.). We were

referred to the decision of the Divisional Court in *Retirement Income Plan for Salaried Employees of Weavvex Corp. v. Ontario (Superintendent of Pensions)* (2000), 133 O.A.C. 375, as authority for the proposition that on a transfer of assets the Superintendent is required, under subsection (5) of section 81 of the PBA, to protect a notional claim to surplus. However, the court's decision to set aside a consent of the Superintendent given under that subsection was based entirely on deficiencies in the process through which the Superintendent dealt with the application for consent to the transfer of assets and with objections to it. That is how the Court of Appeal, in an unreported decision dated February 14, 2002 (docket C35896 & C35919), characterized the decision in affirming it on appeal (with a modification to the form of remedy afforded by the Divisional Court). In the present case, the Applicants did not allege that there were any deficiencies in the procedure the Superintendent followed in dealing with NSC's application for consent.

The Applicants relied on *Buschau v. RogersCable Systems Inc.* (2001), 148 B.C.A.C. 263, a decision of the British Columbia Court of Appeal that may appear, at first blush, to be at odds with the decision of the Ontario Court of Appeal in *Heilig*. In fact, *Buschau* simply required an accounting for the benefit of the members of a pension plan (the "merging plan") that had been merged with certain other plans, in order to determine the proportion of the combined assets of the merged plan that were attributable to those members. The assets of the merging plan were subject to a trust in favour of the members and membership in the plan had been closed sometime prior to the merger. The apparent objective of the members of the merging plan, in requesting an accounting, was to preserve the integrity of the trust such that the

members would remain entitled to share in the surplus on termination of the trust and be in a position to bring about the termination of the trust and distribution of the trust assets in accordance with the rule in *Saunders v. Vautier* (1814), E.R. 282 (aff'd (1841), 41 E.R. 482). There was no question of the appropriateness of any transfer of assets in connection with the plan merger, which apparently did not require any regulatory approval under the pension legislation to which the merging plan was subject, namely the *Pension Benefit Standards Act*, 1985, S.C. 1986, c. 40. *Buschau* is not, therefore, the same kind of case as the present one.

The Superintendent has adopted Policy A700-251 (the "Policy"), being an administrative policy with respect to the giving of consent to a transfer of assets under section 81 of the PBA. The Policy anticipates (in section 11) that if the assets of the plan to which the transfer is to be made would be less than the liabilities of that plan (and certain other conditions pertain), the Superintendent may decide that member benefits of a kind referred to in subsection (5) of section 81 of the PBA would not be protected on the proposed transfer. Assuming there were member benefits of that kind here, that is not the situation we have to consider since the merged plan, following the transfer, would have a surplus of \$20,593,800. The Policy does not say that if there is a surplus, the proposed transfer ought to be approved. Therefore, the Policy is not helpful in this case.

Disposition

It follows that the decision of the Superintendent granting consent to the transfer of assets from the Salaried Plan to the Hourly Plan should stand. In the event that the Tribunal has the jurisdiction to entertain the Applicants' request for a hearing in this matter, we confirm the Superintendent's consent.

DATED at Toronto, Ontario this 31st day of May, 2002.

Colin H.H. McNairn
Chair of the Panel

William Forbes
Member of the Panel

MINORITY REASONS FOR DECISION

Background

As background for these minority reasons, I agree with and adopt the Background section of the Majority Reasons for Decision. The two main issues identified in advance by the parties were expressed as follows:

1. Does the Tribunal have jurisdiction under the PBA to hear this matter?
2. If the Tribunal has jurisdiction, should the Superintendent's consent to the asset transfer under section 81 of the PBA be set aside or varied?

At the request of NSC, and with the approval of all parties, the Panel agreed to deal with both issues at the same hearing, with the result that we were able to decide Issue No. 2 without first determining that we had jurisdiction under the PBA to hear that matter.

Issue No. 2

If the Tribunal has jurisdiction, should the Superintendent's consent to the asset transfer under section 81 of the PBA, be set aside or varied?

I concur with my fellow Panel members regarding the decision reached on Issue No. 2; that is, that the Superintendent's consent to the asset transfer at issue in this hearing should stand. I also agree with the reasons expressed in that section of the Majority Reasons for Decision regarding Issue No. 2.

Issue No. 1

Does the Tribunal have jurisdiction under the PBA to hear this matter?

I do not agree with the decision reached by the majority of the Panel, that the Tribunal does not have jurisdiction to hear this matter, nor do I agree fully with the section of the Majority Reasons for Decision regarding Issue No. 1. My view is that the Tribunal should have jurisdiction, and my reasons follow.

I agree with the arguments presented by the Superintendent, and supported by the Applicants and the USWA Respondents, that the Tribunal has an implied jurisdiction to conduct a hearing of this matter under section 89 of the PBA. In making these arguments, the Superintendent relied on the authority of *Hospitals of Ontario Pension Plan*, No. C-001500, November 22, 1990, PCO Index No. XDEC-05, PCO Bulletin 1/4 (December 1990), affirmed at *C.U.P.E. v. Ontario Hospital Association* (1992), 91 D.L.R. (4th) 436 (Ont. Div. Ct.), and decisions that have followed it, namely *Imperial Oil Limited Plan and the Entitlement 55 Group*, PN 0347054 and PN 0344002, April 28, 1995, PCO Index No. XDEC-28, *Pension Plan for Salaried Employees of McDonnell Douglas Canada Ltd.*, No. 520593, May 25, 1998, PCO Index No. XDEC-38, *Maynard v. Ontario (Superintendent of Pensions)*, [2000] O.J. No. 881 (Div. Ct.), and *Pension Plan for Hospital Employees of the Sisters of St. Joseph for the Diocese of Toronto in Upper Canada*, PN 302851, May 29, 1998, PCO Index No. XDEC-39.

In my view, these decisions are relevant for the present hearing, as they highlight the importance of interpreting the PBA, wherever possible, to give equitable treatment of hearing rights to both sides in a pension dispute. In the *Hospitals of Ontario (CUPE)* case, the PCO and

Divisional Court both held that there was a right to a hearing under the PBA where the Superintendent had refused to make an order, even though the PBA only expressly provided a right to a hearing where the Superintendent had proposed to make an order.

The PCO's reasons included the following statements regarding the PBA (referred to as the Act):

... the legislature would have intended fair play for both sides and, where possible, the Act should be construed to provide fair and equitable treatment for all concerned. It would take very clear language indeed to persuade the Commission that inequitable treatment of the sort envisaged by the OHA and the Superintendent was intended.

... the Act is remedial in nature with one of its basic objectives to protect and enhance the rights of plan members.

The Divisional Court, in affirming this decision on appeal, stated:

It is not reasonable, in our opinion, to think that a decision to refuse to issue an order requested under s. 88 [now s. 87] should be treated any differently, for the purpose of s. 90(6) [now s. 89(6)], than one to make such an order. In the first case, those interested and in disagreement with the decision would have to live with it, while in the second, they would have access to the Commission by way of an appeal and the power it possesses under s. 90(9) [now s. 89(9)].

In the present case, we are dealing with the Superintendent's consent regarding an asset transfer under section 81 of the PBA. This consent was given in a letter dated March 2, 2001, from David Gordon by delegated authority from the Superintendent, sent to representatives of NSC, the USWA and the Applicants. This letter included a statement

that "the recipients of this letter may request a hearing before the Financial Services Tribunal with respect to the approval of the asset transfer." As a result, the Superintendent's consent may alternatively be viewed as a proposed consent to the transfer, subject to the holding of a hearing before the Tribunal if requested. The letter also included the following paragraph:

I am transmitting copies of this letter to all individuals who made submissions concerning this application in order to ensure that they are informed of my decision. The recipients of this letter may request a hearing before the Financial Services Tribunal with respect to the approval of the asset transfer. The Financial Services Tribunal is an independent adjudicative body that reviews decisions made by the Superintendent of Financial Services.

NSC had received the consent they had requested, or at least had received a proposed consent, and so had no reason to request a hearing before the Tribunal. However, the Superintendent had not consented, or proposed to consent, to the request of the Applicants – that the Superintendent deny or attach conditions to the transfer of assets – with the result that the Applicants had reason to request a hearing before the Tribunal, and did so. As a party to NSC's request for consent to a transfer of assets, the Applicants had made submissions to the Superintendent, who refused to consent to the Applicants' request, and gave them notice of the Superintendent's proposed action on this matter, in accordance with subsection 89(4). The Superintendent's letter also included an invitation for any recipients of the letter to request a hearing, in accordance with subsection 89(6), which includes the following direction:

A notice under subsection ...(4)...shall state that the person on whom the notice is served is entitled to a hearing by the Tribunal...

In my view, the Superintendent acted correctly in informing the Applicants and other parties of their right to a hearing in these circumstances, by interpreting subsection 89(4) in this manner. This view provided equitable treatment to the Applicants, for whom the Superintendent's consent or proposed consent was really a refusal to consent to the Applicants' requests. Had the Superintendent refused to consent to NSC's application for transfer of assets, NSC would have had an express right to a hearing under subsection 89(4).

In this case, the Applicants were heard by the Tribunal, even though a majority of the Panel later found that the Tribunal did not have jurisdiction. If this hearing had not been held, the Applicants could still have applied for a judicial review. In that case, the judicial review would have proceeded without the Tribunal's views, as no determination would have been made by the Tribunal. In addition, a judicial review could involve quite different costs and time constraints, and more limited grounds for overturning the Superintendent's decision, compared with a hearing before the Tribunal.

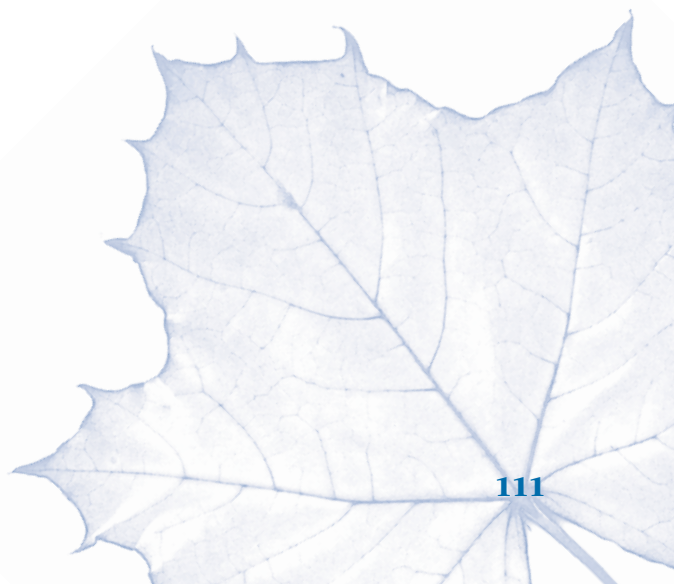
Subsection 89(4) of the PBA can be interpreted in a reasonable way that will avoid this inequitable treatment of parties. NSC argued that to do so would stretch the PBA language beyond reason, and the majority of the Panel agrees. I disagree. The Superintendent's consent to one party's request can reasonably be interpreted as a refusal to consent to an opposing party's request, as discussed earlier in my reasons.

When the PBA was amended in 1997 under the FSCO Act, section 89 was amended to extend the situations providing for a right to a hearing before the Tribunal, reflecting the prevailing view that a right to a hearing should be given whether the Superintendent's proposal or decision was favourable or unfavourable to the party bringing the matter to the Superintendent. These amendments reflected recent jurisprudence in this area, and also an increased focus on certain decisions now made in the first instance by the Superintendent (and formerly first instance decisions of the PCO tribunal). I have no reason to believe that similar amendments to subsection 89(4) were intentionally omitted, as was suggested in NSC's argument, or that such an amendment is necessary in order to give that subsection the broader interpretation.

For these reasons, I would conclude that the Tribunal does have jurisdiction to entertain the Applicants' request for a hearing in this matter.

DATED at Toronto, Ontario this 31st day of May, 2002.

C.S. Moore,
Member of the Panel



INDEX NO.: FST File Number P0099-2000

PLAN: Brewers Retail Pension Plan for Bargaining Employees, Registration No. 0336081

DATE OF DECISION: June 3, 2002

PUBLISHED: Bulletin 11/3 and FSCO website

(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 refusal by the Superintendent of Financial Services ("the Superintendent") to make an order in response to a complaint regarding the Brewers Retail Pension Plan for Bargaining Employees, Registration Number 0336081 (the "Plan");

AND IN THE MATTER OF a Hearing in accordance with subsection 89(8) of the Act;

BETWEEN:

UNITED FOOD AND COMMERCIAL WORKERS UNION,

**Local 375W, represented by
MR. PATRICK J. MOORE**

Applicant

– and –

**SUPERINTENDENT OF FINANCIAL SERVICES, BREWERS RETAIL INC., and
UNITED FOOD AND COMMERCIAL WORKERS INTERNATIONAL UNION/**

UNITED BREWERS' WAREHOUSING WORKERS' PROVINCIAL BOARD

Respondents

MOTION HEARING

BEFORE:

Ms. Elizabeth Greville,
Member of the Tribunal and Chair of the Panel

Ms. Heather Gavin,
Member of the Tribunal

Mr. C.S. (Kit) Moore,
Member of the Tribunal

APPEARANCES:

For the Applicant

Mr. Thane Woodside

For the Respondent United Food and Commercial Workers International Union/United Brewers' Warehousing Workers' Provincial Board

Mr. John Evans

For the Respondent Brewers Retail Inc.

Mr. Dirk Van de Kamer

For the Superintendent of Financial Services

Ms. Deborah McPhail

HEARING DATE:

September 28, 2001

REASONS FOR DECISION

Nature of the Application:

The hearing request arises from a January 26, 2000 decision by the Superintendent of Financial Services (the “Superintendent”) that the Superintendent had no authority or jurisdiction to grant the Applicant the relief sought.

The Superintendent’s decision was in response to a request that the Superintendent declare an existing pension advisory committee to be improperly constituted, and order that it be replaced by a properly constituted advisory committee under the Act.

On January 26, 2000, the Superintendent wrote to counsel for the United Brewers Warehousing Workers’ Locals 375W and 305W. The letter stated in part:

“Please note that although Section 24 of the *Pension Benefits Act*, R.S.O. 1990 (the “Act”) gives the plan members the right to establish an advisory committee, there is no requirement under the Act that such a committee be established. Consequently, no grounds exist under the Act for me to order the establishment of such a committee.

Section 1.36 of the plan only defines the term Pension Advisory Committee and does not require that such a committee be established. Therefore, there is no basis under the plan terms for me to order the establishment of an advisory committee.

As you pointed out in your letters, there exists a letter of understanding, which is part of the collective agreement, wherein the employer acknowledges that the Union has a right to appoint a Pension Advisory Committee that has membership, roles, and responsibilities similar to that attributed to the advisory committee described in the Act.

However, the collective agreement has been negotiated between the employer and the union and is not a part of the pension plan. Therefore, any issue with such a document would be a labour issue and not within the jurisdiction of the Financial Services Commission of Ontario.”

On February 24, 2000, the Applicant requested a hearing before the Financial Services Tribunal with respect to the Superintendent’s decision of January 26, 2000.

Facts:

By Letter of Understanding dated September 1, 1994 (“1994 Letter”), between Brewers Retail Inc. (the “Employer”) and the United Food and Commercial Workers International Union/United Brewers’ Warehousing Workers’ Provincial Board (the “Union”), the Employer acknowledged the Union’s right to appoint a Pension Advisory Committee with “membership, roles and responsibilities as defined under the pension legislation.” The Letter of Understanding also stated it was to form part of the Collective Agreement.

The 1994 Letter of Understanding was subsequently renewed in July, 1997 and replaced with a Letter of Understanding with identical terms.

A further updated Letter of Understanding was signed on March 8, 1999 (“1999 Letter”). It stated that the Employer acknowledged the right of the Union to appoint a Pension Committee with membership, roles and responsibilities as defined under Section 24 of the *Pension Benefits Act*, and added that the Employer would remain the Administrator for the Plan and that the “Pension Committee” would have an advisory or consultation role only. Finally, the updated letter retained the provision that the letter would form part of the Collective Agreement.

Between December, 1998 and January, 2000 there was an exchange of correspondence between counsel for the Applicant and the Superintendent's office concerning the issue of whether the pension committee established pursuant to the 1994 Letter was properly constituted, and the potential jurisdiction of the Superintendent to order that the existing committee was not properly constituted and that a properly constituted committee be formed.

Pension Benefits Act

The role and contribution of an "advisory committee," which is not otherwise defined in the Act, are set out in section 24:

- 24 (1) The **members and former members** of a pension plan by the decision of a majority of them participating in a vote, **may establish** an advisory committee.
- (2) **Each class of employees that is represented in the pension plan is entitled to appoint at least one representative** to the advisory committee established under subsection (1).
- (3) The **former members of the plan are entitled to appoint one representative** to the advisory committee established under subsection (1).
- (4) The purposes of an advisory committee are,
- (a) to monitor the administration of the pension plan;
 - (b) to make recommendations to the administrator respecting the administration of the pension plan; and
 - (c) to promote awareness and understanding of the pension plan on the part of members of the pension plan and persons receiving pension benefits under the pension plan.

- (5) The advisory committee or its representative has the right to examine the records of the administrator in respect of the administration of the pension plan and the pension fund and to make extracts from and copies of the records, but the subsection does not apply in respect of information as to the service, salary, pension benefits or other personal information related to any specific person without the person's prior consent.
- (6) Subsection (1) does not apply,
- (a) if the pension plan is administered by a pension committee at least one of the members of which is appointed by the members of the pension plan; and
 - (b) in respect of a multi-employer pension plan established pursuant to a collective agreement.
- (7) The administrator of a pension plan shall provide to the advisory committee or its representative such information as is under the control of the administrator and is required by the advisory committee or its representative for the purposes of the committee.
- (emphases added)

The Act defines the term "pension committee" (as opposed to the term "pension advisory committee") as a committee that is the administrator of the pension plan. Section 8 of the PBA sets out a list of authorized administrators, stating in part:

- 8 (1) A pension plan is not eligible for registration unless it is administered by an administrator who is,
- (a) a pension committee composed of one or more representatives of,

- (i) the employer or employers, or any person other than the employer or employers, required to make contributions under the pension plan; and
- (ii) members of the pension plan;
- (b) a pension committee composed of representatives of members of the pension plan.
- (2) A pension committee, or a board of trustees, that is the administrator of a pension plan may include a representative or representatives of persons who are receiving pensions under the pension plan.

Section 87 of the Act sets out the general power of enforcement given to the Superintendent:

- 87 (1) The Superintendent, in the circumstances mentioned in subsection (2) and subject to section 89 (hearing and appeal), by a written order may require an administrator or any other person to take or to refrain from taking any action in respect of a pension plan or a pension fund.
- (2) The Superintendent may make an order under this section if the Superintendent is of the opinion, upon reasonable and probable grounds,
- (a) that the pension plan or pension fund is not being administered in accordance with this Act, the regulations or the pension plan;
 - (b) that the pension plan does not comply with this Act and the regulations; or
 - (c) that the administrator of the pension plan, the employer or the other person is contravening a requirement of this Act or the regulations.

The Issue:

As agreed at the pre-hearing conference, the issue for this motion hearing is:

Does the Financial Services Tribunal have jurisdiction to deal with the relief sought in the Applicant's Request for Hearing?

The relief sought by the Applicant is that the "Commission by Order direct the Superintendent to order the Administrator to cease administering the Plan with an improperly [sic] constituted advisory committee and to cause the creation of a properly constituted advisory committee pursuant to the Act and formulating documentation."

Analysis and Conclusion:

Before May 3, 1999, the text of the Plan defined "Pension Advisory Committee" as "a committee appointed by the United Brewers Warehousing Workers' Provincial Board," and not a "pension advisory committee" as defined under *"Applicable Pension Legislation."*

Prior to May 3, 1999, the plan text defined "Pension Committee" as "the committee which was appointed by the *Employer*, in accordance with Article 14." Article 14.01 states that the Administrator (defined as the Employer, which is defined as Brewers Retail Inc.) may delegate any of its duties to such other person or persons as deemed appropriate, including but not limited to the Employer of the Pension Committee. The Plan text does not require a Pension Advisory Committee to be established and is silent on the role and/or composition of such a Committee.

Effective May 3, 1999, Amendment No. 2 to the Plan text deleted the existing definition of "Pension Advisory Committee" and substituted the following:

“1.36 “Pension Advisory Committee” means a committee appointed by the United Brewers Warehousing Workers’ Provincial Board, in accordance with membership, roles and responsibilities as defined under Section 24 of the Ontario *Pension Benefits Act*, R.S.O. 1990.”

The 1994 Letter and the 1999 Letter provide that the respective Letters form part of the Collective Agreement. The letters do not specify that they are incorporated into the Plan or form part of the Plan.

The Act does not authorize the Tribunal or the Superintendent to enforce a provision of a collective agreement unless the provision is incorporated by reference into the pension plan. In this case, the Letters are not so incorporated, nor do they require the Employer or administrator to establish an advisory committee.

The Act does not place any obligation on the employer or the administrator to establish an advisory committee, or to ensure that a committee, once established, is properly constituted. Rather, section 24 of the Act provides that members and former members “may establish” a pension advisory committee, and if such a committee has been established, requires the administrator to provide records and information to the committee.

The Superintendent’s jurisdiction under the Act is limited to the powers conferred on it by the Act, Regulation and provisions of the applicable pension plan. Section 87(1) of the Act confers remedial powers on the Superintendent in relation to matters arising under the Act or a pension plan.

The Applicant has requested the Superintendent to declare an existing pension advisory committee to be improperly constituted and to order its replacement. However, there are no

grounds under the Act in the circumstances of this case for the Superintendent to grant the relief requested. Neither the terms of Section 24 of the Act or Section 1.36 of the Plan requires a pension advisory committee to be established. Therefore, there is no basis on which the Superintendent can make a determination under Section 87 of the Act which would give rise to a hearing under Section 89 of the Act. Accordingly, the Tribunal has no basis on which to assume jurisdiction to direct the Superintendent to order the Administrator to cease administering the Plan with an improperly constituted advisory committee, and to cause the creation of a properly constituted advisory committee.

ORDER

For the reasons noted above, the Tribunal has determined that it lacks the jurisdiction to deal with the relief sought in the Applicant’s Hearing Request and therefore lacks jurisdiction to proceed with the hearing request in the circumstances of this case.

DATED at Toronto, this 3rd day of June, 2002.

Elizabeth Greville,
Member of the Tribunal and Chair of the Panel

Heather Gavin,
Member of the Tribunal

C.S. (Kit) Moore,
Member of the Tribunal

INDEX NO.: FST File Number U0180-2002
DATE OF DECISION: June 20, 2002
PUBLISHED: Bulletin 11/3 and FSCO website

(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 Notice of Proposal to Refuse to Consent by the Superintendent of Financial Services (the "Superintendent"), dated December 21, 2001, with respect to an application for withdrawal of money from a life income fund, locked-in retirement account, or a locked-in retirement income fund (a "locked-in account") based on financial hardship;

AND IN THE MATTER OF a Hearing under subsection 89(8) of the Act;

REASONS

Facts

The Applicant in this matter filed an Application for Consent to Withdraw Money from an Ontario Locked-in Retirement Account, Life Income Fund, or Locked-in Retirement Income Fund (the "locked-in account") based on Financial Hardship (the "Application"). The Applicant applied to withdraw \$2,104.37 to pay for medical expenses and an additional amount of \$1,660.80 for medical expenses anticipated to be paid over the 12 months following the date the Applicant

signed the Application for a total amount of \$3,765.17. The amount of \$2,104.37 was in respect of medical expenses incurred and paid or payable by the Applicant for prescription drugs and hospital expenses. The amount of \$1,660.80 was in respect of the premium the Applicant intended to pay for drug and extended health care coverage for the coming year.

Consent was issued by the Superintendent to the Application that authorized the withdrawal and payment to the Applicant of the amount of \$3,466.77 from his locked-in account. The withdrawal was authorized on the basis of the information and accompanying documentation the Applicant provided which included the amount of a hospital bill: \$2,104.37, an additional amount for the Applicant's medical prescriptions for the past year: \$681.20, and another \$681.20 for medical expenses the Superintendent determined would be payable for the 12 months following the date the Applicant signed his Application.

On December 21, 2001, the Superintendent issued a Notice of Proposal to Refuse to Consent to the Application for \$298.40, the difference between the amount the Applicant requested to withdraw in his Application, \$3,765.17, and the amount in the consent, \$3,466.77 for the reason that none of the documentation submitted with the Application supported the granting of consent to withdraw any amount in excess of the \$3,466.77 amount allowed. With respect to the Applicant's documentation relating to the cost of a drug

plan and extended health plan coverage, the Superintendent stated in the Notice of Proposal that premium amounts paid in respect of such coverage do not constitute medical expenses incurred and claimed under such plans. The Superintendent's consent only authorized the withdrawal of amounts to cover expenses related to prescriptions or hospital expenses actually incurred or to be incurred.

The Applicant filed a Request for Hearing, dated January 24, 2002 with the Financial Services Tribunal (the "Tribunal") with respect to the Superintendent's Notice of Proposal to Refuse to Consent to his Application.

Issue

The issue in this proceeding is whether the Superintendent should have consented to the payment of the cost of the premium for drug plan and extended health plan coverage as had been set out in the Applicant's Application.

Pension Benefits Act

Subsection 67(1) of the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act") generally prohibits the commutation or surrender of a pension, deferred pension, pension benefit, annuity or prescribed retirement savings arrangement. Subject to express exceptions in the Act, assets related to benefits accrued under a registered pension plan are meant to provide retirement income. Property division and payment of support orders under the *Family Law Act* are such exceptions under the Act. Subsection 67(5) of the Act provides a further exception to this general rule in circumstances of financial hardship, stating:

67(5) Despite subsections (1) and (2), upon application, the Superintendent may consent to the commutation or surrender, in whole or in part, of a prescribed retirement savings

arrangement of a type that is prescribed for the purposes of this subsection if the Superintendent is satisfied as to the existence of such circumstances of financial hardship as may be prescribed.

The circumstances of financial hardship in which the Superintendent may consent to such applications are prescribed by section 87(1) of Regulation 909, R.R.O. 1990, as amended (the "Regulation"). The Application in issue in this proceeding was based on withdrawal for medical expenses, in accordance with paragraph 3 of subsection 87(1) of the Regulation which states that:

The owner, his or her spouse or same-sex partner or a dependant has incurred or will incur medical expenses for treatment of the illness or physical disability of any of them, and the expenses claimed are reasonable and are not subject to reimbursement from any other source.

"Medical expenses" is defined under 83(1) of the PBA Regulation, as:

"medical expenses" means expenses for goods and service of a medical or dental nature including, without limiting the generality of the foregoing, expenses for,

- (a) medical or dental services provided for by a hospital or a health care provider,
- (b) services provided by an attendant or by a nursing home to a person suffering from a server and prolonged disability,
- (c) services provided by a caregiver,
- (d) ambulance services,
- (e) travel by a person and a companion to obtain medical services,
- (f) finding by an organ donor,
- (g) medical devices such as wheel chairs, artificial limbs and eyeglasses,

- (h) a guide dog or hearing ear dog,
- (i) dentures,
- (j) rehabilitative therapy, and
- (k) diagnostic testing;

It is the Superintendent's submission that premiums paid in respect of drug and extended health coverage do not constitute "goods and services of a medical or dental nature." Such amounts are not paid to a doctor, dentist, hospital or other health care provider but are paid to an insurance company providing the coverage. Premium amounts are payable regardless of the actual amount of any expenses incurred and are, in fact, payable even if no expenses are incurred. However, it is clear from a plain reading of subsection 83(1) of the Regulation that the definition or list of "medical expenses" is broad and is not exhaustive. The issue is, whether or not the premiums paid for a drug plan or extended health insurance coverage that pays for or reimburses an insured for prescription, medical or hospital expenses can themselves be characterized as permitted "medical expenses" so as to permit the Applicant access to his locked-in funds to pay for such premiums.

It is the Tribunal's determination in the case of the Applicant that such premiums are such a permitted medical expense. The Applicant suffers from a host of serious and debilitating ailments that are chronic in nature. He has had frequent hospital stays, has undergone numerous surgical procedures and must take a variety of costly prescription medications. In the case of the Applicant, for the coming year, the Tribunal accepts that the costs that will be incurred by the Applicant to address his medical condition may exceed the cost of the

premium for coverage. To uphold the Superintendent's Notice of Proposal could as a consequence, require the Applicant to deplete his locked-in funds at a faster rate than otherwise required.

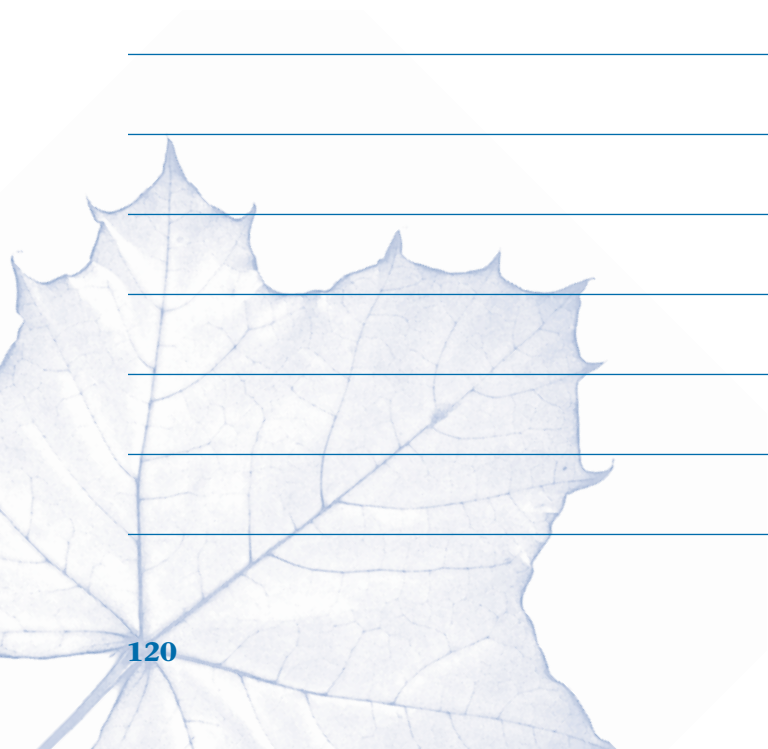
Accordingly, on the basis of the facts specific to the Applicant, and having regard to the open and non-exhaustive definition or list of "medical expenses," the Tribunal hereby directs the Superintendent to refrain from carrying out the Notice of Proposal dated December 21, 2001, and refers the matter of the Applicant's Application to the Superintendent for re-determination on the basis of this Order.

DATED at Toronto, this 20th day of June, 2002.

Martha Milczynski
Chair, Financial Services Tribunal



NOTES

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