

Superintendent of  
Financial  
Services



Surintendant des  
services  
financiers

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

**AND IN THE MATTER OF** a Notice of Intended Decision of the Superintendent of Financial Services, under section 69(1) of the *PBA*, to partially wind up the Imperial Oil Limited Retirement Plan, Registration Number 347054

**TO:** **IMPERIAL OIL LIMITED**  
**237 Fourth Avenue S.W., FAP 34097**  
**P.O. Box 2480, Stn. M**  
**Calgary AB T2P 3M9**

**Attention: J. B. McIntyre**  
**Manager, Plans, Payrolls and**  
**Administration Human Resources**

**Employer and Administrator of the Plan**

### **NOTICE OF INTENDED DECISION**

**I INTEND TO MAKE AN ORDER**, under sections 69(1)(d) and (e) of the *PBA*, that the **Imperial Oil Retirement Plan**, Registration Number 347054 (the “Plan”) be partially wound up effective as at June 30, 2006, in relation to the 3 former members of the Plan who ceased to be employed by Imperial Oil Limited at its location at 111 St. Clair Avenue West, Toronto (the “Toronto location”) during the period from September 28, 2004, to June 30, 2006, and who are expressly not affected by the settlement made between Imperial Oil Limited (“Imperial Oil”) and The 111 Pension Rights Association (the “Association”) as incorporated into the reasons for decision in Financial Services Tribunal Decision Number P0346-2009/P0427-2010 (the “Decision”).

## REASONS:

1. Imperial Oil is the employer and administrator of the Plan.
2. The Association is a voluntary association comprised of some of the former members of the Plan who were affected by the reorganization and discontinuance of Imperial Oil's business, as referenced in paragraphs 4 through 10 of this Notice of Proposal.
3. The Plan is a defined benefit pension plan that is registered with the Financial Services Commission of Ontario.
4. On September 28, 2004, Imperial Oil announced that it was moving its head office from the Toronto location to a location in Calgary, Alberta (the "Calgary location"). At the time of the announcement there were 722 active Plan members at the Toronto location.
5. In various communications, Imperial Oil described the move as a centralization and a consolidation of "upstream" and "downstream" functions within the organization.
6. Out of the 722 active Plan members at the Toronto location, 84 were not offered a position and a further 104 Plan members were offered employment at the Calgary location but declined to move and had their employment terminated.
7. The move to the Calgary location was essentially completed by September 2005, although a few Plan members followed in 2006.
8. The Toronto location was closed by June 30, 2006.
9. None of the 188 terminated Plan members were offered grow-in benefits pursuant to section 74 of the *PBA*.
10. Out of the 188 terminated Plan members, a total of 39 former members stood to benefit from a partial wind up as these former members were either eligible for grow-in benefits pursuant to section 74 of the *PBA* or for immediate vesting in the Plan pursuant to section 73(1)(b) of the *PBA*.
11. The Superintendent of Financial Services (the "Superintendent") issued a Notice of Proposal to partially wind up the Plan under section 69(1)(e) of the *PBA* as a result of the above events on January 16, 2009. The Superintendent issued a second Notice of Proposal to partially wind up the Plan under section 69(1)(d) of the *PBA* as a result of the above events on January 6, 2010.
12. Imperial Oil requested a hearing by the Financial Services Tribunal (the "Tribunal") with respect to both Notices of Proposal. The Association was granted

full party status in both hearings, and the two hearings were consolidated into one.

13. The Association does not represent all of the 39 former members of the Plan who stood to benefit from a partial wind up.
14. Out of the 39 terminated Plan members who stood to benefit from a partial wind up, 36 agreed to accept a settlement negotiated by Imperial Oil and the Association. Pursuant to the settlement, these 36 terminated Plan members agreed to receive 50% of the grow-in benefits to which they were eligible under section 74 of the *PBA*, and to provide Imperial Oil with a full and final release.
15. The Tribunal incorporated the terms of the settlement in the Decision. The 3 terminated members who did not agree to accept the settlement are expressly excluded from the Decision. The Tribunal states at page 7 of the Decision:

The Tribunal has considered the fact that a decision to order the Superintendent to refrain from carrying out the NOPs, and thereby make the Agreement (the settlement agreement) operative, will indirectly affect the three persons who, as of the date of the hearing of this motion, had not deposited the required release in exchange for receiving a benefit under the Agreement. Whether the Superintendent would revisit the matter and propose to order a partial wind up limited to those who have not released their rights by taking their benefits under the Agreement is speculative. If he will not, an order to refrain from carrying out the NOPs will, in practice, remove their option to pursue their claim for full wind up benefits.

16. The Tribunal ordered the Superintendent to refrain from carrying out both Notices of Proposal in the Decision. The Tribunal expressly refrained from adjudicating the question of whether the Plan should be partially wound up pursuant to either Notice of Proposal, stating at page 6 of the Decision:

In this case, the Tribunal has not yet held a hearing on the merits on the possible application of ss. 69(1)(d) and 69(1)(e), and is accordingly unable to agree or disagree with the Superintendent's conclusion that the threshold conditions for the application of these subsections have been met.

17. The Superintendent did not support the settlement in the negotiations or at the settlement motion before the Tribunal that led to the Decision.
18. Section 69(1)(d) of the *PBA* states that the Superintendent by order may require the wind up of a pension plan in whole or in part if a significant number of members of the pension plan cease 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.

19. The moving of the head office business of Imperial Oil from the Toronto location to the Calgary location constituted a reorganization of the business, and a significant number of Plan members ceased to be employed by Imperial Oil as a result of the reorganization within the meaning of section 69(1)(d) of the *PBA*.
20. Section 69(1)(e) of the *PBA* states that the Superintendent by order may require the wind up of a pension plan in whole or in part if all or a significant portion of the business carried on by the employer at a specific location is discontinued.
21. The moving of the head office business of Imperial Oil from the Toronto location to the Calgary location constituted a discontinuance of the business within the meaning of section 69(1)(e) of the *PBA*.
22. There are no discretionary reasons not to order a partial wind up.
23. 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 section 89(6) of the *PBA*. **To request a hearing, you must deliver to the Tribunal a written notice that you require a hearing, within thirty (30) days after this Notice of Intended Decision is served on you.**<sup>1</sup>

**YOUR WRITTEN NOTICE** must be delivered to:

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

Attention: The Registrar

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

**YOU ARE REQUIRED**, pursuant to section 89(5) of the *PBA*, to transmit a copy of this notice and the written reasons to the 3 former Plan members specified on page 1 of this Notice of Intended Decision.

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

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

**DATED** at Toronto, Ontario, this **12<sup>th</sup>** day of **January, 2011**.

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Superintendent of Financial Services