



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 Consent to a payment of surplus to Sunnybrook Health Sciences
Centre from the Superannuation Plan for Employees of Sunnybrook Hospital,
Registration Number 0546754, under section 79(1) of the *PBA*

TO: **Sunnybrook Health Sciences Centre**
2075 Bayview Avenue
Toronto, Ontario
M4N 3M5

Attention: Marilyn Reddick
Vice President,
Human Resources and Organizational Development
Employer & Administrator of the Plan

NOTICE OF PROPOSAL

I PROPOSE TO CONSENT to a payment of surplus to Sunnybrook Health Sciences
Centre from the Superannuation Plan for Employees of Sunnybrook Hospital, Registration
Number 0546754 (the “Plan”).

REASONS:

- 1) Sunnybrook Health Sciences Centre (“Sunnybrook”) is the employer and administrator for the Plan.
- 2) The Plan is a single employer, defined benefit pension plan that was established as at October 1, 1966. The Plan has been closed to new members since October 1, 1966.
- 3) On August 16, 2004, Sunnybrook resolved to make a distribution of surplus in the Plan. The actuarial surplus in the Plan as at that date was in the amount of \$22,709,000.00.
- 4) The actuarial surplus was updated in an actuarial valuation report filed by Sunnybrook as at December 31, 2009 to \$25,423,000.00.

- 5) On March 16, 2010, the Ontario Superior Court of Justice issued an Order in a class proceeding (the “Class Proceeding”) commenced by Sunnybrook to have a Surplus Sharing Agreement approved and to have section 13.04 of the Plan, which permits Sunnybrook to withdraw surplus from the Plan while the Plan continues, declared valid. This Order states in part:
- a) All persons entitled to consent to a withdrawal of surplus from a continuing plan under subsections 10(2) and (3) of Ontario Regulation 909, R.R.O. 1990 (the “Regulation”) have consented to the withdrawal of surplus from the Plan in accordance with the Surplus Sharing Agreement;
 - b) The application is approved pursuant to subsection 29(3) of the *Class Proceedings Act* and the settlement is fair, reasonable, and in the best interest of the respondent class of members, former members, and other beneficiaries of the Plan;
 - c) The Surplus Sharing Agreement is valid and binding on the respondent class;
 - d) An amendment to the Plan in the form attached to the Order providing for payments of surplus and expenses pursuant to the Surplus Sharing Agreement is and shall be considered valid and binding on the respondent class and Sunnybrook;
 - e) The Plan provides for the withdrawal of surplus by Sunnybrook pursuant to the Surplus Sharing Agreement while the Plan continues, and Sunnybrook is entitled to withdraw surplus from the Plan and Trust in accordance with the Surplus Sharing Agreement;
 - f) The withdrawal of surplus from the Plan and Trust and the payment of surplus from the Plan and Trust in accordance with the Surplus Sharing Agreement are lawful and permissible under the terms of the Plan and Trust, at common law, in equity, and otherwise, subject to consent being obtained from the Superintendent under the *PBA*.
6. The Court Order has not been appealed.
7. Sunnybrook is leaving a reserve in the Plan in the amount of \$1,386,000, which represents 25% of the Plan's liabilities.
8. Section 79(1) of the *PBA* states in part:
- 79(1) Subject to section 89 (hearing and appeal), the Superintendent shall not consent to payment of money that is surplus to the employer out of a continuing pension plan unless,
- (b) the pension plan provides for the withdrawal of surplus by the employer while the pension plan continues in existence, or the applicant satisfies the Superintendent that the applicant is otherwise entitled to withdraw the surplus.

9. The criteria in section 79(1)(b) of the *PBA* have been satisfied by virtue of the Court Order dated March 16, 2010.

10. Sections 10 and 10.1 of the Regulation state in part:

10(1) The criteria described in this section must be met before the Superintendent may consent to the payment of money that is surplus out of a continuing pension plan to the employer.

(2) All persons who are entitled to receive benefits under the pension plan and all members must consent to the terms upon which the surplus is to be paid out of the plan.

10.1(1) This section applies with respect to a payment from surplus out of a pension plan to the employer,

(a) if a court has appointed an individual to represent persons described in 10(2) (but not members) ; and

(b) the Superintendent is satisfied, on the basis of such information and evidence as he or she may require from the employer or administrator, that,

(ii) in the case of a proposed payment of money that is surplus out of a continuing pension plan to the employer, the employer has obtained the consent of 90 per cent of the former members who are in receipt of a pension payable from the pension fund, whose consent is required by subsection 10(2).

(3) The court-appointed representative is authorized to give the consent required by subsection 10(2) on behalf of the former members in receipt of a pension payable from the pension fund, who he or she represents. However, the representative is not authorized to consent on behalf of former members who have consented or have objected to the terms upon which the surplus is to be paid out of the plan.

11. Marian Lorenz was appointed as the representative in the Class Proceeding pursuant to sections 10 and 10.1 of the Regulation in the Certification Order dated December 3, 2009. The Certification Order authorized Marian Lorenz to give the consent required by subsection 10(2) of the Regulation on behalf of all respondent class members who neither agreed nor objected to the Surplus Sharing Agreement.

12. There were no “opt outs” in the Class Proceeding. There were a total of 176 former members and other beneficiaries and one active member in the respondent class. Twelve former members or other beneficiaries neither consented nor objected to the surplus sharing agreement. Marian Lorenz consented to the surplus sharing agreement on behalf of these twelve former members or other beneficiaries.

13. Based on the Court Order, the required degree of consent has been obtained pursuant to sections 10 and 10.1 of the Regulation.

14. 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 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 on a Form for the written notice, please see the Tribunal website at 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.

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

DATED at Toronto, Ontario, this **20th** day of **August , 2010**

K. David Gordon
Deputy Superintendent, Pensions

¹ 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.

