



## WHAT'S NEW IN PENSIONS AND BENEFITS AT FSCO NOVEMBER, 2011

### PENSION e-BULLETIN

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### FSCO WEB SITE POSTINGS

Since the last report in August, information on the following items has been posted to the Pensions section of the FSCO website. You can easily access any item posted directly from the WHAT'S NEW? column on the right hand side of any FSCO Pensions page for further details. Any bill, policy or other document or information that is referred to is available by clicking on the link in the description of the item on the relevant FSCO web page.

#### FAQ - Commuted Value Transfers

- O. Reg. 239/09 made under the *Pension Benefits Act* (the "PBA") amended section 19 of O. Reg. 909 effective June 19, 2009. These amendments included changes to the treatment of commuted values. Pension plans registered in Ontario with defined benefits must review the plan transfer ratio before transferring a commuted value, if the administrator of a plan knows or ought to know that the transfer ratio has fallen by 10% or more since the most recent determined transfer ratio. In the event the transfer ratio has fallen by 10% or more the administrator shall not transfer any part of the commuted value without the prior approval of the Superintendent. Policy T800-402 (Commuted Value Transfers) provides detailed information on the Request for Approval and other requirements. A number of Q&As addressing different issues that have arisen have been posted to the website.

#### Second Window for Applications for Temporary Solvency Funding Relief Opens for Public Sector Pension Plans

- Changes made to the regulation under the PBA in May 2011 provide some pension plans in the public sector and broader public sector with the opportunity to take advantage of temporary solvency funding relief. In exchange for the relief, plan sponsors are expected to adopt plan changes that would make their plans more sustainable in the long term. The process could include negotiations with collective bargaining agents. The first window for applications closed in March 2011. This second window for applications is open from the date of this announcement to December 30, 2011. This means that completed

applications must be submitted to the Ministry of Finance no later than December 30, 2011.

The filing deadline for a pension plan with a valuation date on or after August 2, 2010 and on or before May 30, 2011 has been extended by regulation to February 29, 2012. Plan sponsors will be notified whether or not they have been accepted into Stage 1 of the solvency relief regime by mid-February, 2012. A detailed description of the framework and the savings targets, as well as information on how to apply, is posted on the Regulatory Registry.

#### Pension Policy B100-151 – Payments from a defined contribution/money purchase benefit

- This updated policy replaces B100-150 (Form of Benefit Payment) and notes that there is no provision in the PBA for RRIF-like payments to be made from a defined contribution/money purchase benefit pension plan.

#### Pension Policy B100-401 – Union Membership As Condition for Benefit Improvement

- This updated policy replaces B100-400 (Union Membership as Condition for Benefit Improvement) and provides that in pension plans where union membership is a condition of plan membership, such a pension plan can restrict benefit improvements to those active, deferred vested and retired members who are union members at the time of the benefit improvement.

#### Pension Policy B100-126 – Garnishment of Pensions In Pay

- This updated policy replaces B100-125 (Garnishment of Pensions In Pay) and provides that in cases where the administrator of a pension plan is complying with Canada Revenue Agency's Requirement to Pay or a garnishment issued under section 224(1) of the *Income Tax Act* (Canada) with respect to pensions in pay, FSCO staff will not take proceedings against the administrator for an alleged breach of section 66 of the PBA.

#### B100-101 – Definition of Bridging Benefit

- This updated policy replaces B100-100 (Definition of Bridge Benefit) and provides that the amount or value of a bridging benefit shall not be reduced only by reason of the eligibility or entitlement of the retired member to receive actuarially reduced payments prior to attaining age 65 under the CPP, the QPP or the OAS.

#### Proposed Family Law Forms

- The proposed family law forms relating to the new (effective 2012) pension valuation and division regime were posted on September 30th.

#### Regulation 177/11 – FAQs on JSPPs and All Pension Plans

- This new posting contains a number of frequently asked questions (and answers) relating to O. Reg. 177/11 and its effect on jointly sponsored and other pension plans including: What is the new process by which a pension plan identifies itself as a JSPP? Are the pension plans identified in the regulation the only JSPPs that will receive the funding relief? Under the new rules, which pension plans are required to file valuation reports on an annual basis?

#### O. Reg. 396/11 filed

- O. Reg. 396/11 relating to the Ontario Municipal Employees Retirement System Pension Plan was filed and comes into force on August 23, 2011.

## **WEBINAR ON VALUATION AND DIVISION OF PENSION ASSETS ON BREAKDOWN OF A SPOUSAL RELATIONSHIP**

The new rules relating to the valuation and division of pension assets on breakdown of a spousal relationship come into effect on January 1, 2012. FSCO's Pension Division plans to hold a webinar on these new rules. See the FSCO website for dates and times.

### **COURT MATTERS:**

#### **1. Slater Stainless Corp.**

Morneau Sobeco Partnership Limited, as administrator of two union plans formerly sponsored by Slater Stainless Corp. (the CAW plan and the USWA Local 7777 plan), commenced a civil suit in the Ontario Superior Court of Justice against AON Consulting Inc. and J. Melvin Norton in November 2005. The claim is for damages for negligence and breach of fiduciary duty. AON and Mr. Norton have applied to the Commercial List for leave to bring third party claims in the civil action against various former directors and officers of Slater. In response, the Slater directors and officers brought a cross motion to have the third party claims struck. These motions were heard by the Commercial List on March 7 and 8, 2007.

The Slater officers and directors have also brought a motion to the Commercial List for a declaration that the Superintendent must indemnify them in any third party claim, based on Minutes of Settlement reached in the Claims Bar proceeding under the *Companies Creditors' Arrangement Act* in December 2004. In response, the Superintendent has brought a cross motion to have the Slater motion stayed or struck. These motions were adjourned *sine die* pending the result in the two third party motions mentioned above.

On April 13, 2007, the Court released its decision on the first two motions, holding that the motions for leave to bring the third party claims were dismissed. AON and Mr. Norton both filed Notices of Appeal respecting this decision with the Court of Appeal.

The Court of Appeal heard the appeals on February 21, 2008, and released its decision on March 19, 2008. The Court held that the third party claims could be initiated by AON and by Mr. Norton.

On May 20, 2008, the Slater directors and officers filed a motion for leave to appeal the Court of Appeal's decision with the Supreme Court of Canada. The Supreme Court dismissed the motion with costs on September 4, 2008.

The two indemnification motions were heard by the Superior Court of Justice (Commercial List) on November 21, 2008 and the Court reserved its decision. The Court released its decision on May 27, 2009. The Court dismissed both motions, finding that there was a genuine issue for trial with respect to the indemnification issue. The Slater directors and officers have filed a motion for leave to appeal with the Court of Appeal. On May 31, 2010, the Slater officers and directors served a Fourth Party Claim against Her Majesty the Queen in Right of Ontario as represented by

the Superintendent of Financial Services.

Examinations for discovery were scheduled for December 2011. On November 10, 2011, the parties attended a 9:30 AM case conference. AON advised that it intends to bring a motion for judgment. The Court ordered that AON is to serve its motion materials by December 23, 2011; if this does not happen, the parties are to return for another 9:30 AM case conference to set dates for the examinations for discovery.

## **2. National Steel Car**

On February 6, 2006, the Superintendent issued a Notice of Proposal to National Steel Car Limited ordering it to credit Mr. Taso Ristic with service under the Pension Plan for Employees of National Steel Car Limited for periods while Mr. Ristic was receiving a partial permanent disability pension from the Workmen's Compensation Board while on lay off. The plan is the Pension Plan for Employees of National Steel Car Limited. National Steel Car requested a hearing. The pre-hearing conference was held on June 5, 2006, and the hearing on November 1, 2006. The panel reserved its decision. On February 16, 2007, the panel issued a decision ordering the Superintendent not to proceed with the Notice of Proposal, finding that the term "workmen's compensation benefits" in the plan did not include time on lay off while receiving permanent disability benefits from the Workmen's Compensation Board (as it then was). Mr. Ristic has appealed this decision to the Divisional Court. No date is yet set for the appeal.

## **MATTERS BEFORE THE FINANCIAL SERVICES TRIBUNAL:**

### **1. Canada Life Assurance Company**

Canada Life Assurance Company requested a hearing respecting the Superintendent's Notice of Proposal issued on January 30, 2007, proposing to order a partial wind up of The Canada Life Canadian Employees Pension Plan with respect to members who ceased to be employed by Adason Properties Limited during the period November 1, 1999 to February 28, 2001. The Tribunal held a pre-hearing conference on June 18, 2007. The pre-hearing conference continued on October 9, 2007. The hearing dates were adjourned to November 24, 26, 27, and 28, 2008, and have been further adjourned to March 3 to 6, 2009. The hearing dates have been adjourned *sine die* to permit settlement discussions. The pre-hearing conference continued on March 26, 2009, December 9, 2009, June 1, 2010, February 23, 2011, October 24, 2011, and will continue on April 16, 2012.

### **2. Canada Life Assurance Company (Pelican Food Services Limited)**

On September 19, 2008, the Superintendent issued a Notice of Proposal proposing to order a partial wind up of The Canada Life Canadian Employees Pension Plan in relation to those members and former members who ceased to be employed by Pelican Food Services Limited between February 23 and 28, 2001. Canada Life requested a hearing. A pre-hearing conference was held on January 6, 2009, March 26, 2009, December 9, 2009, June 1, 2010, February 23, 2011, October 24, 2011, and will continue on April 16, 2012.

### **3. Corby Distilleries**

On December 11, 2008, the Superintendent issued a Notice of Proposal to refuse to register an amendment to the Pension Plan for Salaried Employees of Corby Distilleries and Affiliated Companies. Corby Distilleries requested a hearing. A pre-hearing conference was held on April

23, 2009, and was adjourned to June 17, 2009, October 23, 2009, February 18, 2010, May 25, 2010, July 26, 2010, September 12, 2010, December 13, 2010, February 23, 2011, April 4, 2011, May 19, 2011, May 27, 2011, August 17, 2011, October 3, 2011 and most recently to January 30, 2012 to accommodate settlement discussions between the parties.

#### **4. Imperial Oil Limited**

The Superintendent issued a Notice of Intended Decision on January 12, 2011, to partially wind up the Imperial Oil Retirement Plan 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 111 St. Clair Avenue West, 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 and The 111 Pension Rights Association as incorporated into the reasons for decision in the decision of the FST dated December 8, 2010. Imperial Oil requested a hearing. The pre-hearing conference was held on May 18, 2011. A motion raising certain preliminary objections to the Notice of Intended Decision has been scheduled for July 18, 2011 and the hearing on the merits has been scheduled for December 5, 6 and 9, 2011. The preliminary motion was abandoned by Imperial Oil. A pre-hearing conference was held on July 18, 2011 and will continue on August 30, 2011.

Two of the 3 former members settled with Imperial Oil on a confidential basis in the summer of 2011. The third member applied for party status. Imperial Oil opposed this application. On September 28, 2011, the FST heard the motion for party status and also a motion respecting whether there was jurisdiction to withdraw the Notice of Intended Decision. On November 3, 2011, the FST issued its decision and granted the third member party status on condition the hearing proceed in two stages: a) first, the FST will determine whether there are discretionary reasons to order a partial wind up (assuming without prejudice that the facts exist to justify a partial wind up under clause 69(1)(d) and (e) of the PBA); b) if the FST determines that there is such discretion, it will then determine whether the facts exist to support a partial wind up under clause 69(1)(d) and (e) of the PBA.

The FST also held in its November 3 decision that the Superintendent does not have jurisdiction to withdraw a Notice of Intended Decision once a hearing request has been made, absent a settlement on the consent of all parties. In addition, the FST held that it did not have jurisdiction at this stage of the proceeding to direct the Superintendent not to carry out the Notice of Intended Decision.

A teleconference was held on November 16, 2011 during which it was agreed that the hearing will proceed on December 9 with respect to whether the FST should exercise its discretion not to order a partial wind up.

#### **5. Shoppers Drug Mart Inc.**

The Superintendent issued a Notice of Intended Decision on May 25, 2011, refusing to order Shoppers Drug Mart Inc. to leave a former member's grow-in benefits in the Pension Plan for Executives of Shoppers Drug Mart. The former member requested a hearing. A pre-hearing conference was held on August 16, 2011, and the hearing was held on October 31, 2011. The FST reserved its decision.

#### **Request to Withdraw Funds from Locked-In Accounts**

No significant new decisions.

#### **PROSECUTION MATTERS:**

**1. Industrial Alliance Insurance and Financial Services Inc.**

On August 29, 2011, Industrial Alliance Insurance and Financial Services Inc. was charged with six counts of failing, as trustee of the Pension Plan for Employees of Colonial Cookies Corporation, to notify the Superintendent that contributions were not remitted to the Plan by the respective due dates under the PBA and Regulation. The first appearance was on September 29, 2011, the second appearance was on October 27, 2011, and the matter is to be spoken to on November 24, 2011.