Appendix A

WHAT’S NEW IN PENSIONS AND BENEFITS AT FSCO
JANUARY, 2012

PENSION e-BULLETIN

Don’t forget to subscribe to the Pension e-Bulletin by clicking on the “Subscribe to Pension e-Bulletin” icon in the Pension section of the FSCO website (http://www.fsco.gov.on.ca).

FSCO WEBSITE 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.

Pension Policy Review

As part of the ongoing pension policy review, the following policies have been revised (January posting):

- A100-100 - Pension Fund Administration – Responsibilities of Fund Holders;
- T800-403 - Recalculation of Transfer Values.

2012 Pension Unlocking and Financial Hardship Unlocking Forms

The 2012 pension unlocking and financial hardship unlocking forms have now been posted.

Final Family Law Forms

FSCO’s Superintendent approved family law forms relating to the valuation and division of pension assets on the breakdown of a spousal relationship have now been posted in final form.

E-filing Option (Actuarial Valuation Report, Actuarial Information Summary and Financial Statements)
Pension Plan Administrators now have the option to submit an Actuarial Valuation Report (AVR), Actuarial Information Summary (AIS) and Pension Plan/Fund Financial Statements (FS) electronically, in accordance with the Superintendent’s Electronic Service and Delivery and Filing Rules.

The option to electronically file an AVR and FS in pdf format and the new online fillable AIS form are available on the Pension Services Portal (PSP).

Securing Our Retirement Future

Ontario is implementing changes it first announced in 2010 and reaffirmed in the 2011 Budget by strengthening the Pension Benefits Guarantee Fund (PBGF) to help protect pensioners.

Beginning January 1, 2012, the government will:

- Establish a minimum assessment level of $250 for each covered plan;
- Raise the base fee per plan member from $1 to $5;
- Increase the maximum fee per plan member in underfunded plans from $100 to $300;
- Eliminate the overall assessment cap, currently $4 million, for underfunded plans; and
- Extend the initial waiting period for PBGF coverage of new plans and benefit improvements from three to five years.

These changes will help to make the PBGF more sustainable by reducing the size of claims and ensuring it has sufficient funds to cover them. PBGF assessments are paid by the company or organization that sponsors the pension plan, not employees.

O. Reg. 466/11 filed – Pension Benefits Guarantee Fund

Regulation 466/11 was filed on December 16, 2011 and will come into effect on January 1, 2012. Regulation 466/11 implements changes to the Pension Benefits Guarantee Fund (PBGF). The Order in Council proclaiming subsection 38(1) of the Securing Pension Benefits Now and for the Future Act, 2010 (Bill 120) into force will also come into effect on January 1, 2012. The most significant changes brought about by this new legislation for pension plans entitled to make a PBGF claim are summarized in this FSCO’s What’s New posting.

O. Reg. 467/11 filed – Family Law

Effective January 1, 2012, Ontario Regulation 467/11 amends Ontario Regulation 287/11 (Family Law Matters) by temporarily adding the unproclaimed section 1.1 Pension Benefits Act (PBA) definitions of “retired member” and “former member. Once the new (Bill 236) section 1.1 PBA definitions come into force, the definitions in the Family Law Matters regulation will automatically be revoked.
Overpayments and Plan Wind Up – FAQs

When an employer makes contributions to the pension plan to fund a deficit while the plan is in the course of winding up (either in whole or in part), and this results in a surplus in the plan as defined by the PBA, the employer may make an application to the Superintendent for consent to the payment from the pension fund to reimburse the employer for the overpayment under section 62.1(3) of the PBA. FSCO has issued a new FAQ providing guidance on the application process.

LIF and LRIF Maximum Annual Income Payment Amount Table

Policy L200-410 (2011 Life Income Fund (LIF) and Locked-In Retirement Income Fund (LRIF) Maximum Annual Income Payment Amount Table) has been replaced by Policy L200-411 (2012 Life Income Fund (LIF) and Locked-In Retirement Income Fund (LRIF) Maximum Annual Income Payment Amount Table) which provides the new maximum annual income payment amount table for 2012.

Pension Policy Review

As part of the ongoing pension policy review, the following policies have been updated/revised/archived (December posting):

Updated (references):

- W100-106 - Treatment of Prior Year Credit Balance;

Revised:

- L100-051 - Shortened Life Expectancy;
- W100-276 - Natural Termination of a Pension Plan;
- W100-441 - Restrictions on Payments in Deficit Situations;
- W100-801 - Successor Plan Does Not Preclude Wind Up of Original Plan;

Archived:

- L100-050 - Shortened Life Expectancy;
- P200-200 - Assessment and Member Fees;
- W100-275 - Plan with no Members;
- W100-440 - Restrictions on Payments in Deficit Situations;
- W100-800 - Successor Plan Does Not Preclude Wind Up of Original Plan.
Resources from the Webinar on the Valuation and Division of Pension Assets on Breakdown of a Spousal Relationship

Information presented at the FSCO Webinar on the Valuation and Division of Pension Assets on Breakdown of a Spousal Relationship which took place in November and December 2011 has now been posted. The new rules relating to the valuation and division of pension assets on breakdown of spousal relationship come into effect on January 1, 2012. Pension plan administrators need to familiarize themselves with the new rules, and are encouraged to review the:

- Webinar Recording;
- Presentation Slides with Speakers' Notes;
- Family Law Forms;
- Questions and Answers.

Risk-Based Regulation – Framework Document

The Risk-Based Regulation Framework Document has now been finalized taking into consideration stakeholder comments.

JSPPs - Additional Q and A

Additional Q&As have been posted relating to Jointly Sponsored Pension Plans (JSPPs). The Q&As provide additional guidance relating to content requirements for annual statements to plan members.

CAPSA Guidelines on Prudent Investment Practices, a Self-Assessment Questionnaire and Funding Policy

On November 15, 2011, CAPSA released its:

- Letter to Stakeholders;
- Guideline No. 6 on Pension Plan Prudent Investment Practices;
- Self-Assessment Questionnaire on Prudent Investment Practices;
- Guideline No. 7 on the Pension Plan Funding Policy.

The prudent investment practices guideline and companion questionnaire are intended to provide guidance to plan administrators on how to demonstrate the application of prudence to the investment of pension plan assets. The funding policy is intended to provide guidance on the development and adoption of funding policies. Additional information is available on the CAPSA website www.capsa-acor.org.
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.

AON served its motion materials on December 22, 2011. No date has been set yet for the motion.
2. **Shepherds’ Trust**

The Trustees of The Shepherds’ Trust have brought an application to the Ontario Superior Court of Justice for advice and directions as to whether The Shepherds’ Trust is a pension plan under the PBA, and if so whether the Trustees have contravened the PBA in failing to register it. The application is to be heard on February 6, 2012.

**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)**


3. **Corby Distilleries**


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 (see #3 above). 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 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.

The hearing was held on December 9, 2011. The panel reserved its decision.

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.

The former member was entitled to a “small pension” under section 50 of the PBA on his termination date. This amount was paid to him and transferred to a non-locked-in retirement plan in 2002. In 2005, the Superintendent proposed to order a partial wind up, which was eventually declared by Shoppers Drug Mart. The former member then became entitled to grow-in benefits that exceeded the “small pension” amount.

The FST released its decision on December 7, 2011. The panel held that the effect of section 73 of the PBA was that the former member was entitled to more than a “small pension”, that the determining date was the effective date of the partial wind up and not the earlier date of
termination, and that the former member should therefore be given full transfer rights. The Superintendent was directed to order Shoppers Drug Mart Inc. to give the former member the option of leaving his pension in the plan and to bring the matter back before the FST if the Canada Revenue Agency would not permit this to happen.

The FST also held that as a general matter, parties should not assume that personal information in documents filed with the FST will not form part of the public record. Parties should therefore consider whether such personal information is necessary for the case when filing their documents.

6. **BCE Inc.**

The Superintendent issued a Notice of Intended Decision on April 28, 2011, refusing to consent to a transfer of assets from the BCE Inc. Pension Plan to the Pension Plan for Employees of Progistix-Solutions Inc. and its Subsidiary and Affiliated Companies.

BCE Inc. requested a hearing. SCI Group Inc. (the sponsor of the Progistix Plan) and Canada Post Corporation (the parent company of SCI Group Inc. and the purchaser of all issued and outstanding shares of SCI from Bell Canada) were both granted full party status.

A pre-hearing conference was held on September 21, 2011. A motion by SCI for an order compelling BCE Inc. to disclose certain documents was heard on December 2, 2011. The panel reserved its decision on this motion.

The pre-hearing conference is to resume on January 25, 2012. The hearing is scheduled for April 11 and 12, 2012.

7. **Rio Tinto Alcan**

The Régie des Rentes du Québec issued a decision on July 18, 2011, refusing to order the administrator of the Alcan Pension Plan (Canada) to transfer a former member’s accrued benefits to his LIRA. The former member, who is in Ontario, requested a hearing.

A pre-hearing conference was held on November 23, 2011. It was agreed that this matter will proceed as a written hearing.

8. **Public Service Pension Plan**

The Superintendent issued a Notice of Intended Decision on August 8, 2011, refusing to issue an order, in respect of the Public Service Pension Plan, requiring that the administrator allow the Applicants to commence receiving pension benefits effective the date of the transfer to the federal civil service. A pre-hearing conference was held on December 19, 2011. The hearing is scheduled for March 26, 2012.
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 third appearance was on November 24, 2011. On December 8, 2011, Industrial Alliance pleaded guilty to count 1 and was fined $60,000. The remaining 5 counts were withdrawn.