



Financial Services Commission of Ontario
Commission des services financiers de l'Ontario

SECTION: Surplus

INDEX NO.: S900-504

TITLE: Surplus Distribution to an Employer
- PBA, s. 78 and 79 and Reg. 909, s. 8

APPROVED BY: The Pension Commission of Ontario

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Subsection 78(1) of the *Pension Benefits Act*, R.S.O. 1990, c.P.8 (the "Act"), provides that surplus may not be paid to an employer unless the Commission consents to the payment. The Commission shall not consent to an application to distribute surplus to an employer until specific requirements and conditions have been satisfied. Statements and documents supporting the applicant's assertion that the requirements and conditions have been satisfied should be included in the Application to the Commission.

This administrative practice replaces S900-501, Surplus Distribution to an Employer, PBA S.78 and 79 and s. 8 of Ontario Regulation 909.

Part I of this administrative practice identifies the procedure for bringing an Application to the Commission pursuant to section 78 of the Act and subsections 8(1) and 8(2) of Regulation 909 (the "Regulation") on a full wind up.

Part II of this administrative practice identifies the modifications to Part I which apply to an Application made to the Commission pursuant to section 78 of the Act and subsections 8(1) and 8(2) of the Regulation on a partial wind up.

General

It is the responsibility of the applicant to satisfy the Commission that the Application meets the requirements of the Act, the Regulation and Commission policies, procedures and administrative practices respecting such applications. It is also the applicant's responsibility to consider whether plan specific circumstances warrant the inclusion of additional information or documentation supporting the Application.

For example, additional information about members and/or former members or additional plan documentation may be relevant in the following circumstances:

- the source of all or a portion of the assets of the pension fund can be traced to the pension fund of another pension plan;
- all or a portion of the liabilities of a pension plan were converted to liabilities determined on another basis (a plan conversion);
- there was a partial wind up at any time prior to the date of wind up.

While every effort has been made to make this practice as complete as possible, the Commission is not bound by this practice. Further, the Commission is not bound by information or advice given to the applicant by staff of the Commission or the Superintendent in regards to an Application.

Relevant Published Policies, Procedures and Administrative Practices

Applicants are advised that the following policies, procedures and administrative practices contain information relevant to an Application for the Commission's consent to a payment of surplus to an employer on full or partial wind up. The relevant materials are listed below by subject, index number and the date they appeared in the PCO Bulletin, a publication of the Pension Commission of Ontario.

- 1) Surplus Distribution to Beneficiaries as Cash on Wind Up; S900-300; August, 1993
- 2) Surplus Attributable to Employer and Employee Contributions on Plan Wind Up; S900-801; Summer, 1995
- 3) Allocation of Surplus Distributed to Members and Former Members on Wind Up; S900-900; Spring, 1994
- 4) Applications before the Commission - Decision-making Process; XTRB-01; August 1993
- 5) Pre-hearing Conference Procedures; P520-780 (replaces XTRB-02); March, 1996
- 6) Role of the Presiding Officer at the Pre-hearing Conference; P520-781 (replaces XTRB-03); March, 1996
- 7) Submission Deadlines for PCO Monthly Meetings; XTRB-04 (formerly P300-800); December '93/January '94
- 8) Filing Requirements and Procedure; W100-101, Summer, 1995. PCO Compliance Assistance Guideline No. 4, Revised December, 1990
- 9) Communications Between PCO and Plan Administrators; P500-001 (formerly A300-500); Winter, 1996
- 10) Asset Transfers under s. 80 - Superintendent's Consent Required; A700-200 (Policy Statement #2)
- 11) - Asset Transfers under Section 81 - Superintendent's Consent Required; (all assets transferred) A700-250; Winter-Spring, 1996
- and revision, A700-251; Fall-Winter 1997;
- (partial asset transfers) A700-225; Spring, 1994
- and revision, A700-226; Fall-Winter 1997

An applicant who is eligible to file an Application pursuant to subsection 8(2) of the Regulation (the "grandfathering" provision), should also refer to the following:

- 12) Court Applications - Surplus Entitlement in Wound Up Plans; S900-250; October, 1992
- 13) Procedures for Applications Pursuant to subsection 7a(2) O. Reg. 743/91 [grandfathering provision]; S900-550; October, 1992
- 14) Court and PCO Procedure for Applications under ss. 7a(2)(c), O. Reg. 708/87; S900-600; November, 1991

All of the relevant policies, procedures and administrative practices published by the Pension Commission of Ontario may not be listed above. Applicants are responsible for ensuring that all relevant publications have been considered when making

an application pursuant to section 78 of the Act.

The content of this Administrative Practice is set out as follows:

PART 1 Distribution of Surplus to an Employer on Full Wind Up

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**PART I
DISTRIBUTION OF SURPLUS TO AN EMPLOYER ON FULL WIND UP**

General Principles

1. Where payment of surplus to the employer is sought on a wind up, section 78 of the Act requires that no payment may be made without the Commission's prior consent. Before such consent may be given, the requirements of subsection 78(2) of the Act concerning notice and disclosure of plan provisions with respect to the payment of surplus on wind up must be met. In addition, the requirements of subsection 79(3) must be satisfied.
2. Generally, an employer winding up a pension plan will file an Application for the Commission's consent to payment of surplus to the employer:
 - (a) after the Superintendent of Pensions has approved payment of basic benefits out of the plan;
 - (b) if the plan documents permit surplus reversion to the employer on the wind up of the pension plan;
 - (c) after the employer has submitted a copy of the Notice of Application to the Superintendent;
 - (d) after the employer has transmitted the Notice of Application and, where applicable, has provided a copy of the proposed surplus distribution agreement to those persons who are entitled to receive it, and
 - (e) after the employer has obtained the written agreements as required by clause 8(1)(b) of the Regulation, or
 - (f) if pursuant to subsection 8(2) of the Regulation, the applicant has obtained or is seeking to obtain a court order with respect to surplus entitlement and distribution.
3. Compliance with the requirements of the Act, the Regulation and conditions identified in any Commission policy,

procedure and administrative practice which affects the Application is the responsibility of the applicant.

4. Applicants are responsible for the accuracy and completeness of the information contained in the Application and any supporting documents.

The Notice of Application

Content

5. The Notice of Application required by subsection 78(2) of the Act must include the information prescribed under subsection 28(5) of the Regulation.
6. With respect to clause 28(5)(c) of the Regulation (i.e., surplus attributable to employee and employer contributions), the methodology used to determine the surplus attributable to employee and employer contributions must be consistent with the conditions under Policy No. S900-801.
7. With respect to clause 28(5)(e) of the Regulation (i.e., the statement that submission may be made in writing to the Commission within 30 days of receipt of the notice), the Notice must also state that:
 - (a) written submissions are to be directed to the attention of the Registrar; and
 - (b) information related to the date on which the Application will be considered by the Commission may be obtained from the plan administrator.
8. With respect to clause 28(5)(f) of the Regulation (i.e., contractual authority for surplus reversion), there must be complete disclosure of all provisions of the plan and prior versions of the plan which may be relevant to any determination of surplus entitlement, including provisions contained in all current and previous plan texts and trust agreements, insurance contracts, employee booklets and notices, collective bargaining agreements and any other relevant documents. "Prior versions of the plan" include any pension plan from which the assets of the wound up pension plan can be traced.

The actual wording of plan provisions which may be relevant to surplus entitlement and the authority to make plan amendments must be cited in the Notice of Application.

Where the plan documents do not contain explicit provisions with respect to surplus entitlement, this fact must also be disclosed in the Notice of Application.

If an Application requires a court order pursuant to subsection 8(2) of the Regulation, the applicant should refer to the procedure under Policy No. S900-600.
9. With respect to clause 28(5)(g) of the Regulation (i.e., notice concerning access to copies of the wind up report), if the office or location where the members were employed is closed, the employer must make alternative arrangements close to the location(s) where business was conducted for members to review the wind up report filed with the Commission in support of the surplus request.
10. The Commission may require the Notice of Application to be re-issued if the Commission determines that the requirements of the Act and the Regulation have not been satisfied, conditions identified in any Commission policy, procedure and administrative practice affecting Applications have not been met, or there has not been complete disclosure of all relevant information including the proposed surplus distribution agreement.
11. Subsection 28(5.1) of the Regulation requires that the employer submit a copy of the Notice of Application to the Superintendent before it is transmitted.

The Notice of Application should be submitted to the Superintendent by sending one (1) copy to:

Pension Commission of Ontario
~~250 Yonge Street, 29th Floor~~
Toronto, ON ~~M5B 2N7~~

Attention: Superintendent of Pensions

12. With respect to paragraph 7 above and subparagraph 27(j) below, the Registrar will forward a copy of any written representations received by the Registrar to the applicant.

Transmitting the Notice of Application

13. The employer is required to transmit the Notice of Application to all parties listed in subsection 78(2) of the Act.
14. Transmittal must be by personal delivery or first class mail in accordance with subsection 112(1) of the Act.
15. Where the plan wind up results from an event affecting the employment of the members, such as in the case of a plant closure, all members participating in the plan on or after the date notice of the event is given must be included as members for purposes of the wind up, including the surplus distribution. This applies even if a member terminates after the notice date but prior to the event actually occurring. Please also refer to Policy No. W100-101.

Public Advertisement

16. The Superintendent may authorize delivery of the Notice of Application by public advertisement or otherwise in accordance with subsection 112(3) of the Act if satisfied that it is not reasonable to give individual notice to all persons in accordance with section 14 above.
17. Where an applicant requests the Superintendent's authorization to deliver the Notice of Application by public advertisement, the information provided in the draft public advertisement submitted to the Superintendent with the request must clearly indicate the following:
- (a) to whom the notice is addressed (eg. former members and other persons entitled to payments from the wound up plan or any applicable predecessor plan(s)),
 - (b) the reason that these persons are being contacted (i.e., wind up of the pension plan in a surplus position and the surplus application),
 - (c) where the details of the surplus application will be made available,
 - (d) information that persons to whom notice has been transmitted may make written representations to the Commission with respect to the Application within thirty (30) days after receiving the notice.

Written Agreement (Applications pursuant to clause 8(1)(b) of the Regulation)

Content

18. When considering the Application, the Commission must be satisfied that;
- (a) prior to agreeing in writing, the affected members, former members and other persons have received, in addition to the Notice of Application, a copy of the proposed surplus distribution agreement with respect to all persons who are to participate in the surplus allocation, and

(b) the required number of written agreements has been obtained by the applicant.

19. The written agreement must provide for:

- (a) the name of the individual;
- (b) the signature of the individual;
- (c) the name of a witness; and,
- (d) the signature of the witness.

Transmitting the Written Agreement

20. In order to obtain the written agreements required under clause 8(1)(b) of the Regulation, a copy of the proposed surplus distribution agreement must be given to all persons listed in subsection 78(2) of the Act. In accordance with subsection 112(1) of the Act, transmittal must be by personal delivery or first class mail.

A copy of the proposed surplus distribution agreement should be transmitted with the Notice of Application.

Written Agreements

21. In order to satisfy subclause 8(1)(b)(iii) of the Regulation, an applicant is required to obtain the written agreement of two-thirds of the aggregate of those former members and other persons who are entitled to payments under the pension plan on the date of wind up. This requirement is subject to the Commission's discretion following a review of the circumstances which are applicable to each individual Application.

22. The appropriate bargaining agent for the purposes of subclause 8(1)(b)(ii) of the Regulation, is the collective bargaining agent or agents that represent the members of the plan at the date the written agreement is signed.

23. A collective bargaining agent may enter into a written agreement on behalf of those plan members represented by the agent only. Therefore, if a pension plan involves more than one bargaining agent, the written agreement of each bargaining agent is required.

24. If a pension plan is provided for both unionized and non-unionized members, the written agreement of the collective bargaining agent(s) as well as two-thirds of those members not represented by the bargaining agent(s) must be obtained.

25. The written agreement of a collective bargaining agent that represents the members of the pension plan must be obtained, even where the collective bargaining agent does not bargain the pension plan.

The Application

26. The format and content of the Application should be consistent with Schedule 1 under this practice.

27. All material required by the Act and Regulation must be attached to the Application, including:

- (a) A list, by class, of the names of members, former members or other persons who are affected by the wind up.
- (b) Pursuant to subsection 28(6) of the Regulation, a certified copy of the notice referred to in subsection

28(5).

- (c) A statement that the employer has complied with subsection 78(2) of the Act.
- (d) A list, by class, of the names of members, former members or any other persons who received the Notice of Application, the last date Notice was transmitted and the form of delivery of the Notice.
- (e) Copies of all provisions from the plan documents, trust agreements, insurance contracts, employee booklets and notices, and any other documents respecting surplus entitlement (in chronological order and clearly labelled) which may be relevant.
- (f) Copies of the title page and the balance sheet (or any updated balance sheet) of the wind up report as of the effective date of the wind up giving rise to the Application and the actuary's certification from the wind up report or any supplemental wind up report.

A supplement to a wind up report will be required if it is discovered that the initial report does not reflect the surplus distribution proposals outlined in the Application.

- (g) Information required to be submitted to PCO staff in accordance with Policy No. S900-801.
- (h) The Superintendent's approval of the payment of basic benefits based on the wind up report and any supplementary report.
- (i) A copy of the most recent collective bargaining agreement if the pension plan is negotiated and the agreement has not been filed in accordance with subsection 12(3) of the Act.
- (j) Any written representations objecting to the Application received by the applicant directly or through the Registrar, as well as any response(s) of the Applicant.
- (k) Any submissions which may be relevant to the Application.

Where other materials or information which may be relevant are discovered after the Application has been filed, such materials or information must be filed as an addendum to the initial Application (note paragraphs 29 and 39 below).

- (l) Where the Application is pursuant to clause 8(1)(b) of the Regulation:
 - i) a copy of the proposed surplus distribution agreement;
 - ii) a list, by class, of the names of members, former members or any other persons who received a copy of the proposed surplus distribution agreement, the last date the agreement was transmitted and the form of delivery of the agreement;
 - iii) a sample copy of the written agreement obtained from a plan member, former member, or other person with respect to the proposed surplus distribution agreement, and
 - iv) copies of the written agreement(s) between the employer and any collective bargaining agent(s) that pertain to the surplus distribution agreement.
- (m) Where the Application is to be brought pursuant to subsection 8(2) of the Regulation, the applicant should refer to Policy No. S900-600. If the applicant has already obtained a court order concerning entitlement to surplus and distribution of funds from surplus, a copy of the court order must be attached

to the Application.

Filing the Application

28. A complete Application should be filed with the Commission at least ninety (**90**) days prior to the date of the Commission meeting at which the applicant wishes to have the Application considered.

Submission of the Application, including attach-ments, on stock which does not exceed 8-1/2" x 11" is preferred. Photo-reduction of relevant materials which are on larger stock to the more manageable 8-1/2" x 11" size is suggested (subject to legibility).

29. The Application is filed with the Commission by sending 18 copies to:

The Registrar
Pension Commission of Ontario
~~250 Yonge Street, 29th Floor~~
Toronto, ON ~~M5B 2N7~~

Eighteen (18) copies of any information or materials which are supplemental to the initial filing and which are required in order to complete the Application should be filed with the Registrar.

30. The Registrar will give the applicant acknowledgment of receipt of the Application.
31. The applicant and anyone who made representation pursuant to subsection 78(3) of the Act will be advised of the date on which the Commission will consider the Application.
32. The Commission will not consider the Application unless the Superintendent has approved the payment of basic benefits on the basis of the wind up report.
33. If the administrator is a person other than the employer, the employer must forward a copy of the Application to the plan administrator.
34. For Applications made pursuant to clause 8(1)(b) of the Regulation, a copy of a sample signed written agreement should be included in each of the eighteen (18) copies submitted to the Registrar. As well, two full sets of all of the signed written agreements obtained from plan members, former members, and other persons with respect to the disclosed surplus distribution agreement must be filed with the Registrar. One set should include all the original signed written agreements.

Review Process

35. The Registrar will provide the appropriate PCO staff with a copy of the Application, and for Applications made pursuant to clause 8(1)(b) of the Regulation, the copies of the signed written agreements.
36. Staff will review the Application, and provide their comments and conclusions in respect of the Application in a memorandum to the Commission.
37. The Registrar will provide a copy of the staff memorandum and/or any submissions from the Superintendent of Pensions to the Applicant, the bargaining agent(s) of the members (if applicable) and any other parties who have made representations to the Commission pursuant to section 78(3) of the Act. Copies will be provided fourteen (**14**) days prior to the Commission meeting at which the Application is to be considered.
38. The Applicant, the bargaining agent(s), or any other parties who wish to respond to staff's memorandum or any submission from the Superintendent of Pensions must file their response with the Registrar nine (9) days prior to

the Commission meeting at which the application is scheduled to be heard or request that consideration of the application be deferred if more time is required.

Eighteen (18) copies of the new submission and any supporting materials should be submitted to the Registrar.

Copies of any new submission must also be provided to the other parties at least nine (9) days prior to the Commission meeting.

39. Consideration of the Application will be deferred if new submissions include new material which the Commission refers to staff for review.

The Registrar will advise the Applicant, any bargaining agent(s), and anyone who made representation pursuant to subsection 78(3) of the Act of the revised date on which the Commission will consider the Application.

Pre-hearings and Commission Decisions

40. Applicants should be aware of the decision-making process outlined in Policy No. XTRB-01 (formerly P300-100). An Application may be set over for a pre-hearing conference as outlined in Policy No. P520-780 (formerly XTRB-02).
41. After the Commission has made its decision, the Registrar will communicate the Commission's decision in accordance with subsection 79(5) of the Act.
42. Any party to a proceeding before the Commission under section 79 of the Act may appeal to Divisional Court from the Commission's decision pursuant to section 91 of the Act.

PART II DISTRIBUTION OF SURPLUS TO AN EMPLOYER ON PARTIAL WIND UP

Part I procedures will apply with respect to partial wind ups subject to the following:

1. For the purpose of an Application under Part II of this Administrative Practice, any reference to "full wind up" or "wind up" under Part I of this paper should be read as "partial wind up".
2. Those persons listed in subsection 78(2) of the Act who are entitled to receive the Notice of Application and a copy of the proposed surplus distribution agreement by personal delivery or first class mail in accordance with subsection 112(1) of the Act are as follows;
 - (a) all persons who are directly affected by the partial wind up (i.e., are entitled to receive payment from the pension plan as a result of the event which gave rise to the partial wind up),
 - (b) all persons who ceased to be employed as a result of the event which gave rise to the partial wind up, and
 - (c) each collective bargaining agent that represents members under the plan at the date of partial wind up.
3. All persons who are not directly affected by the partial wind up are entitled to receive only the Notice of Application by personal delivery or first class mail. However, subject to obtaining the Superintendent's authorization under subsection 112(3) of the Act, the employer may choose to provide Notice by public advertisement or otherwise.

4. For the purposes of obtaining written agreement in accordance with subclause 8(1)(b)(ii) of the Regulation, the appropriate collective bargaining agent is the collective bargaining agent which represents the members under the plan at the date of partial wind up who are directly affected by the partial wind up.

The written agreement of a collective bargaining agent that is a collective bargaining agent at the date of partial wind up for those members who are not affected by the partial wind up is not required to be obtained.

5. Where written agreement is required pursuant to subclause 8(1)(b)(ii) of the Regulation, and there is no "collective bargaining agent" which represents the members who are directly affected by the partial wind up, written agreement must be obtained from at least two-thirds of the members who are directly affected by the partial wind up.

6. For the purposes of subclause 8(1)(b)(iii) of the Regulation, the written agreement of at least two-thirds of the aggregate of the former members and other persons who are directly affected by the partial wind up must be obtained. This requirement is subject to the Commission's discretion following a review of the circumstances which are applicable to each individual Application.

SCHEDULE 1

**FORMAT AND CONTENT OF THE APPLICATION TO THE COMMISSION
FOR CONSENT TO THE REFUND OF SURPLUS TO AN EMPLOYER**

- Date:** *Enter the date of the application.*
- Employer:** *Provide the full legal name of the employer making the application.*
- Pension Plan:** *Provide the full legal name of the pension plan and the provincial registration number.*
- Prepared By:** *Provide the name and title of the corporate officer authorized to act on behalf of the employer in respect of the application. (Unless otherwise indicated in the application, all communication from the Commission will be directed to the person who files the application.)*

Nature of the Application:

Provide a full description of what is being asked of the Commission with reference to the specific section(s) of the Act and Regulations pursuant to which the application is being made. For example:

Application for the Pension Commission's consent pursuant to subsection 78(1) of the Pension Benefits Act, R.S.O. 1990, c.P.8, as amended, and clause 8(1)(b) of Regulation 909, R.R.O. 1990, as amended, to a payment of surplus to (provide full legal name of the company) in the amount of \$ (show the amount as of the effective date of wind up) as at (show the effective date of wind up) plus investment earnings thereon to the date of payment and (add reference to any other adjustment that will be made in the proposed refund to the employer such as expenses).

This application is made pursuant to a surplus distribution agreement whereby (x) per cent of the surplus as of the effective date of wind up will be distributed to the members, former members and other persons entitled to benefits as of the effective date of wind up in the form of indexed benefits.

Appropriate modifications will be required with respect to applications which are pursuant to subsection 8(2) of the Regulation where the applicant has applied or, will apply, to court for an order under clause 7a(2)(c) of Ontario Regulation 708/87 as that section read prior to December 18, 1991.

Actuary/Counsel:

This section should provide the name of these persons connected to the application, either as agents of the employer making the application, or those acting on behalf of the members, former members, etc. If there is no such individual, please indicate "None".

Actuary for the Applicant (and name of firm):

Counsel for the Applicant (and name of firm):

Counsel for the Members/former members/union/etc.:

Actuary for the Members/former members/union/etc.:

Collective Bargaining Agent:

Provide the name of the Collective Bargaining Agent(s) who represent any members or former members of the pension plan.

Background:

Provide a brief summary of the background of the plan leading up to the application including;

- *the effective date of the plan,*
- *the classes of members covered by the plan,*
- *the basic benefit structure (e.g. "non-contributory", flat benefit plan"),*
- *a brief chronology of the plan and prior versions thereof, including any pension plan from which assets of the wound up pension plan can be traced (include references to asset transfers to or from the pension fund of another pension plan, plan conversions, and partial wind ups that may have occurred prior to the date of wind up),*
- *the relevant corporate history including the background to any changes in the name of the employer associated with the pension plan,*
- *the effective date and reasons for the wind up of the pension plan, and*
- *any information which will assist in understanding the application.*

Subsection 78(2) of the Act - Notice Requirements

In the following subsections, the applicant should satisfy the Commission that the notice requirements of the Act and Regulations have been satisfied.

(a) Subsections 28(5) and 28(5.1) of the Regulation:

Provide information indicating how the applicant has complied with:

- *Subsection 28(5) and any related Pension Commission policies, procedures or administrative practices setting out the minimum contents to be included in the Notice of Application required to be issued under subsection 78(2) of the Act.*
- *Subsection 28(5.1) which requires that a copy of the Notice of Application be filed with the Superintendent prior to transmittal to the members, former members and other persons.*

(b) Subsection 28(6) of the Regulation:

Provide information demonstrating compliance with subsection 28(6) of the Regulation which requires that the application be accompanied by a certified copy of the Notice of Application, a statement that subsection 78(2) of the Act has been complied with, the date the last Notice of Application was distributed and details as to the classes of persons who received notice. Include reference to the Attachment or Tab at which the certified copy of the notice may be found.

Subsection 112(3) of the Act - Alternate Service:

If transmittal by public advertisement or otherwise, was used in lieu of individual notice, indicate the classes or groups for whom service by public advertisement was provided along with advice as to the dates and newspapers an advertisement ran or, if applicable the date other alternative forms of notice were given. Include reference to the Attachment or Tab at which copies of the newspaper advertisements and the Superintendent's authorization for service by public announcement may be found.

Subsection 79(3) of the Act - Conditions Precedent:

In the following sections, the applicant should satisfy the Commission that the conditions of the legislation that have been met.

(a) **Clause 79(3)(a) - The Plan has a Surplus:**

Provide advice as to the date of the Superintendent's letter approving the distribution of the members' and former members' basic benefits. Include reference to the Attachment or Tab at which extracts of the wind up report and supplemental report and a copy of the Superintendent's letter may be found. Include in the application a brief summary of the balance sheet for the plan as at the effective date of wind up along with an updated balance sheet if there has been any significant change in the figures. For example:

Balance Sheet	As at effective date of wind up	As of (current date)
Market value of assets	\$.00	\$.00
Liabilities		
Basic benefit entitlements	\$.00	\$.00
Liabilities for enhancements	\$.00	\$.00
Expenses	<u>\$.00</u>	<u>\$.00</u>
Surplus	\$.00	\$.00

Surplus sharing agreement:

To employees	\$.00 (%)
To employers	\$.00 (%)

(b) **Clause 79(3)(b) of the Act - The Plan Provides for the Payment of Surplus to the Employer on the Wind Up of the Pension Plan:**

Provide an outline of the history of the plan provisions relating to the disbursement of surplus on wind up and, where any of the provisions have been amended since inception, the authority under the plan to amend. The outline must include reference to the plan documents, trust agreements, insurance contracts, employee booklets, collective bargaining agreements and any other relevant documents since the inception of the pension plan any prior pension plan. In addition, the outline should include reference to any documents that did not contain an express provision relating to surplus on wind up,

or that were not supportive of the current application by the employer.

Reference should be included as to the Attachment(s) or Tab(s) at which clearly labelled copies of all relevant extracts from the plan documents, trust agreements, insurance contracts, employee booklets and notices, and any other documents or submissions respecting surplus entitlement may be found.

It is the responsibility of the applicant to satisfy the Commission that the conditions of the legislation for the Commission's consent to the application have been satisfied. Therefore, there should be some explanation or elaboration concerning why the applicant believes that the plan provides for payment of surplus to the employer.

(c) Clause 79(3)(c) of the Act - Provision has been made for the Payment of All Liabilities of the Pension Plan:

Outline the status of the distributions of basic benefits and surplus to members, former members and any other persons entitled to payments. If all distributions to the members and other persons have not been completed, the Commission's consent to the payment to the employer normally will not be effective until all entitlements of the members, former members and other persons have been paid, purchased, or otherwise provided to the satisfaction of the Commission.

Clause 8(1)(b) of the Regulation - Written Agreement

Provide a summary of the notices issued and signed agreements provided. For example:

	Total Number	Notices Issued	Written Consents	(%)
Employer	_____	_____	_____	_____
Collective Bargaining Agent(s)	_____	_____	_____	_____
Members	_____	_____	_____	_____
Former Members/ Other Persons	_____	_____	_____	_____

Subsection 8(2) of the Regulation - The Court Order

(a) Clause 8(2)(a) of the Regulation - The Status of the Application to Court:

Provide information concerning the status of the application to the court. Refer to the attachment which indicates the applicant's intention or where the copy of the order is located.

The applicant (*enter "has applied" or "will apply"*) to the court for an order pursuant to clause 7a(2)(c) of O. Reg. 708/87 as that section read immediately before December 18, 1991 (*enter "and has obtained" or "is to obtain"*)

an order for payment of the surplus assets to the applicant on termination of the Plan.

(b) **Clause 8(2)(b) of the Regulation - Eligibility as a "Grandfathered Plan":**

Provide information supporting the applicant's position that the application is eligible to proceed under the "grandfathering provision".

The applicant may make application pursuant to clause 7a(2)(c) of O. Reg. 708/87 as that section read immediately before December 18, 1991 as *(enter the reason why the plan is a "grandfathered plan", i.e., "the notice of proposal to wind up was filed prior to December 18, 1991" - enter the date of filing).*

Representations

Indicate if any objections or representations were received. Refer to the attachment where copies of the objections or representations and any response(s) of the applicant are located.

Attachments

The applicant should provide an index of all attachments to the Application. It is preferred that the attachments be listed in an order which corresponds to the order of the subject matter under this document, and where applicable, in chronological order. Where an Application is a bound application, the relevant Tabs should be listed.