



SECTION: Surplus

INDEX NO.: S900-800

TITLE: Surplus Attributable to Employee and Employer Contributions
on Plan Wind Up
- PBA, 1990 ss. 78(2) and O. Reg. 909 ss. 28(5)

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Surplus Attributable to Employee and Employer Contributions on Plan Wind up

The *Pension Benefits Act* provides that an employer who applies to the Pension Commission (the "Commission") for consent to payment of money to an employer that is surplus out of a pension fund must transmit notice of the application, containing the prescribed information, to the parties listed in subsection 78(2) of the Act.

Subsection 28(5) of Regulation 909, R.R.O. 1990, as amended (the "Regulation") provides that:

"A notice required under subsection 78(2) of the Act for a plan that is being wound up shall contain, ...

c) the surplus attributable to employee and employer contributions,"

The following practice will be followed by the staff of the Pension Commission ("PCO staff") in assessing compliance with this requirement:

- a) As a general rule, PCO staff will provide comments to the Commission on the reasonableness of methods used to attribute surplus between employee and employer contributions. Where circumstances warrant, PCO staff may question the method or information used, or may refer the case to the Canadian Institute of Actuaries for review. In all cases, the final decision as to whether clause 28(5)(c) has been satisfied rests with the Commission.
- b) The plan actuary should provide PCO staff with:
 - i) a detailed description of the method used to determine the surplus attributable to employee and employer contributions;

- ii) any information relevant to the attribution method, including information on the annual amount of employer contributions and employee contributions remitted since the inception of the plan or prior plan(s), if any, or for such period of time for which this information is available; and
 - iii) a statement by the actuary performing the calculation that, in the opinion of the actuary, the method employed is consistent with sound actuarial principles and practices, and is appropriate for the intended purpose.
- c) The onus is on the actuary to use a reasonable method. However, as a matter of policy, the Commission will not accept an assertion that it is not possible to determine the amount of surplus attributable to employee and employer contributions. Also, the Commission will not accept a notice which does not contain an estimate of the amount attributable to each.
- d) Subject to any professional standards established by the Canadian Institute of Actuaries, it is not the intention of the Commission to specify a method that must be used. The following are some of the concerns that the Commission has in the past requested the actuary to consider:
- o That the contributions of all members were considered, not just the contributions of members remaining at the time of plan wind up or surplus withdrawal.
 - o That the historic actual fund rates of return were applied to the member contributions.
 - o That the attribution recognizes any purchases of annuities for less than a member's contributions with interest.
 - o That the attribution considers events for the life of the plan, not just from when the first surplus was revealed.
- e) In addition to setting out the amounts of surplus attributable to employee and employer contributions, the notice to plan members and others should include the following information:
- i) there is no standard method of calculating the amount of surplus attributable to employee and employer contributions;
 - ii) the amounts of surplus attributable to employer and employee contributions are estimates determined by the actuary retained by the employer; and
 - iii) a detailed description of the method of attribution is available from the plan administrator.

This policy is replaced by S900-801 which was effective on June 26, 1995.