

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF SECTION 101 OF THE *COURTS OF JUSTICE ACT*,
R.S.O. 1990, C. C-43, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT
OF VICTORIAN ORDER OF NURSES FOR CANADA, VICTORIAN ORDER OF
NURSES FOR CANADA – EASTERN REGION AND VICTORIAN ORDER OF
NURSES FOR CANADA – WESTERN REGION

Applicants

RESPONDING MOTION RECORD
(Re: Pension Matters)
(returnable July 14, 2016)

June 16, 2016

GOLDBLATT PARTNERS LLP
Barristers & Solicitors
20 Dundas Street West, Suite 1100
Toronto, ON, M5G 2G8

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Lawyer for certain members of the United
Nurses of Alberta

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T A B 1

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Applicants

AFFIDAVIT OF DOUG LEFAIVE

(Sworn June 16, 2016)

I, Doug LeFaive, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY:

1. I am a lawyer at Goldblatt Partners LLP specialising in pension and benefits law.
2. In preparing this affidavit I have relied on materials provided by the United Nurses of Alberta (“UNA”) and other sources of information and where I have relied upon other sources of information, I have stated that source of information and believe such information to be true.
3. On the 26th of November the UNA received notice that nine members of the UNA who were employed by the Victoria Order of Nurses (“VON”) had their positions eliminated effective November 25, 2015. Attached as Exhibit “A” is an email from Susan Rath-Wilson of VON Canada to H. Smith at the UNA providing notice of the terminations.

4. On December 4, 2015, Ron Mills of VON advised Cherie Langlois-Klassen of UNA that the VON Pension Plan “is unaffected by the organizational restructuring and departing employees will receive 100% of their pension entitlement.” Attached as Exhibit “B” is the above-noted email.
5. Article 22 of the collective agreement between the Victoria Order of Nurses Edmonton Branch and the United Nurse of Alberta, Local #61 recognizes that the VON Pension Plain is maintained at the national level and that enrolment, participation and contributions by employees and the employer are determined in accordance with the terms and conditions of the Plan. Attached as Exhibit ‘C’ is the cover page and article 22 of the collective agreement.
6. On February 18, 2016, terminated members of the VON West, which includes the members represented by UNA, received notice from the VON Canada entitled “Update on your VON Canada Pension Plan options statement”. As part of this update, VON Canada stated, “The Board of Directors of VON Canada, in consultation with its advisors and legal counsel, is recommending a partial wind-up of the VON East and VON West portions of the Pension Plan.” Attached as Exhibit “D” is a copy of the update that was distributed to Plan members who were not eligible to receive an immediate pension.
7. A more detailed update entitled “VON Restructuring and Pension Plan – Update 2” was released by VON Canada on February 18, 2016. In the update, VON Canada indicated how it intended to treat retirees who worked in VON West. In the answer to question 7, VON Canada stated, “If there is a partial wind up of the VON East and VON West portions of the plan, affected pensioners will be informed of the changes, and their pensions will be adjusted retroactively based on the wind-up valuation of those portions of the Plan.” Attached as Exhibit “E” is the update referred to in this paragraph.
8. There are at least thirteen (13) past and present members of UNA who have worked with VON West. VON Canada indicated that five UNA members were enrolled in the Plan as

of November 25, 2015. Attached as Exhibits “F” and “G” are emails from Cherie Langlois-Klassen of UNA and Susan Rath-Wilson of VON confirming this information.

9. The proposal to wind up the VON West portion of the Plan is inconsistent with minimum pension standards in Alberta (the place of employment) and in Ontario (the place of Plan registration). When amendments were enacted to the Alberta’s *Employment Pension Plans Act* (“EPPA”) and the supporting regulations effective September 1, 2014, Alberta Treasury Board and Finance issued EPPA Update 14-03 wherein it provided the regulator’s view as to the applicability of partial plan terminations under the new rules. The Update states: “With the move to immediate vesting, the concept of partial plan termination, the need to file partial termination reports and obtain the consent of the Superintendent for the disbursement of assets, has been eliminated.” Attached as Exhibit “H” is EPPA Update 14-03.

10. In Ontario, partial wind-ups were eliminated under the *Pension Benefits Act* effective July 1, 2012. The Financial Services Commission of Ontario (“FSCO”) issued a question and answer summary dealing with the elimination of partial wind-ups. FSCO states that the elimination of partial wind-ups means “that a pension plan can only be partially wound-up, if the effective date of the partial wind up is before July 1, 2012.” Attached as Exhibit “I” is the internet posting of the question and answer issued by FSCO.

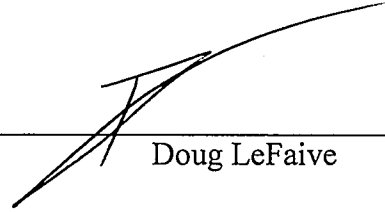
11. As indicated in the motion materials filed by VON Canada, as of June 1, 2015 the Plan has a significant surplus on a going concern basis (\$46,292,000) and is 96% funded on a solvency basis. An increase in the solvency valuation discount rates in the range of 0.3% to 0.4% would be enough to raise the transfer ratio from 96% to 100% as of June 1, 2015. This is an approximation based on the information contained in the valuation report relying primarily on the sensitivity information on page 10 of the report, but nevertheless demonstrates that the assumption that other VON entities would be required to subsidize the payment of benefits to VON West Plan members and former members is not a certain outcome. I have relied on a rough approximation of the above-noted discount rate changes prepared by Anthony Benjamin, a principal at Eckler, recognizing that the

approximation was prepared relying solely on the valuation report data and not considering potential investment losses.

12. This affidavit is sworn in opposition to the Applicants' motion for approval of its proposed Pension Plan Restructuring, in support of UNA Plan members and former members, and for no improper purpose.

SWORN BEFORE ME at the City of Toronto, in
the Province of Ontario, this 16th day of June,
2016


A Commissioner for taking Affidavits


Doug LeFaive

TAB A

This is Exhibit A referred to in the
affidavit of Doug LeFave
sworn before me this 16th
day of June 2016
Darrell Brown
A COMMISSIONER, ETC.

----- Original message -----

From: "Rath-Wilson, Susan" <Susan.Rath-Wilson@von.ca>

Date: 26-11-2015 4:23 PM (GMT-05:00)

To: h.smith@una.ab.ca

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Cc: "Mills, Ron" <Ron.Mills@von.ca>

Subject: UNA Notice VON Eastern Region -Restructure

Attention to Heather Smith:

Please be advised the VON is ceasing its operations in six provinces effective November 25, 2015.

I regret to inform you that the following members of the United Nurses of Alberta have had their positions eliminated.

Michelle Slocombe

Patricia Clark

Sara Wright

Morag McLean

Alvin Klassen

Karen McEachern

Lydia Stark

Jessica Matos

Bernice Toma

If you have any questions or require additional information please contact me.

Susan Rath-Wilson

Vice President, People and Organization

Victorian Order of Nurses Canada








T: 613-288-3498 C: 613-324-5438

7

E: susan.rath-wilson@von.ca

This communication is intended for the use of the recipient to which it is addressed, and may contain confidential, personal and or privileged information. Please contact us immediately if you are not the intended recipient of this communication, and do not copy, distribute, or take action relying on it. Any communication received in error, or subsequent reply, should be deleted or destroyed.

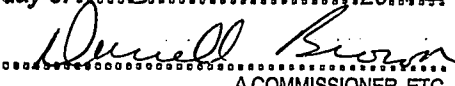
TAB B

From:  Cherie Langlois-Klassen December 4, 2015 1:29:33 PM 
Subject: Re: FW: UNA Notice VON Eastern Region -Restructure
To:  "Mills, Ron" <Ron.Mills@von.ca>
Cc:  "Rath-Wilson, Susan" <Susan.Rath-Wilson@von.ca>  David Harrigan
 Kris Farkas  Jeannine Arbour

Thanks Ron. I can't imagine how difficult a decision this was. I will look at the claims information you have provided and work with the Employees as needed. Take good care,
Cherie

Cherie Langlois-Klassen
Labour Relations Officer
United Nurses of Alberta
700 - 11150 Jasper Avenue NW,
Edmonton, Alberta
T5K 0L1

(780) 425-1025 / 1-800-252-9394
Fax: (780) 426-2093
Email: cklassen@una.ab.ca

This is Exhibit ^B.....referred to in the
affidavit of Dany Lefave
sworn before me this 16th
day of June.....2016

.....
A COMMISSIONER, ETC.

Please consider the environment before printing this email.

Note that this communication and any attachment is confidential and may be subject to privilege and/or be exempt from disclosure under privacy laws. There is no intention to waive privilege. It should only be read by the person to whom it is addressed. If you have received this communication in error, please notify me by reply and delete the communication.

"Mills, Ron" <Ron.Mills@von.ca> on December 4, 2015 at 12:29 PM -0700 wrote:
Hi Cherie

In response to your questions concerning the entitlements of VON Edmonton's former employees, please be advised that VON West (including the Edmonton Site) is the subject of a court order issued November 25, 2015 by the Ontario Superior Court of Justice pursuant to the Companies' Creditors Arrangement Act (CCAA). I have attached the court document for your information.

As such, employees affected by this action will receive their wages up to, and including that day on their next regularly scheduled pay check. Claims in respect to employment (such as vacation credits, notice and severance) will become part of a claims process as part of the CCAA proceedings. A transition guide has been provided to employees with information including contact information for the Monitor, regarding this process.

As for the VON Pension Plan, this Plan is unaffected by the organizational restructuring and departing employees will receive 100% of their pension entitlement.

This has been a difficult and sad process, Cherie, but it truly was the only viable option open to us.

Please call me if you wish to discuss the matter further.

Ron

Ronald W. Mills, MBA
Director, Labour Relations
VON Canada
Cell: 613-899-1695
Fax: 613-230-4376
visit us at : www.von.ca

From: Cherie Langlois-Klassen [<mailto:cklassen@una.ab.ca>]
Sent: Monday, November 30, 2015 1:14 PM
To: Rath-Wilson, Susan; Mills, Ron; McCulloch, Karen
Cc: Christina Doktor; David Harrigan; Heather Smith; michelleslocombe@shaw.ca
Subject: Re: Fwd(2): [SPAM] Fwd: UNA Notice VON Eastern Region -Restructure
Importance: High

TAB C

This is Exhibit C referred to in the
 affidavit of Doug LeFave
 sworn before me this 16th
 day of June 2016
David Brown
 A COMMISSIONER, ETC.

COLLECTIVE AGREEMENT

BETWEEN

**THE VICTORIAN ORDER OF NURSES
EDMONTON BRANCH**

AND

**UNITED NURSES OF ALBERTA
LOCAL #61**

FOR THE PERIOD

APRIL 1, 2012 - MARCH 31, 2014

- 20.02 Should the Local's concerns not be satisfactorily resolved within two (2) months, the Local may request and shall have the right to present its recommendations to the Personnel Committee of the Board of Management of the V.O.N. The Chairperson of the Personnel Committee shall reply in writing to the Local within thirty (30) days of the presentation by the Local.
- 20.03 Immunization and personal safety devices determined by the Committee to be necessary for the safety of the Employee in the performance of her duties shall be provided at no cost to the Employee.

ARTICLE 21: RETIREMENT

- 21.01 Employees who were hired on or before April 1, 2010 will be entitled to a retirement allowance, in addition to any vacation salary due, will be given to an Employee upon leaving the Employer on retirement as follows:
 - (a) after fifteen (15) years' service - two (2) months;
 - (b) after twenty (20) years' service - three (3) months;
 - (c) after twenty-five (25) years' service - four (4) months.

ARTICLE 22: PENSION PLAN

- 22.01
 - (a) The VON Pension Plan (the "Plan") is maintained at a national level. Enrollment, participation and contributions by the Employees and the Employer will be in accordance with the terms and conditions of the Plan.
 - (b) All full-time Employees shall, as a condition of employment, enroll in the Plan when eligible.
 - (c) Part-time and casual Employees may participate in the Plan when eligible.
 - (d) The Employer will pay fifty percent (50%) of the contribution rates for those Employees participating in the Plan.
 - (e) The Employer will make available to Employees brochures outlining the Plan and will provide one copy of the Plan and periodic amendments to the Provincial Office of the United Nurses of Alberta.

ARTICLE 23: MANAGEMENT/LOCAL COMMITTEE

- 23.01 A Victorian Order of Nurses Management-Local Committee shall be established composed of not more than three (3) representatives of the Local and three (3) representatives of the management group.
- 23.02 Meetings of the Committee shall be held on the request of either of the parties.

TAB D



CANADA

This is Exhibit ^D referred to in the affidavit of Dany LeFavre sworn before me this 16th day of June 2016
Donnell Brown
A COMMISSIONER, ETC.

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Terminated VON East and VON West – not eligible to receive an immediate pension
February 18, 2016

Update on your VON Canada Pension Plan options statement

You are receiving this update because you are a member or pensioner of the VON Canada Pension Plan (the Pension Plan). We want to update you on the status of the Plan as a result of VON's recent restructuring and its potential effect on your pension entitlement.

Background

The organization referred to as the Victorian Order of Nurses is made up of five distinct corporate entities:

- Victorian Order of Nurses for Canada (VON Canada);
- Victorian Order of Nurses for Canada – Ontario Branch (VON Ontario);
- Victorian Order of Nurses for Canada – Nova Scotia Branch (VON Nova Scotia);
- Victorian Order of Nurses for Canada – Eastern Region (VON East); and,
- Victorian Order of Nurses for Canada – Western Region (VON West).

On November 25, 2015 VON Canada, VON East and VON West filed for protection under the Companies' Creditors Arrangement Act (CCAA). The operations of VON East and VON West were closed resulting in the immediate termination of employment of all of those entities' employees. As well some (but not all) of the employees of VON Canada were terminated. VON Canada continues to operate under CCAA protection.

VON Ontario and VON Nova Scotia are not part of the CCAA proceedings and are continuing their operations as usual.

How is the Pension Plan affected by the restructuring?

The Board of Directors of VON Canada, in consultation with its advisors and legal counsel, is recommending a partial wind-up of the VON East and VON West portions of the Pension Plan. This approach would have the effect of segregating the VON East and VON West portions of the Pension Plan. Because the Pension Plan is in a deficit on a wind-up basis, and VON East and VON West have no assets to make up that deficit, former employees of VON East and VON West would receive payments at the wind-up valuation ratio. The final wind-up valuation ratio will be determined over the next few months.

It is proposed that former employees of VON Canada would receive 100% of their pension entitlement since VON Canada is expected to emerge from CCAA protection and continue operations.

All former employees affected by the restructuring will receive pension entitlements retroactive to November 25, 2015.

The recommended approach is to ensure that VON Nova Scotia, VON Ontario and VON Canada do not subsidize pension costs payable by VON West and VON East and is consistent with the Board's decision to restructure the organization to ensure it can sustainably serve its clients and government partners in Ontario and Nova Scotia.

What are the next steps?

The Board's recommendations require the approval of the plan's regulator, the Financial Services Commission of Ontario and of the Court overseeing the Companies' Creditors Arrangement Act proceedings. It is VON's intention to request the regulator's approval in February 2016 however the timeline for these approvals is uncertain.

How does this affect me?

There will be a delay in you receiving your options statement. The amount of your eligible pension in that statement will be reduced to reflect the final wind-up amount. You will receive your pension entitlement retroactive to your date of eligibility. You should expect a delay of 12 to 18 months before you receive your options statement as we will require regulatory approval.

Who do I contact for additional information?

VON Pension Administration at 1-866-677-7277.

Also look for updates on the transition website
<http://www.transition2015.com>.

TAB E



CANADA

HEALTH STARTS AT HOME

This is Exhibit F referred to in the affidavit of D. J. LeFave sworn before me this 16th day of June 2016

VON RESTRUCTURING AND PENSION PLAN – UPDATE 2
February 18, 2016

David Beaman
A COMMISSIONER, ETC.

BACKGROUND

The organization referred to as the Victorian Order of Nurses is made up of five distinct corporate entities:

- Victorian Order of Nurses for Canada (VON Canada);
- Victorian Order of Nurses for Canada – Ontario Branch (VON Ontario);
- Victorian Order of Nurses for Canada – Nova Scotia Branch (VON Nova Scotia);
- Victorian Order of Nurses for Canada – Eastern Region (VON East); and,
- Victorian Order of Nurses for Canada – Western Region (VON West).

On November 25, 2015 VON Canada, VON East and VON West filed for protection under the Companies' Creditors Arrangement Act (CCAA). The operations of VON East and VON West were closed resulting in the immediate termination of employment of all of those entities' employees. As well, the positions of some employees of VON Canada were terminated.

On February 18, VON filed materials with the Superior Court of Justice of Ontario, in support of a request for an extension of protection under the CCAA to help maintain the stability of the organization as we work through the restructuring process.

The court materials advise the Court that VON's Board of Directors, in consultation with its restructuring advisors and legal counsel, has determined that the most appropriate approach with respect to the VON Pension Plan is to implement a partial wind up of the VON East and VON West portions of the Pension Plan.

The approach requires the approval of the Pension Plan's regulator (the Financial Services Commission of Ontario (FSCO)) and of the Court overseeing the CCAA proceedings. The next steps are:

- In February, VON will submit a request to FSCO seeking approval of the proposal.
- Prior to rendering a decision, FSCO will provide comments on the proposal.
- Once FSCO comments are received, VON will seek to obtain Court approval for the proposal.
- The Court will set a date for the proceeding, and VON will provide court materials to stakeholders (those on the "service list") in advance of the court date.
- Both the Court and FSCO will provide final written rulings.

This approach is consistent with Management and the Board's decision to restructure the organization to ensure it can sustainably serve its clients and government partners in Ontario and Nova Scotia. It distinguishes obligations with respect to the East and West portions of the Pension Plan to ensure that VON Nova Scotia, VON Ontario and VON Canada do not subsidize pension plan costs payable by VON West and VON East.

Victorian Order of Nurses for Canada • National Office

2315 St. Laurent Blvd Suite 100, Ottawa, ON K1G 4J8 | T. 613-233-5694 | Toll Free 1-888-866-2273 | Fax 613-230-4376 | www.von.ca
VON is accredited with Exemplary Standing by Accreditation Canada | VON Canada Charitable Registration # 129482493RR0001

IMPACT

While we don't know what the outcome or the timing of the regulator's or Court's deliberations will be, implications for employees affected by the November 25th restructuring are as follows:

- In the short term, option statements will be further delayed. This will have the unfortunate effect of delaying pension payments or transfers for former employees of VON Canada, VON East and VON West affected by the November 2015 restructuring.
- In the longer term, if the approach is determined to be appropriate by the regulator and Court, former employees of VON East and VON West will receive payments at the wind-up valuation of their portion of the Pension Plan. (See more information in the Q&A section below).
- Also in the longer term, if the approach receives regulator and Court approval, former employees of VON Canada would receive pension payments at 100%.
- All former employees affected by the November 2015 restructuring, whether they were employed by VON East, VON West or VON Canada, will receive payments retroactive to their departure date of November 25, 2015.

WHAT'S NEXT

VON is working to develop an interim payment plan to be implemented once Court approval has been obtained to lessen the impact of the delay on former employees.

All those affected by the November 25th restructuring will receive personal notification of the issue. In addition, information will be posted on the Transition2015 and CCAA Monitor websites. (www.transition2015.com and <http://www.collinsbarrow.com/en/cbn/v-o-n>).

QUESTIONS & ANSWERS

Q1 Why is VON doing this?

A1 Management and the Board explored options and determined that this option best reflected the intent of the restructuring plan announced in November 2015. This approach would ensure that VON Ontario, VON Nova Scotia and VON Canada do not subsidize the portions of the plan payable by VON East and VON West.

Q2 What's next?

A2 VON will request the regulator's approval of the proposed plan, in a submission to be sent to the regulator (FSCO) in February. Prior to rendering a decision, FSCO will provide comments on the proposal, at which time VON can seek to obtain Court approval for the proposal. The Court will set a date for the proceeding, and VON will provide court materials to stakeholders (those on the "service list") in advance of the court date.

Q3 What will be the impact on employees who lost their jobs in the November restructuring?

A3 It is too early to say what the final determination of the regulator and Court will be. We know that there will be a delay in pension payments or transfers for employees of VON Canada, VON East and VON West whose positions were terminated in November 2015. Issuing of Pension option statements will also be delayed.

The proposal is that former employees of VON Canada receive their full pension and VON East and VON West receive payments that reflect the wind up valuation of the VON East and VON West portions of the Plan. It is too early to tell what the wind up valuation of those portions of the plan will be, but we anticipate that it will be less than 100%.



Ultimately, all eligible former employees affected by the restructuring will receive payments retroactive to their final day of employment.

Q4 How long will everything take?

A4 We cannot predict how long it will take as timing depends on both the regulator and the Court, but believe that it could take up to 18 months for all proceedings to be completed. We hope to get to Court by March but this is dependent on factors beyond our control. VON is working to develop an interim payment plan to be implemented once Court approval has been obtained, which we hope will ensure that eligible former employees affected by the restructuring start to receive payments this spring.

Q5 How big is the pension deficit for VON East and VON West?

A5 The final amount of the deficit will not be known until later in the wind up process. As of the last update of the plan, as at December 31, 2015, the deficit for the VON East and VON West portions of the plan is approximately \$2.25 million, or 6% of the value of those portions of the Plan. The assets of the Plan are subject to market fluctuation and these values may change over time.

Q6 Why did VON not inform affected employees of this at the time of the restructuring?

A6 The decision that this approach was most aligned with the November restructuring was not reached until the end of January, following a thorough exploration of options.

Q7 What about people who are receiving a pension now? What will happen to their pensions?

A7 All remains status quo for those receiving pension payments until the regulator and Court have made final determinations. If there is a partial wind up of the VON East and VON West portions of the plan, affected pensioners will be informed of the changes, and their pensions will be adjusted retroactively based on the wind-up valuation of those portions of the Plan.

Q8 Do pensioners or former employees of VON East and West have any recourse?

A8 Those who are affected by these changes do have an opportunity to participate in this process. The proposal will be reviewed by both the regulator and the Court. The regulator has a mandate to act in the public interest, and as such has procedures for stakeholders to participate in the process. (More information will be provided as it is available).

FOR ADDITIONAL INFORMATION:

VON Pension Administration

1-866-677-7277

VONPension@morneaushepell.com



TAB F

From: Cherie Langlois-Klassen March 7, 2016 2:32:04 PM
Subject: Re: NFLD and NB Unions & VON Canada
To: David Harrigan Lee Coughlan Roseanne Cooper

I have gone through my LMM notes and here are the past and present members names that I have found:

- Joyce Rebus
- Coleen Falk - cafalk@telusplanet.net
- Michelle Slocombe - michelleslocombe@shaw.ca
- Morag McLean - morag.mclean@shaw.ca
- Patricia Clark - gpclark6@shaw.ca
- Karen McEachern - kmceache@telus.net
- Jessica Matos - jessicabmatos@hotmail.com
- Alvin Klassen - mountaingoat04@hotmail.com
- Bernice Toma
- Sara Wright
- Lydia Stark
- Debbie Sontag
- Suzanne Wowk

*This is Exhibit ^F.....referred to in the
 affidavit of Daug Le Faive
 sworn before me this 16th
 day of June.....2016

 A COMMISSIONER, ETC.*

I believe Joyce and Coleen are pensioners, and my guess is that Michelle, Morag, Patricia, Karen, and Alvin are pension contributors.

Roseanne - would you please try and track down current addresses, emails and phone numbers for all of these individuals? Thanks so much!

I also called the FSCO and got the following information:

Financial Services Commission of Ontario (FSCO)
Pension Division
5160 Yonge Street
Box 85, 4th floor
Toronto, Ontario, M2N 6L9

Phone: (416) 226-7776
Toll free: 1-800-668-0128
Fax: (416) 226-7777
E-mail: contactcentre@fSCO.gov.on.ca

call in - search for VON Pension Plan

referred to Pension Plan Administration at VON phone number: 613-782-6271

Susan Strelloff - Pension Plan Administrator - susan.strelloff@von.com - left message

regarding wind-up application date: March 1, 2016

TAB G

VON Restructuring and Pension Plan - Update Feb 19 2016.pdf Uploaded File 471K

David Harrigan
Director of Labour Relations
United Nurses of Alberta

This is Exhibit 6 referred to in the
affidavit of Doug Le Faive
sworn before me this 16th
day of June 2016
David A. Bevan
A COMMISSIONER, ETC.

----- Original Message -----

As a follow up to our telephone conversation last Tuesday, February 16, I am providing you with copies of the letters that were mailed to your members who were terminated when VON filed for protection under the Companies' Creditors Arrangement Act (CCAC). As well I have attached a copy of the update that was posted on the employee transition website. Any further communication to plan members will be provided to you.

The total number of UNA members enrolled in the pension plan as of November 25, 2015 was five (5).

If you have questions, please feel free to contact me at the coordinates below.

Regards, Susan

Susan Rath-Wilson
Vice President, People and Organization
Victorian Order of Nurses Canada
T: 613-288-3498 C: 613-324-5438
E: susan.rath-wilson@von.ca

TAB H

EPPA Update 14-03 New Legislation – SUMMARY OF CHANGES

Issued July, 2014

On July 22, 2014, the Government of Alberta passed the Employment Pension Plans Regulation (the new Regulation). The new Regulation supports the Employment Pension Plans Act (the new Act) which was passed in December of 2012. Although the new Regulation is passed, proclamation of the new Act and Regulation is September 1, 2014.

This Update is designed to provide plan administrators and service providers with a brief summary of the changes in the Regulation and how they relate to the Act (2012). This Update is not exhaustive, and a comprehensive review of the new Act and Regulation should be used to determine all specific legislative requirements.

In addition to this Update:

- Update 12-02 summarized the key changes in the new Act and is complimentary to this Update, and
- Update 14-02 provides checklist for the creation of documents and amendments to existing documents that need to be done to bring a pension plan into compliance with the new legislation.

In addition to this information, the Superintendent's office will be replacing the Policy Bulletins currently on our website with a series of Interpretive Guidelines. These guidelines will address some of the topics formerly addressed under the Policy Bulletins and will add topics based on requirements under the new legislation. It is our intent to have key guidelines up by September 1, 2014 with the balance to follow thereafter. We will be seeking stakeholder comment on these guidelines until November 30 2014, after which the finalized versions will be posted to the website. The current Policy Bulletins will cease to be effective on August 31, 2014.

If you have questions about any of the new legislation or the processes for meeting compliance requirements, please contact our office via e-mail (employment.pensions@gov.ab.ca) or through the contact information at the end of this Update.

New Terms defined in the Act (Section 1)

“Benefit Formula Plans” means either or both of a pension plan that provides for a defined benefit provision, or a target benefit provision.

“Non-Collectively Bargained Multi- Employer Plans (NCBMEPs)” means a multi-employer plan that is established other than through a collective agreement (formerly known as Multi-Unit Pension Plans or MUPPs).

“Collectively Bargained Multi- Employer Plans (CBMEPs)” means a multi-employer plan that is established through a collective agreement (formerly known as Specified Multi-Employer Pension Plans or SMEPPs).

New Definitions (Section 1)

“Accessible going concern excess/accessible solvency excess/plan’s accessible going concern excess/plan’s accessible solvency excess/participating employer’s accessible going concern excess/ participating employer’s accessible solvency excess” Accessible excess is what the employer or administrator has available to use for various purposes depending on the plan type and plan provisions. The concept of accessible excess has been added to emphasize the requirement to leave a contingency reserve in the fund when actuarial excess arises. Total excess will always be greater than accessible excess.

“Divisional multi-employer plan” is a term used to describe either a collectively bargained multi-employer plan (CBMEP) or a non-collectively bargained multi-employer plan (NCBMEP) under which the participating employers are individually responsible for funding of benefit accrued to or accruing by the members who are, or were, employees of the employer.

“Life Income Type Benefit” this term refers to the account that may be set up under a defined contribution plan to permit a retiring member to receive LIF-like payments from the plan rather than transferring funds out of the plan to a LIF. This term replaces the term DCRIA from the former Regulation.

“Medical Practitioner” is a term used to describe who is able to make a determination of considerably shortened life expectancy, or can certify that medical treatment is necessary (for purposes of financial hardship unlocking).

“Provision for Adverse Deviation (PfAD)” is a term used in the development of the funding rules applicable to pension plans with target benefit provisions.

“Share” refers to that portion of the assets and liabilities of a divisional multi-employer plan that relate to a specific participating employer.

“Withdrawal Factor” is a term used in the calculation of maximum withdrawals for a Life Income Type Benefit (LITB) or a Life Income Fund (LIF). While the concept has been around since the inception of the LIF, it is now appearing as a legally defined term.

Calculation of a PfAD (Section 2)

Applicable to a plan with a target benefit provision, the PfAD is a percentage of the plan’s going concern liabilities, which is adjustable depending on certain risk factors in the plan. The PfAD has two components.

The first component is called the “asset allocation amount”. The amount of the PfAD associated with this component depends on the amount of the plan’s equity component.

The second component of the PfAD compares the going concern discount rate used in the plan’s actuarial valuation report to a benchmark discount rate. Instructions on how to calculate the benchmark discount rate are in section 2 of the Regulation. The amount of the PfAD associated with this component is a 15% increase in going concern liability for every 1% that the assumed discount rate exceeds the benchmark discount rate.

Jointly Sponsored Plan (Section 5)

The concept of a jointly sponsored plan is first introduced in section 1(1)(dd) of the Act and it must meet the criteria prescribed in the Regulation. A jointly sponsored plan must be administered by a board of trustees (or similar body acceptable to the Superintendent). At least 50% of the trustees must be individuals appointed by plan members. Under this type of plan the participating employer and the active plan members share the total funding cost of the plan, including the requirement to make special payments, based on agreement set between them as joint sponsors. As members are now sponsors, they participate in the administration, investment, funding and governance decisions related to the plan.

Commuted Value Calculation (Section 9)

There are no changes in the method for calculating the commuted value of a defined benefit provision. New rules have been added, however, for the calculation of the commuted value of a target benefit provision. Under a target benefit provision, the commuted value is calculated using the actuarial assumptions used in determining the going concern liability under the current actuarial valuation report.

In either case, the commuted value must be calculated as at the date of the member’s termination of active membership or death. Where payment of the commuted value is not made within 180 days after that calculation, the commuted value **must** be recalculated before payment is made.

Application to publicly funded plans (Section 11)

A publicly funded plan is one that

- is wholly or partially funded, either directly or indirectly by a public entity that operates on a non-profit basis and that is, was or has the potential to be an employer under a pension plan covered by the *Public Sector Pension Plans Act* or the Teachers' Pension Plan under the *Teachers' Pension Plans Act* or from a source related to such an entity, but
- is not covered by the *Public Sector Pension Plans Act* and
- has been designated by the Superintendent, by written notice to that entity and the plan's administrator, as a publicly funded pension plan for the purposes of this Act.

The provisions which applied to the publicly funded plans were previously found under Schedule 0.2 of the old Regulation. These provisions have been moved to Section 11 of the new Regulation and have mostly been maintained. There have been a few changes made to better reflect administrative requirements for these plans.

Plans for connected persons (Section 13)

Plans for connected persons continue to be exempt from registering with the Superintendent. They are, however, required to comply with certain sections of the Act and Regulation. These sections are listed in Section 13.

Additional matters to be dealt with in the plan text document (Section 14)

Section 8(1) of the Act lists the topics that must be included in the plan text document and refers to some additional prescribed items. Section 14 of the Regulation outlines these additional items, including four new items; three are new with respect to plan content and the fourth restricts how the plan is created and what the governing document is.

These new items are:

1. The plan text document must state the effective date of the plan.
2. If the benefit to be provided under a negotiated cost plan is determined by reference to contributions (Example: benefit formula = X% of contributions received), the plan text document must further provide that a change in the negotiated contribution rate must only affect future service benefits. Past service benefits cannot be automatically increased by the change in contribution rate but would require a separate amendment and be subject to restrictions related to funding requirements.

3. If the plan contains a defined contribution provision, the plan text document must state who is responsible for directing the investments: the member, the administrator or some combination of the two.
4. The plan text document must be a stand-alone document. It cannot form part of a collective agreement or any other document under which the plan was created.

Plan Registration and Amendment (Sections 13, 18 and 20)

As part of the registration and amendment process, the administrator must also now file a new prescribed form that certifies that the documents submitted for registration comply with the requirements of Act. In case of plan registration the prescribed form is Form 1. For a plan text document amendment it is Form 2. For amendment of a supporting document it is Form 3. All of these can be found under Schedule 6 of the Regulation.

Administrator must amend target benefit provisions (Section 21)

Where a pension plan has a target benefit provision, and if the preparation of an actuarial valuation report demonstrates that the expected contributions will be insufficient to pay for the targeted benefit, section 21 of the Regulation requires an amendment to the plan which adjusts the targeted benefit to be filed concurrently with the filing of that actuarial valuation report. The valuation must demonstrate that the amended plan will continue to meet the funding requirements of the Act.

Administrator may amend for temporary benefit improvements (Section 22)

The administrator of a pension plan with a target benefit provision may amend the plan text document to provide retired members with a temporary increase to monthly pensions if there are sufficient accessible actuarial excess assets to cover the cost of the increase. Temporary increases cannot result in the provision having an unfunded liability following the benefit improvement.

Superintendent may refuse to register an amendment (Section 23)

The Superintendent may refuse to register an amendment to the plan text document if

- A. In the case of a defined benefit provision,
 - the effect of the amendment would be to reduce the solvency ratio of the plan,
 - a supporting actuarial valuation that demonstrates that the plan's solvency ratio would be at least 0.9 has not been filed, and
 - any other information that the Superintendent requires has not been filed.

B. In the case of a target benefit provision,

- the effect of the amendment would be to reduce the target benefit component's going concern funded ratio,
- a supporting actuarial valuation that shows that the plan will continue to have accessible going concern excess assets has not been filed, and
- any other information that the Superintendent requires has not been filed.

Auto-Enrollment (Section 26)

Section 26 sets out the conditions under which auto-enrollment in a pension plan may occur, including information that must be provided to a member and the minimum time period a member has to opt out of the plan.

Prescribed Classes of Employment

To provide employers with more flexibility in determining the groups covered by the plan, the concept of prescribed classes for eligibility has been removed. It should be noted that all employees who meet the plan text document's conditions for membership, and who earn at least 35% of YMPE (Year's Maximum Pensionable Earnings) over a two year period, must be permitted to join the plan.

Participation Agreements (Sections 29)

The Regulation has expanded the required items to be contained in a participation agreement for a Non-Collectively Bargained Multi-Employer Plan (NCBMEP). These new items include:

- the information and records that must be provided by the participating employers to the plan administrator,
- when and how the information and records must be provided by the participating employers to the plan administrator, and
- the consequences a participating employer will face if the terms of the agreement are not met.

It should also be noted that the participation agreement must be signed by the participating employer and filed with the administrator within 60 days of the employer's commencement of participation in the plan (Section 56).

Disclosure Requirements (Sections 30 through 46)

Enhancement of disclosure requirements is a key element of the new legislation. One of the main principles outlined in the Joint Expert Panel on Pension Standards (JEPPS) 2008 report was that members need to have a clear understanding of “the pension deal” and what their responsibilities and rights are under the plan.

As a result, some new requirements have been added to existing disclosure statements, and other new statements have been added. As well, both statement and plan summary requirements have been tailored to better match the plan type and/or benefit type provided by the plan.

Plan Summary (Section 30)

The plan summary must contain a full description of what the member is entitled to under the plan, including who makes contributions and what happens on termination of membership, death or retirement. In addition, the Regulation now requires that the summary include:

- the name of the pension plan
- the Canada Revenue Agency registration number, and
- the name of and contact information for the administrator.

Section 30 also outlines the timing requirements for providing an individual with a copy of the plan summary.

Statements (Sections 31 through 44)

Four new items are required for all statements. These are:

- a statement informing members of their right to examine plan documents and records, or to obtain more information from their plan administrator,
- the name and contact information for the administrator, and if different, the name and contact information for the person to whom an application must be made in order for the member to start a pension or receive benefits from the plan,
- information regarding the obligation of a plan member to notify the plan administrator if the member’s contact information changes, and
- a statement which outlines which jurisdiction’s legislation applies to determine the benefit entitlement and rights of the plan member.

New Statements

The following new statements have been added:

- an annual statement to retired members,
- a statement to the member and non-member pension partner upon notice of marriage breakdown showing the value of the benefit to be split,
- a statement to non-member pension partner outlining the option available for payment of the benefit after filing with the administrator the matrimonial property order or agreement,
- a statement to members electing to commence phased retirement if such is permitted by the pension plan,
- a statement notifying members of changes in contribution or benefits. Adverse amendment notification that existed under the previous Regulation has been eliminated.
- notice of plan termination (notice has always been required, section 42 now outlines the minimum information that must be required with the initial notice).

Timing for disclosure requirements

Some time lines have been adjusted to make provision of disclosure items more functional.

- A plan summary must now be provided at different times depending on the plan types (see section 30).
- The requirement to provide a termination statement in a collectively bargained multi-employer plan (CBMEP) has been increased from 60 to 90 days from the date the member terminates membership.
- A retirement statement is not required to be provided until the member has made application and provided the administrator with all of the information needed for the administrator to prepare the statement. The timing for providing the summary varies and is found in Section 37 (3)(b).

Additional Information (Sections 45 and 46)

Section 45 adds to the list of persons in Section 37(1)(d) of the Act who may request additional information from the administrator. A joint annuitant and a non-member pension partner have been added to the list of persons. Section 46 lists the information that may be requested by persons listed in Section 37(1)(d) of the Act and Section 45 of the Regulation.

New to section 46 are:

- the record that authorizes the establishment of the pension plan (e.g. board resolution)
- the plan's governance policy, and
- the plan's funding policy.

Review of a Plan/Actuarial Valuation and Cost Certificate (Section 49)

A pension plan must be reviewed at least once every three years. The date of the review must be the plan fiscal year end unless the plan text document specifies otherwise. Once a review date has been set, it cannot be changes for at least 9 years.

An actuarial valuation report must also be filed (in between the triennial valuations) if an event occurs that materially affects the funding of the plan, either positively or negatively. Such an event may be a plan amendment, the sale or closure of a part of the business, a change in the negotiated contribution rate in a negotiated cost plan, or a significant drop in the market value of plan assets (herein called "cost events"). It is up to the plan administrator, with the help of the plan actuary, to determine if such an event has occurred.

Triennial actuarial valuations and cost certificates must now be filed no later than 270 days after the review date. Where a cost event has occurred between reviews, the new actuarial valuation and cost certificate is required no later than 60 days after the effective date of the cost event. Where a cost event review is done between triennial reviews, the next triennial review must be done on a review date that ensures no more than 3 years have elapsed between the cost event review date and the normal review date. For example, if the plan review date is December 31, and the cost event review is June 30, then the next triennial review would be required 2 ½ years from the June 30 review.

The requirements for the contents of an actuarial valuation report and cost certificate have been expanded to reflect the unique differences for the different types of benefit formula provisions and the different types of plans.

Elimination of the Requirement to file a partial plan termination report

With the move to immediate vesting, the concept of partial plan termination, the need to file partial termination reports and obtain the consent of the Superintendent for the disbursement of assets, has been eliminated. However, as mentioned previously, if an event changes the membership composition in such a way as to have a material impact on the funding of the plan, then a new actuarial valuation report and cost certificate must be filed.

Audited Financial Statements (Section 50)

The threshold for the filing of an audited financial statement of a pension plan that has a benefit formula provision (defined benefit or target benefit) has been increased from \$3 million to \$10 million. Audited financial statements for pension plans that have only a defined contribution provision have been eliminated. However, the Superintendent has the authority to request year-end account statements from the fundholder of a defined contribution plan.

All CBMEPs must file audited financial statements, regardless of the value of plan assets or benefit type.

Assessment of the Plan (Section 30)

A new requirement is that the administrator must review the plan on an annual basis to confirm that the plan meets the requirements of the Act, is being administered in accordance with the plan text document and is being administered and funded in accordance with the governance policy, funding policy and investment policy (as applicable). The assessment must be in writing and kept on file. It does not need to be filed with the Superintendent unless the Superintendent so requests. The first assessment is not required to be completed until the second plan year after the new Act comes into effect on September 1, 2014 and must be completed annually thereafter. For example, if the plan's next fiscal year ends on December 31, 2014, the first assessment is required to be completed in 2016.

Governance Policy (Section 53)

A governance policy is required under section 42 of the Act and must, as a minimum, cover certain topics from section 53 of the Regulation. The administrator of an existing pension plan must ensure that the policy is in place not later than August 31, 2015 (one year after the Act is proclaimed). This document does not have to be filed with the Superintendent but must be available on request. A plan that is not yet registered or is applying for registration must confirm that the governance policy is in place before the plan will be registered.

Funding Policy (Section 55)

A funding policy is required under section 44 of the Act and must, as a minimum, cover certain topics from section 55 of the Regulation. The administrator of an existing pension plan must ensure that the policy is in place not later than August 31, 2015 (one year after the Act is proclaimed). This document does not have to be filed with the Superintendent but must be available on request. A plan that is not yet registered or is applying for registration must confirm that the funding policy is in place before the plan will be registered.

Responsibilities of Fundholders / Notice of Failure to Remit / Summary of Contributions (Section 58, 69 and 70)

Section 58 provides greater detail with respect to the requirement for fundholders to advise the Superintendent when contributions are not remitted.

Fundholders are required to monitor contributions and to report to the Superintendent when the following circumstances occur:

- On a monthly basis, to report within 15 days after the remittance due date if no contributions have been received, and
- On a quarterly basis, to report within 45 days after the end of the quarter if the contributions actually received are less than those expected to be contributed.

To assist fundholders and plan administrators, a revised Schedule of Expected Contributions (Form 21 which replaces the previous Form 7) has been developed. Additionally, the Regulation provides the type of information that must be provided to the Superintendent which has been developed and will be posted to the website.

Funding of a Pension Plan and Remittance of Contributions (Sections 59 through 65 and Sections 67 and 68)

Section 59 sets out new definitions related to funding. Section 63 provides that the asset smoothing method must be acceptable to the Superintendent.

Funding of Defined Benefit Provisions (Section 60)

The rules for funding a defined benefit provision have not changed. However, plans now have the option to establish a solvency reserve account to hold special payments which are intended to amortize solvency deficiencies.

Funding of Target Benefit Provisions (Sections 2, 61 and 64)

Sections 2, 61 and 64 of the Regulation largely comprise the funding requirements for a plan with a target benefit provision. Some highlights of those provisions include:

- The Regulation requires that in addition to the calculated normal cost, an additional amount equal to $(\text{the PfAD}) \times (\text{normal cost})$ must be contributed to the plan. The additional funding starts three years after the conversion of the plan to a target benefit.
- When preparing an actuarial valuation report for a target benefit provision, Section 64 requires that the actuary must also perform stress testing for elements which the actuary considers to pose a material risk to the plan's ability to meet its funding requirements. The stress testing results must be reported in the valuation report. There is no legislated obligation to fund the plan in consideration of the results of the stress testing.

Plan Contributors' Share (Section 62)

Section 62 applies primarily to non-collectively bargained multi-employer plans (NCBMEPs) that have a benefit formula provision. It also applies to collectively bargained multi-employer plans (CBMEPS) if they are divisional multi-employer plans (see definitions above) and have a benefit formula provision. In this type of plan, each participating employer's share of the plan's assets and liabilities and the funding requirements that apply to each participating employer with respect to members who are, or were, employees of that employer must be determined.

Letters of Credit (Section 67)

Timelines around notifications, renewal and expiration of a letter of credit have been shortened from 90 days to 30 days. The Regulation also expands on details related to:

- the continued requirement to make contributions in situations where a submitted letter of credit does not meet the requirements of the Regulation, and
- the repeal of a letter of credit on full plan termination.

Remittance (Section 68)

- In the case of a jointly sponsored plan, when an actuarial valuation report reveals that an increase in contributions is required, the increase may be delayed until the second fiscal year following the review in order to give time to adjust to a cost increase. Example: if an actuarial valuation report is prepared as at December 31, 2014, the contribution increases would commence on January 1, 2016.

- When an actuarial valuation report is being prepared, a participating employer can no longer cease making contributions during the period between the review date and the filing date. Contributions must continue in the amounts and for the purposes specified under the prior actuarial valuation until the new actuarial valuation report is filed.
- It is permitted to “front end load” unfunded liability and solvency deficiency payments. For example if the amortization payment for an unfunded liability is \$1,000 per month, a payment of \$12,000 could be made in January to cover all the payments for the year. The payment must be in advance of the normal due date, and cannot extend the amortization period.

Withdrawal of Actuarial Excess or Surplus from a Pension Plan (Sections 65, 66 and 74)

Plans with target benefit provisions are not permitted to withdraw accessible actuarial excess from that component of the plan while the plan continues. Section 65 of the Regulation contains details around the withdrawal of accessible actuarial excess (for an ongoing plan) for a defined benefit provision and surplus (for a terminating plan) from a benefit formula provision. Distinctions are made for plans with and without a solvency reserve account. In the case of an NCBMEP or a divisional CBMEP whose participating employers have had their shares determined as required by section 62, the rules in sections 65 and 66 apply to each participating employer with respect to their share of excess or surplus.

Virtually all of the requirements around a return of actuarial excess and surplus under the old Regulation have been maintained in the new Regulation. New provisions which apply to the withdrawal of accessible actuarial excess include:

- No more than 20% of the accessible actuarial excess may be withdrawn in a given fiscal year, for no more than three years (or until the next actuarial valuation is filed). If accessible actuarial excess continues to exist, a new application for withdrawal based on the new amount of excess may be made. The Superintendent may revoke the consent to the continued withdrawal of accessible actuarial excess at any time.
- Accessible actuarial excess may not be withdrawn in the case of going concern excess if it would create a solvency deficiency and in the case of solvency excess if it would create an unfunded liability.
- In the case of a plan with a solvency reserve account:
 - the plan must not have an unfunded liability, and the withdrawal of the accessible actuarial excess cannot create an unfunded liability, and
 - after the withdrawal of the assets from the solvency reserve account, members must be notified of that withdrawal on the next annual statement.

- In the case of a plan that does not have a solvency reserve account:
 - the plan must not have a solvency deficiency, and the withdrawal of the accessible actuarial excess cannot create a solvency deficiency
 - member communication must be done in advance of the withdrawal.

Use of Accessible Actuarial Excess to Offset Contributions (Section 75)

Plans with target benefit provisions are not permitted to use accessible actuarial excess from that component of the plan to offset employer contributions.

Plans with defined benefit provisions may use accessible actuarial excess from that component of the plan to offset employer contributions, or in the case of a jointly sponsored plan, employer and member contributions. However, no more than 20% of the accessible actuarial excess may be used in a given fiscal year, and that excess may be used for no more than three years (or until the next valuation report is filed). Continued use will be reevaluated at the filing of each subsequent actuarial valuation. The Superintendent may stop the use of accessible actuarial excess at any time.

Allocation and Distribution of Excess Member Contributions (Section 71)

New rules have been added with respect to the allocation and distribution of excess member contributions from pension plans that have a target benefit provision.

Where a target benefit provision requires member contributions, the excess is determined based on the value of member contributions with interest and the commuted value of the target benefit (going-concern liability). The excess is then multiplied by the plan's funded ratio (to a maximum of 1.0) to determine the amount of excess to which the member is entitled.

If the member chooses a deferred benefit, the plan may choose to defer the calculation of the member excess until the date that the benefit payment is made.

Investment Requirement (Section 72)

Previous restrictions around borrowing of funds have been eliminated. Plan administrators must continue to approach borrowing from the context of the requirements, if any, under the *Income Tax Act* (Canada) and Schedule III of the federal *Pension Benefits Standards Act*.

Pension plans which require the member to make investment decisions must provide a default option which is either a balanced fund or a target date fund.

Exceptions to Locking-in (Section 76)

As a result of immediate vesting, locking-in requirements are determined solely on the basis of a threshold amount: 20% of YMPE (i.e. "small amounts"). The ability to unlock a benefit in the case of a defined benefit provision where the annual pension is less than 4% of YMPE has been eliminated.

In addition to small amounts unlocking, all plans must permit unlocking due to considerably shortened life expectancy and with, respect to a deferred member, due to non-residency.

The provision for 50% unlocking will apply only if a LIF is purchased on retirement or, in the case of a defined contribution plan, if assets are transferred to the LITB component of the plan. All of these provisions will likewise apply to Locked-in Retirement Accounts (LIRAs).

Life Income Type Benefits or LITBs (Section 78)

The LITB (formerly known as DC RIAs) is an account within a defined contribution plan that permits decumulation of the member's account from the pension plan. The payments and rules are the same as those required for a Life Income Fund (LIF) details of which are discussed later in this Update.

Marriage Breakdown (Sections 79 through 84)

New rules on the division of a pension on marriage breakdown have been developed, largely in response to situations that were not addressed under the similar rules of the old Regulation. Highlights of the changes include:

- Two disclosure statements are now required: an initial statement of the value of the benefit to be used by the parties in negotiating the split, and, once Matrimonial Property Order or Agreement (MPO/A) is filed with the plan administrator, an option statement for the non-member pension partner to determine how the benefit will be paid. When an MPO/A is filed with the plan administrator it should not specify how the non-member pension partner's share is to be distributed. Instead, distribution will occur in accordance with an election of an option as provided by the disclosure statement under section 36 of the Regulation.
- The total entitlement of a member's benefit is the commuted value of the benefit, calculated as if the member had terminated membership on the date of the marriage breakdown. In calculating the commuted value, there is no longer an obligation to assume the member would commence pension at the plan's pension eligibility date.

- Where the member has already retired when the MPO/A is submitted to the plan administrator and the pension is to be divided:
 - the pension payable to the non-member pension partner must be in the form of a single-life pension, based on the age of the non-member pension partner, or if the plan text document so provides, be transferred out of the plan;
 - if the non-member pension partner was named as the joint annuitant on the joint life pension at the member's pension commencement date, then the pension payable to the member will be determined on a single-life pension form and be based on the age of the member (the plan may, however, offer different forms to the member); and
 - the sum of the actuarial present value of each of the pensions payable to both the non-member pension partner and the plan member must be equal to the commuted value of the pension prior to the division.
- The fees that a plan administrator may charge for a division under this section have doubled from the amounts under the old Regulation.

Phased Retirement Benefits (Section 87)

Section 93 of the new Act permits a plan to provide for phased retirement as permitted under the *Income Tax Act* (Canada). Section 87 of the Regulation provides the rules for administering such a provision. Phased retirement is an optional provision.

Lump Sum Payments (Section 88)

Section 88 outlines the rules related to the provision of lump sum payments under section 94 of the Act. This is an optional provision for a pension plan and is limited to defined contribution provisions.

Manner and Extent of Transfers (Section 90)

Where the balance of a transfer deficiency is to be paid would materially impair the solvency of the plan, a plan administrator may, subject to the consent of the Superintendent, delay payment of that amount until such time as it no longer materially impairs the solvency of the plan.

Missing Persons (Sections 93 and 94)

These sections provide the rules for transferring missing member benefits to Unclaimed Property. They outline the searches that must be undertaken as well as what information must be provided to the Superintendent prior to the transfer.

Successor/Predecessor Situations (Section 95)

Rules regarding successor/predecessor situations have been expanded to better clarify what is required both in terms of information for the Superintendent and disclosure to members.

Conversion of Benefits (Section 102)

Rules regarding conversion of benefits have been expanded to better clarify what is required both in terms of information for the Superintendent and disclosure to members. Conversion of accrued defined benefits to target benefits is not permitted. A defined benefit plan may, however, move to target benefit for future service.

Locked-In Retirement Accounts - LIRAs (Sections 104 through 122)

The contract for a LIRA must continue to include the prescribed addendum found in Schedule 1 of the Regulation.

Life Income Funds - LIFs (Section 123 through 146)

The contract for a LIF must continue to include the prescribed addendum found in Schedule 2 of the Regulation.

In an effort to improve the harmonization of LIF provisions across the country and in recognition of increased life expectancy, maximum amounts payable out of the LIF have been adjusted as follows:

- to reduce administrative burdens, and to simplify LIF withdrawals, the need to prorate the maximum payment in the year of the establishment of the LIF has been eliminated; and
- the maximum withdrawal has been moved back to an age 90 factor, rather than the age 85 factor currently in use.

It should be noted that with the exception of financial hardship unlocking, provisions which are applicable to LIFs have been largely replicated as provisions applicable to LITBs under section 78 of the Regulation.

Financial Hardship Unlocking

Financial hardship unlocking will now be administered by the financial institutions who are issuers of locked-in products, rather than by the Office of the Superintendent.

The program is also scaled down to facilitate administration. Under the new rules, applicants may apply once per calendar year for each of the following reasons:

- low income
- medical expenses (including the cost of renovations)
- foreclosure on a mortgage
- rent arrears
- first and last month's rent

Termination Reports (Sections 142 and 143)

The due dates for filing a termination report for a pension plan that does not have a benefit formula component (i.e. purely defined contribution) continues to be 60 days after the effective date of the termination. For plans with a benefit formula component the due date has been changed to 120 days after the plan termination date.

Transfer Rights on Wind-up (Section 145)

Normally on plan wind-up, life annuities that match the form and amount that they were receiving from the plan must be purchased for pensioners. There are, however, circumstances in which a retired member may be given the option of portability. These circumstances are:

- the plan has a solvency deficiency and the participating employer responsible for funding that deficiency is insolvent;
- the plan administrator cannot or is not reasonably able to purchase an annuity that provides the same type of benefit and the same amount of income as the retired member has been receiving under the plan;
- the plan is a jointly sponsored plan and at the effective date of termination the plan assets are not sufficient to pay all benefits; and
- the plan provides a target benefit and at the effective date of plan termination plan assets are not sufficient to pay all benefits.

Allocation and Distribution of Assets if Assets are Insufficient (Section 146)

This section has been expanded to provide for allocation and distribution of assets where assets are insufficient to cover liabilities and the plan is jointly sponsored, the plan has a target benefit component, or the employer is insolvent as of the date of plan termination. Specific rules are set to determine how benefits will be reduced in these cases.

Administrative Penalties (Section 147)

This is a new concept set out in the Act, and section 147 lists the sections of the Act and Regulation to which administrative penalties may be applied. The maximum penalty for a corporation or administrator is \$250,000 and the maximum for an individual is \$50,000. Please note that these are maximum amounts and it is up to the Superintendent to set the penalty amount in each case dependent upon how egregious the issue is.

Alberta Employment Pension Tribunal (Sections 148 and 149)

Section 147 of the Act makes provision for the establishment of a tribunal to hear appeals on decisions of the Superintendent. Sections 148 and 149 outline the requirements for making an appeal to the tribunal and how the tribunal is appointed.

Assessment for Administration of the Act (Sections 150 through 154)

Filing fees payable on registration of a new pension plan and fees which are payable with the filing of an annual information return are changing. Rather than being a flat fee of \$7 per active member, the filing fee amount will be adjusted annually to ensure that the regulatory costs of the Superintendent's office are fully recovered.

The filing fee amount will be based on total plan membership, as opposed to the previous requirement which applied fees in respect of active members only. The minimum fee has increased from \$200 to \$250 and the maximum fee has increased from \$20,000 to \$75,000.

As total plan membership in all Alberta registered pension plans change, and/or as the revenue and expenses of the Superintendent's office change, the "per-total-member fee" will fluctuate on an annual basis. The per-total-member fee will be published on the website by September 30 of each year and will apply to plan fiscal year ends starting on October 1 of each year (the date following the annual publication of the fee).

Transitional Matters (Sections 158 through 162)

The coming into force date of the new legislation is September 1, 2014. To ease the process of moving to compliance with the legislation a number of transitional items have been provided in the Regulation. These include the following.

- Documents filed under the old Act are deemed to have been filed under the new legislation.
- A pension plan that had been submitted for registration under the old Act, but has not yet been registered, will be required to comply with the new Act in order to become registered.
- A financial institution authorized on the Superintendent's List to provide LIRA and LIF products under the old Act is deemed to be on the Superintendent's List under the new Act, until such time as the Superintendent establishes one or more new lists.

Forms (Schedule 6)

Pension Partner Waiver Forms

The number of required forms has increased substantially, largely in an attempt to clarify what is being waived. This was done in consideration of feedback from stakeholders regarding confusion where multiple circumstances were included in one form. Each form now deals with only one circumstance.

Other Prescribed Forms

In addition to the waiver forms, Schedule 6 contains the following new prescribed forms:

- Administrator's certification on registration of a new pension plan,
- Administrator's certification on amendment of the plan text document,
- Administrator's certification on amendment of supporting plan documents, and
- Application to the Alberta Employment Pension Tribunal.

For further information please contact:	
Superintendent of Pensions Alberta Treasury Board and Finance Room 402, 9515 - 107 Street Edmonton, AB T5K 2C3	Telephone: (780) 427-8322 Fax: (780) 422-4283 Internet: http://www.finance.alberta.ca
For toll-free dialling within Alberta, call 310-0000 and then dial 780-427-8322.	Sign up for electronic notifications: http://www.finance.alberta.ca/subscribe/epen/

TAB I

You are here: Home > Pensions > Legislation: Act & Regulations > Elimination of Partial Wind Ups effective July 1, 2012 - FAQ

Questions and Answers on the Elimination of Partial Wind Ups Effective July 1, 2012

Q1. Subsection 77.1(2) of the Pension Benefits Act (PBA) was introduced to eliminate partial wind ups effective July 1, 2012. What does this mean?

A1. This means that a pension plan can only be partially wound-up, if the effective date of the partial wind up is before July 1, 2012. This includes a partial wind up that was declared after July 1, 2012, but has an effective date before July 1, 2012. -06/12

Q2. What is grow-in?

A2. As of July 1, 2012, a pension plan member is entitled to grow-in to certain benefits (referred to as "grow-in benefits") if his or her pension plan provides defined benefits, and he or she ceases to be a member because his or her employment is terminated (subject to some limited exceptions) or the plan is wound up. This right entitles the eligible plan member to receive the pension beginning on the date on which the member would have been entitled to an enhanced or unreduced pension under the pension plan, if his or her employment or membership had continued to that date.

To be eligible for grow-in benefits:

- the member must be employed in Ontario at the time of wind up or termination of employment;
- the member's age plus years of continuous employment or membership in the plan at the effective date of wind up or the effective date of termination must equal at least fifty five (55); and
- the member must not be a member of a Jointly-Sponsored Pension Plan (JSPP) or a Multi-Employer Pension Plan (MEPP) that has opted out of providing grow-in benefits.

To be eligible to grow-in to bridging benefits under the plan the member must have at least ten years of continuous employment with the employer or have been a member of the plan for at least ten years.

Please note that the legislation limits the rights of a plan member who is a construction employee within the meaning of Ontario Regulation 285/01 made under the Employment Standards Act, 2000 to receive grow-in benefits.

Please also note that if a member is entitled to grow-in benefits, the dollar amount of the benefits the member will receive are based on the benefits that have been earned (or accrued) up to the relevant date.

For example, a plan may provide that a member is entitled to begin receiving an unreduced pension when he or she reaches 60 years of age. The plan also offers a bridging benefit payable from age 60 to age 65. If a member's membership is terminated when he or she is 48 and at the date of termination the member has 10 years of continuous employment or membership in the plan, the member would be eligible to begin receiving an unreduced pension when he or she is 60. This is because the member's age plus years of continuous employment or membership in the plan is equal to at least 55 on the effective date of termination. The pension the member

will receive will be based on the benefits he or she earned as at the effective date of wind up or termination and would also include the bridging benefit offered under the pension plan because the member has 10 years of continuous employment with the employer or has been a member of the plan for 10 years. -06/12

Q3. Will grow-in under section 74 of the PBA continue to apply to a partial wind up with an effective date before July 1, 2012?

A3. Subsection 77.7(4) of the PBA provides that grow-in under section 74 of the PBA still applies to members' entitlements on a partial wind up of a pension plan, if it has an effective date before July 1, 2012. -06/12


Q4. Will grow-in benefits continue to be provided to members on a full wind up?

A4. Yes. Grow-in benefits will continue to be provided to members on a full wind up of a pension plan. As was the case before July 1, 2012, to be eligible for grow-in benefits members must be employed in Ontario and their combination of age plus years of continuous employment or membership in the plan must equal at least 55 on the effective date of wind up. -06/12

Q5. In the case of a partial wind up, will plan administrators be required to purchase life annuities for plan members, former members, retired members, or other persons entitled to benefits under the pension plan, in order to distribute plan assets in connection with the partial wind up?

A5. No. Section 77.7(2) of the PBA indicates that plan administrators are not required to purchase life annuities for plan members, former members, retired members, or other persons entitled to benefits under the pension plan in order to distribute the plan's assets in connection with a partial wind up. (This is consistent with the Financial Services Tribunal's Imperial Oil decision.) However, the plan administrator may purchase annuities for this group if it wishes to do so. -06/12

More information:

 Want to view a link in a new window?
Right-click the link and select "open in new window"

FSCO Policies on Partial Wind Up of a Pension Plan

This is Exhibit I referred to in the
affidavit of Doug HeFaire
sworn before me this 16th
day of June 2016
Daniel Brown
A COMMISSIONER, ETC

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS
AMENDED
AND IN THE MATTER OF SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990, C. C-43, AS
AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF VICTORIAN ORDER OF
NURSES FOR CANADA, VICTORIAN ORDER OF NURSES FOR CANADA – EASTERN REGION AND
VICTORIAN ORDER OF NURSES FOR CANADA – WESTERN REGION

Court File No.: CV-15-11192-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding commenced at Toronto

AFFIDAVIT OF DOUG LEFAIVE
(Sworn June 16th, 2016)

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IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS
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**RESPONDING MOTION RECORD OF THE
UNITED NURSES OF ALBERTA
(Re: Pension Matters)
(returnable July 14, 2016)**

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