

June 9, 2017

Superintendent Powers – Special Orders
Pension Initiatives Unit, Pension Policy Branch
Ministry of Finance
5th Floor, Frost Building South
7 Queen's Park Crescent East
Toronto, ON
M7A 1Y7

Re: Proposed Amendment to Ontario Regulation 909: Special Orders by the Superintendent

Dear Sir/Madam:

The Canadian Institute of Actuaries (CIA) is the national, bilingual organization and voice of the actuarial profession in Canada. Its 5,000+ members are dedicated to providing actuarial services and advice of the highest quality. The Institute puts the public interest ahead of the needs of the profession and those of its members. The CIA also assists the Actuarial Standards Board (ASB) in developing standards of practice applicable to actuaries working in Canada.

We are pleased to offer the following comments on the [Proposed Amendment to Ontario Regulation 909: Special Orders by the Superintendent](#) published on April 28, 2017 (the “proposed amendment”).

We recognize that a primary concern is protecting the security of benefits for plan members. The CIA shares these concerns, since we hold the duty of the public above the needs of the profession and its members.

Nevertheless, the CIA believes that certain elements of the proposed amendment and their intended application should be clarified and/or revised.

Subsection 87(6) of the Pension Benefits Act (PBA), not yet in force, includes provisions that would provide the superintendent with particularly broad reaching power to “make an order requiring an administrator, an employer or any other person to prepare and file a new report or another prescribed type of report in respect of a pension plan if the Superintendent is of the opinion that there are reasonable and probable grounds to believe, (a) that there is a substantial risk to the security of the benefits payable under the pension plan to members, former members, retired members or other persons entitled to payments under the pension plan; or (b) that there has been a significant change in the circumstances of the pension plan.”

The proposed amendment would prescribe the following as circumstances when a special order could be made:

- i. there has been a decline in the number of members of the pension plan,

- ii. there has been a decrease in the total amount of contributions or in the amount of contributions in respect of the normal cost made to the plan by the employer or by a person or entity required to make contributions under the plan on behalf of the employer,
- iii. there has been a decrease in the going concern assets or solvency assets, or
- iv. the employer has sold, assigned or otherwise disposed of all or part of the employer's business or all or part of the assets of the employer's business to another person or entity.

While the prescribed circumstances would now be outlined, in the event that a prescribed circumstance occurs, the other requirement that must be satisfied to permit the superintendent to make an order is undefined, as the superintendent only needs to be of the opinion that there are reasonable and probable grounds to believe that as a result of a prescribed circumstance "there is a substantial risk to the security of the benefits payable under the pension plan". Also, given that one or more of the prescribed circumstances could exist with great frequency, we are also concerned that the instances in which the superintendent might make such an order could be widely and frequently applied.

Furthermore, it appears that the superintendent could order someone other than the current plan actuary to prepare a new report or another prescribed type of report in respect of a pension plan—the application of this ability is unclear, and it raises concerns about how it would be implemented in practice. We submit that the prescribed circumstances, and their intended application, be further refined, as they appear overly broad as currently written.

While the proposed amendment is specific to defining the prescribed circumstances under 87(6) of the PBA, it is our understanding that these amendments will be proclaimed into force at the same time as the provisions pertaining to special orders (i.e., section 87 of the PBA) and we are pleased to submit the following with respect to 87(4), (5), and (7) of the PBA.

Subsection 87(4) of the PBA indicates that that "the Superintendent may make an order requiring an administrator to take an action . . . if the Superintendent is of the opinion . . . the assumptions or methods used in the preparation of a report . . . in respect of a pension plan are inappropriate in the circumstances for the pension plan, **whether or not those assumptions or methods are otherwise consistent with accepted actuarial practice**" [our emphasis]. Subsection 87(5) further states that the "An order under subsection (4) may include . . . specifying the assumptions or methods or both to be used in the preparation of the new report."

Subsection 87(4) grants the superintendent the ability to reject a report prepared using assumptions or methods that are in accordance with accepted actuarial practice (AAP), and subsection 87(5) grants the superintendent the power to potentially require the use of alternate assumptions or methods that are not required to be in accordance with AAP. It is not clear what would render assumptions or methods "inappropriate in the circumstances for the pension plan". An actuary is not able to follow AAP while using assumptions or methods that they believe are inappropriate in the circumstances of the pension plan. We are concerned a

possible application of subsections 87(4) and (5) would create inconsistencies in assumptions or methods between AAP and regulatory purposes.

We also observe that subsection 87(7) of the PBA states that “An order under subsection (6) may . . . specify the assumptions or methods or both to be used in the preparation of the report”.

We submit that is preferable that, at a minimum, assumptions or methods used for regulatory purposes (e.g., when subsections 87(5) or 87(7) are applied) always conform with AAP—it would be problematic for actuaries, plan sponsors, and plan administrators if assumptions or methods were imposed that did not conform with AAP. Further, it would be desirable if general guidelines were issued that indicated the superintendent’s expectations around when assumptions or methods might be specified or be deemed inappropriate in the circumstances for the pension plan.

The CIA hopes its comments provided herein will be of value.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "David R. Dickson".

David R. Dickson, FCIA
CIA President