



Canadian  
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## **Educational Note**

# **Reflecting the Potential Impact of the Monsanto Court Decision on Actuarial Valuations**

Document 204039

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## ***EDUCATIONAL NOTE***

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*Educational Notes do not constitute standards of practice. They are intended to assist actuaries in applying standards of practice in respect of specific matters. Responsibility for the manner of application of standards in specific circumstances remains that of the practitioner.*

### **REFLECTING THE POTENTIAL IMPACT OF THE MONSANTO COURT DECISION ON ACTUARIAL VALUATIONS**

**COMMITTEE ON PENSION PLAN FINANCIAL REPORTING**

**JUNE 2004**

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## MEMORANDUM

**TO:** All Fellows, Associates and Correspondents of the Canadian Institute of Actuaries

**DATE:** June 24, 2004

**FROM:** Serge Charbonneau, Chairperson  
Pension Plan Financial Reporting Committee (PPFRC)

**SUBJECT:** **Educational Note on Reflecting the Potential Impact of the Monsanto Court Decision on Actuarial Valuations**

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The Pension Plan Financial Reporting Committee (PPFRC) has developed the attached educational note on how to reflect the potential impact of the Monsanto Court Decision in actuarial valuations.

In accordance with the Institute's policy for Due Process, this educational note on *Reflecting the Potential Impact of the Monsanto Court Decision on Actuarial Valuations* has been approved by the PPFRC, and has received final approval for distribution by the Practice Standards Council.

Section 1220 of the current Standards of Practice prescribes that "the actuary should be familiar with relevant educational notes and other designated educational material." It further explains that "a practice which the notes describe for a situation is not necessarily the only accepted practice for that situation and is not necessarily accepted actuarial practice for a different situation."

Questions should be addressed to me at my CIA online directory address.

SC

A question has arisen regarding how actuarial valuations should reflect the decision by the Ontario Court of Appeal to reject Monsanto's appeal and uphold the decision of the Divisional Court (the "Monsanto Decision"). While leave to appeal has been granted by the Supreme Court of Canada, the ramifications of this Monsanto Decision, if upheld, are substantive enough to warrant issuance of this educational note.

Briefly, the Monsanto Decision indicates that, for a partial plan termination in Ontario, surplus relating to members affected by the partial termination must be distributed. From the perspective of an actuarial valuation, this creates several contingencies, such as:

- If there has been a declared partial plan termination in the past, and the report has not yet been approved by the Financial Services Commission of Ontario (FSCO), there is a possibility that additional amounts might need to be distributed from the plan.
- If there has been a declared partial plan termination in the past, and the report has been approved by the FSCO, there is a possibility that the affected members could seek relief under the Monsanto Decision, and an additional distribution from the plan might be required.
- If there has been an event that might be construed as a partial plan termination, but was not so declared, there is a possibility that the affected members might seek a declaration by the FSCO that the event constituted a partial plan termination with the resultant potential for distribution of monies from the plan, including a share of surplus.

There are other scenarios where plans could be affected by the Monsanto Decision, and there are jurisdictions other than Ontario where a similar interpretation may need to be applied.

Even if past partial terminations could be identified, there is no clear indication regarding what the appropriate method would be for determining the amount of surplus to be distributed, and the legislation around surplus reversions to employers, where applicable, is unclear due to the consent requirement.

In the current Standards of Practice (SOP), sections 1710.04 and 1710.10 would appear to be the applicable standards that the actuary should consider in performing a valuation for a plan that might be affected by the Monsanto Decision. They state (condensed where appropriate):

**NEEDED ASSUMPTIONS**

*1710.04      The other assumptions are the assumptions about the legal, economic, demographic, and social environment on which the model and data assumptions depend.*

**NEEDED ASSUMPTIONS**

1710.10      *Here are examples of matters about which assumptions may be needed:*

*Social*

*Family composition*

*Marital status*

*Age difference between spouses*

*Judicial decisions in litigation*

Notwithstanding the issue that determination of a realistic amount for distribution is likely exceptionally difficult, as long as the Monsanto Decision may be applicable, there are circumstances where there could be a reasonable probability of an asset distribution from a pension plan. As such, the PPFRC believes that our Standards of Practice require the actuary to at least disclose in the valuation report the issue of the Monsanto Decision and the fact that, if upheld by the Supreme Court of Canada, it might have some adverse effect on the results presented in the actuarial valuation.