

CANADA
PROVINCE OF SASKATCHEWAN

IN THE COURT OF QUEEN'S BENCH
JUDICIAL CENTRE OF SASKATOON

BETWEEN:

**CROWN INVESTMENTS CORPORATION
OF SASKATCHEWAN,**

APPLICANT

AND:

**THE BENEFICIARIES OF THE SURPLUS IN
THE RETIREMENT ANNUITY FUND OF THE
CAPITAL PENSION PLAN,**

RESPONDENTS

**WRITTEN SUBMISSIONS OF THE APPLICANT RESPECTING
PROPOSED GROUPINGS OF AFFECTED MEMBERS**

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Q.B. NO. 569 OF AD 2007

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INTRODUCTION

1. At the conclusion of the last Court hearing on 15 February 2008, the Court requested, and the parties agreed, that prior to the next return date of 11 April 2008, a listing of the various groups of members and former members under the Plan be created, and provided to the Court. That is the purpose of this submission by the Applicant.

2. In considering how to group the various classes of members, one must start with the observation that there potentially could be as many groups as there are members, depending upon how "refined" or "general" the criteria are for the grouping. For example, groups could be defined by the date of joining the Plan – in which case there would be nearly as many groups as members. Or, groups could be defined by a member's equity in the Plan – in which case nearly every single member or former member would be different.

3. However, all these groupings do not have different interests: a member who joined the Plan on January 1, 1983 does not have an interest any different from a member who joined the Plan on January 2, 1983. Similarly – on the assumption that any distribution of surplus is to be pro-rata, based on one’s equity or former equity in the Plan, as opposed to an “equal division” (which seems beyond doubt) – a member with \$50,000 equity in the Plan has no positional interest different than a member who has \$100,000 equity in the Plan.

4. Further refining the “grouping” criteria could permit several other possible separations of interest: by employer, by whether the member is active or inactive, by whether one’s equity is still in the Plan or whether it has been withdrawn, etc.

5. In creating the following groupings, what the Applicant has sought to do is to create separate categories of individuals based on discrete distinctions between them. In doing so, it is important at the outset to note that not all of the interests between these groups are different, or will diverge. However, by creating (within reason) more rather than less categories, all potential differences in interest can be ascertained. Putting it another way, while the Applicant may have created too many categories, there should be no divergence of interests within any of these groups.

THE MAJOR GROUPINGS

6. The most significant issue before the Court that will cause a divergence of interests between members of the Plan in this case is whether the distribution is to all members, or only to members whose employer contributed to the surplus. This is the primary point for which directions are being sought, and the outcome of that question will determine whether everyone gets a share of the surplus, or whether only approximately 55% of the membership will share in the distribution (see Affidavit of Ken Klein sworn April 12, 2007, para. 46).

7. Thus, it seemed sensible to the Applicant to begin the first level of grouping of members on the basis of whether the member was employed by an employer who contributed to the surplus, or by an employer who did not. A further refinement of these two groups is necessary, as there are both contributing and non-contributing employers who remain in the Plan, and contributing and non-contributing employers who have left the Plan.

8. The Applicant therefore proposes four major groupings, as follows:

Group 1: Members from current¹ employers who contributed to the surplus;

Group 2: Members from current employers who did not contribute to the surplus;

Group 3: Members from former² employers who contributed to the surplus; and

Group 4: Members from former employers who did not contribute to the surplus.

9. Within each of these four major groupings, there are subsidiary groups that can be identified, and these are discussed next.

SUBSIDIARY GROUPINGS

10. Regardless of one's employer or whether that employer contributed to the surplus, each member can be further differentiated by reference to the status of their membership in the Plan.

11. A member's membership status can be one of the following four:

Sub-grouping 1: As an active member, which is defined as a member still making pension contributions to the Plan through their current employment status. An example is a current employee of SGI;

¹ i.e. Still in the Plan

Sub-grouping 2: As an inactive member. An inactive member is one who no longer makes contributions to the Plan through employment, but who still has equity within the Plan. An example would be an individual who worked for Saskatchewan Transportation Company for 15 years, but who now works in the private sector. Contributions by that member are no longer being made, but the member's equity remains in the Plan.

Sub-grouping 3: As a former member, meaning a previous member of the Plan who has transferred his/her equity out of the Plan. An example would be a member who reached retirement age, and who chose to transfer their equity to a third party annuity issuer, as opposed to choosing the pension option from the Retirement Annuity Fund.

Sub-grouping 4: As an annuitant, meaning a former active or inactive member who transferred his or her equity from the Plan to the RAF to purchase an annuity.

12. It is to be noted that not all of these sub-groups exist for each of the main groupings. For example, for Groups 3 and 4 (which deal with employers who have left the Plan), there are obviously no members in sub-group #1 (active members), as there can be no members who are still contributing via an employer who has left the Plan.

13. In summary, the Applicant suggests that there are 16 theoretical groupings of members, although there are not necessarily members in each of those groups.

POSSIBLE FURTHER DIVISIONS

14. It is possible to further divide the four sub-groups listed above. Ultimately, however, it is the Applicant's position while these further divisions may draw a valid

² i.e. Employers who have since withdrawn from the Plan

distinction between members, there is no difference in interest between them, with one exception.

15. One further possible division is amongst the active and inactive members. For each group, it could be further sub-divided to break out beneficiaries of such members (ie. the member has passed away, and a beneficiary is entitled to the interest), as well as former spouses of such members (ie. the member's interest in the Plan has been split with his/her spouse pursuant to a matrimonial property division). It is the Applicant's position that while these are different types of active and inactive members, there is no difference in interest from the larger class of active and inactive members.

16. A second possible division (one suggested by counsel for SGI et al) is on the basis of the date of one's contributions to the Plan, in relation to the surplus. More specifically, it was suggested that members could be divided according to when they joined the Plan, as follows:

1. Those who joined the Plan between 1979 and 1986, when the employers first agreed to leave the non-vested employer contributions in the Plan, and the surplus began accumulating in the Retained Employer's Contribution Account;
2. Those who joined the Plan between 1986 and 1994, when the surplus was transferred to and accumulating in the Retirement Annuity Fund; or
3. Those who joined the Plan after 1994, when the surplus was in existence but was not being enhanced by further non-vested employer contributions.

17. While these are valid demarcations, the Applicant respectfully submits that this level of division is not necessary, because there is no distinction between these classes. In the original PCS decision, these distinctions were not drawn amongst PCS employees,

although they would have existed. The Applicant submits that the most valid distinction between these three groups is whether one's employer contributed to the surplus or not, and that is the distinction already proposed by the Applicant between Groups 1 and 3 on the one hand, and Groups 2 and 4 on the other.

18. The one further division that may be necessary is amongst the annuitants, by virtue of whether the individual was an annuitant who participated in the 1993 *ad hoc* increase, or did not. It will be recalled that in 1993, a one-time increase to pensions being paid (being 60% of the CPI since the member became an annuitant) was made by CIC. The actuarial cost of this enhancement was \$560,000, and this enhancement would not have been possible had the surplus not existed in the fund. There have been no further *ad hoc* increases to the pensions since that time.

19. A question arises in this case as to whether the annuitants who received this one time increase (and therefore a "share" of the surplus) should have this enhancement taken into account. This is an issue on which the Applicant has sought directions. The argument may be made that those who received that *ad hoc* increase should have the same "set-off" from any distribution they might receive; indeed, some of the written submissions received to date make such an argument. Accordingly, because there are two groups of annuitants with different interests here – those who received the *ad hoc* increase, and those who did not – it is proposed that the annuitants be further divided on this basis.

20. In summary, the Applicant believes that the 16 theoretical groupings it proposes (together with a division amongst the annuitants) create logical distinctions that ensure that those with separate interests are separately grouped. Further divisions are indeed possible, but it is the Applicant's position that these would be distinctions without a different positional interest in this case.

21. **It is crucial to note – though perhaps obvious – that these groupings will not affect the quantum of any distribution.** That is, a member's share of the distribution

will be a mathematical determination, likely based on one's equity in the Plan – not based on which particular group they are characterized as belonging to. It is the Applicant's understanding that the purpose for this grouping is simply to ensure that the Court is aware of all potentially divergent interests.

RESPONSES RECEIVED TO DATE

22. As indicated in the Supplementary Affidavit of Ken Klein, as a result of its various notification efforts, the Applicant has received just over 100 written submissions from various members. Fortunately, the overwhelming majority of these submissions are extremely brief, and concisely set out the members' or former members' views.

23. The Applicant has created four spreadsheets, one for each group, setting out (*inter alia*) which sub-group each Respondent belongs to, as well as a short summary of their response. These spreadsheets are attached.

24. The largest number of Respondents come from Group 1 (members from current employers who contributed to the surplus), representing 55 of the 102 responses received. Members from each of the four sub-groups are represented in the responses. The Group 1 spreadsheet is found at Tab 1.

25. On behalf of Group 2 (members from current employers who did not contribute to the surplus), there were 18 responses received, including at least one from each of the four sub-groups. The Group 2 spreadsheet is found at Tab 2.

26. Regarding Group 3 (members from former employers who contributed to the surplus), 30 responses were received. As noted earlier, there are only three possible sub-groups for this group (as one cannot be an active member where the employer has left the Plan), and each of these three sub-groups are represented in the response. See Tab 3 for this table.

27. Finally, there were no responses received on behalf of those in Group 4 (see Tab 4).
28. Two other explanations of the tables are required.
29. First, each employee is numbered. The number used is simply a reference to the number assigned by the Applicant to each submission, for internal recordkeeping purposes.
30. Secondly, there is a *noto bene* column at the far right of the tables. The Applicant has flagged the submissions that are unusual or notable, or where certain assumptions have been made by the Applicant in ascribing a position to the Respondent. For example, in Group #1, member number 8 states in her submission:

I was an employee of Saskatchewan Forest Products until March, 1988. As a past employee I believe I should receive a share of the surplus.

31. Sask Forest Products is one of the employers who contributed to the surplus. As a result, the Applicant has assumed that this member favours distribution only to members whose employers contributed to the surplus (like hers), and characterized her response as such. However, because this is an assumption on the Applicant's part only, this response has been flagged.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

DATED at Saskatoon, Saskatchewan, this 9th day of April, 2008.

BAINBRIDGE JODOUIN CHEECHAM

A handwritten signature in black ink, appearing to read 'G.L. Bainbridge', written over a horizontal line.

PER: _____
GARY L. BAINBRIDGE,
Solicitors for the Applicant, Crown
Investments Corporation of Saskatchewan

This document was delivered by:

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