

FSRAFinancial Services Regulatory
Authority of Ontario**ARSF**Autorité ontarienne de réglementation
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March 30, 2021

Jo Taylor
jo_taylor@otpp.com
Plan Administrator
President & CEO
Ontario Teachers' Pension Plan
5650 Yonge Street
12th Floor
Toronto, ON M2M 4H5

Dear Mr. Taylor:

**Re: Ontario Teachers' Pension Plan
Registration Number 0345785**

Enclosed, please find the Notice of Intended Decision with respect to the above noted pension plan.

Yours truly,

A handwritten signature in black ink, appearing to read "Mitzi D'Souza".

Mitzi D'Souza
Administrative Assistant, Pensions

Enclosure

c: OM, Plan Member
Lourdes Pineda, Financial Services Regulatory Authority of Ontario

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8 (the “Act”), in particular sections 87 and 89;

AND IN THE MATTER OF the Ontario Teachers’ Pension Plan, Registration Number 0345785 (the “Plan”).

NOTICE OF INTENDED DECISION

TO: OM

Plan Member

AND TO: Ontario Teachers’ Pension Plan Board
5650 Yonge Street, 12th floor
Toronto, ON M2M 4H5

Attention: Jo Taylor
President and Chief Executive Officer

Administrator

TAKE NOTICE THAT pursuant to sections 87 and 89 of the Act, and by delegated authority from the Chief Executive Officer of the Financial Services Regulatory Authority of Ontario (the “Chief Executive Officer”), the Head, Pension Plan Operations and Regulatory Effectiveness (the “Head”) intends to refuse to make an order in respect of the Plan. Details of this intended decision are described below.

SI VOUS DÉSIREZ RECEVOIR CET AVIS EN FRANÇAIS, veuillez nous envoyer votre demande par courriel immédiatement à: contactcentre@fsrao.ca.

YOU ARE ENTITLED TO A HEARING BY THE FINANCIAL SERVICES TRIBUNAL (THE “TRIBUNAL”) PURSUANT TO SUBSECTION 89(6) OF THE ACT. A hearing by the Tribunal about this Notice of Intended Decision may be requested by completing the enclosed Request for Hearing Form (Form 1) and delivering it to the Tribunal within thirty (30) days after this Notice of Intended Decision is served on you. The Request for Hearing Form (Form 1) must be mailed, delivered, faxed or emailed to:

Address: Financial Services Tribunal
25 Sheppard Avenue West, 7th Floor
Toronto, ON
M2N 6S6

Attention: Registrar

Fax: 416-226-7750

Email: contact@fstontario.ca

TAKE NOTICE THAT if you do not deliver a written request for a hearing to the Tribunal within thirty (30) days after this Notice of Intended Decision is served on you, a refusal to make an order will be issued as indicated in this Notice of Intended Decision.

For additional copies of the Request for Hearing Form (Form 1), visit the Tribunal's website at www.fstontario.ca.

The hearing before the Tribunal will proceed in accordance with the *Rules of Practice and Procedure for Proceedings before the Financial Services Tribunal* ("Rules") made under the authority of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22. The Rules are available at the website of the Tribunal: www.fstontario.ca. Alternatively, a copy can be obtained by telephoning the Registrar of the Tribunal at (416) 590-7294, or toll free at 1-800-668-0128 extension 7294.

REASONS FOR INTENDED DECISION

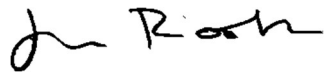
1. The Ontario Teachers' Pension Plan Board (the "Board") administers the Plan.
2. OM is a former member of the Plan.
3. OM was employed by the Toronto Board of Education (the "TBE"), a predecessor to the current Toronto District School Board (the "TDSB"), to teach evening high school credit courses from September 1980 through June 1989 (the "Alleged Service").
4. OM was not identified in the records of the Administrator as a member of the Plan with respect to the Alleged Service and neither OM nor the TBE made contributions to the Plan with respect to the Alleged Service.
5. During the time period of the Alleged Service, the terms of the Plan limited membership to persons who were employed as a qualified teacher. A person who either
 - (a) was granted a certificate of qualification or letter of standing by the Minister of Education (the "Minister"), or
 - (b) was a person in respect of whom the Minister had granted a letter of permission ("LOP") to a school board,

was deemed to be a qualified teacher so long as the certificate of qualification, letter of standing or LOP remained valid.

6. OM did not have a certificate of qualification or a letter of standing from the Minister during the time period of the Alleged Service.
7. The Board has refused to credit OM with service under the Plan in respect of the Alleged Service because neither OM nor the TDSB has provided the Board with an LOP in respect of any of the Alleged Service.
8. Section 19 of the Act requires the Administrator to administer the Plan in accordance with the terms of the Plan.
9. OM has communicated with the Board since 2006 in an attempt to get credited service for the Alleged Service. Over that period of time, OM has presented various reasons to support his request for credited service, including that
 - a. OM believed he taught under LOPs during the time period of the Alleged Service;
 - b. LOPs must have been in place during the time period of the Alleged Service because OM was employed to teach credit courses which could only be taught by a qualified teacher;
 - c. the records of the TDSB might be incomplete; and
 - d. the *Education Act* and regulations thereunder required the TBE to obtain LOPs for the Alleged Service and, therefore, the Board could presume that LOPs were in fact obtained.
10. OM appealed the decision of the Board to the Plan's Benefits Adjudication Committee (the "Committee"). A panel of six members of the Committee considered submissions from OM and the Board and denied OM's appeal. The panel found that, in the absence of documentary evidence, the Board did not have discretion to presume that LOPs were obtained. The panel held that a copy of LOPs in respect of OM's employment during the time period of the Alleged Service must be presented to the Board to ensure that the Alleged Service is pensionable.
11. In the case of *Hunte v. Ontario (Superintendent of Financial Services)*, 2013 ONFST 11 the Financial Services Tribunal held that the fundamental burden of proof that an applicant has an entitlement under a pension plan is on the applicant.
12. Neither the Act nor the Plan requires the administrator to prove that LOPs do not exist or to presume that they were obtained.
13. Subsection 87(1) of the Act states that the CEO may issue an order if the CEO is of the opinion, upon reasonable and probable grounds, that a pension plan is not being administered in accordance with the Act or the pension plan, that the pension plan does not comply with the Act, or that the administrator of the pension plan, the employer or other person is contravening the Act.

14. The allegations made by OM do not support a finding that the Plan is not being administered in accordance with the Act, the regulations thereunder or the terms of the Plan.
15. The allegations made by OM do not support a finding that the Plan does not comply with the Act and the regulations thereunder.
16. The allegations made by OM do not support a finding that the Board, the TBE or the TDSB has contravened the Act.
17. Accordingly, the preconditions for the issuance of an order under section 87 have not been met in this case and the Head proposes to refuse to issue an order under subsection 87(1).
18. Such further and other reasons as may come to my attention.

DATED at Toronto, Ontario, March 29, 2021.



Jennifer Rook
Head, Pension Plan Operations and Regulatory Effectiveness
Financial Services Regulatory Authority of Ontario

By delegated authority from the Chief Executive Officer