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Superintendent of
Financial
Services



Surintendant des
services
financiers

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, (the “PBA”);

AND IN THE MATTER OF a Notice of Intended Decision of the Superintendent of Financial Services to Refuse to Make an Order under section 87 of the PBA relating to the Rules and Regulations of the Labourers' Pension Fund of Central and Eastern Canada, Registration Number 0573188.

TO:

SM

Applicant

AND TO:

Board of Trustees of the Labourers' Pension Fund
of Central and Eastern Canada
PO Box 9002
Lakeshore West PO
Oakville ON L8K 0G1

Attention:

Mr. David D'Agostini
Administrator

Plan Administrator

NOTICE OF INTENDED DECISION

I INTEND TO REFUSE TO MAKE AN ORDER in respect of the Rules and Regulations of the Labourers' Pension Fund of Central and Eastern Canada, Registration Number 0573188, (the “Plan”) under section 87 of the PBA.

Si vous désirez recevoir cet avis en français, veuillez envoyer votre demande immédiatement à: Adjointe, audiences, Greffe, Commission des services financiers de l'Ontario, 5160 rue Yonge, boîte 85, Toronto ON M2N 6L9.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the “Tribunal”) pursuant to section 89(6) of the PBA. **A hearing before the Tribunal about this Notice of Intended Decision may be requested by completing the enclosed Request for Hearing (Form 1) and submitting it to the Tribunal within thirty (30) days after this Notice of Intended Decision is served on you.**¹ A copy of that form is included with this Notice of

Intended Decision. Additional copies can be obtained by visiting the Tribunal's website at www.fstontario.ca.

If a Request for Hearing (Form 1) is submitted to the Tribunal within thirty (30) days after this Notice of Intended Decision is served on you, sections 89(8) and 89(9) of the PBA provide that the Tribunal shall appoint a time for and hold a hearing, and by order may direct the Superintendent of Financial Services ("Superintendent") to make or refrain from making the intended decision indicated in this notice and to take such action as the Tribunal considers the Superintendent ought to take in accordance with the PBA and the regulations, and for such purposes, the Tribunal may substitute its opinion for that of the Superintendent.

IF NO WRITTEN REQUEST FOR A HEARING IS MADE within thirty (30) days after this Notice is served on you, TAKE NOTICE THAT the Superintendent will carry out the refusal pursuant to section 89(7) of the PBA.

A completed Request for Hearing form must be received by the Tribunal within 30 days after this Notice is served on you. The Request for Hearing form may be mailed, faxed or delivered to:

Financial Services Tribunal
5160 Yonge Street
14th Floor
Toronto, Ontario
M2N 6L9

Attention: The Registrar
Fax: 416-226-7750

The hearing before the Tribunal will proceed in accordance with the Rules of Practice and Procedures for Proceedings before the Financial Services Tribunal made under the authority of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22. Those Rules are available at the website of the Tribunal at: 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 ext. 7294.

REASONS FOR INTENDED DECISION:

1. SM ("Mr. M") is a retired member of the Plan who has raised the following concerns:
 - a. that the Board of Trustees of the Labourers' Pension Fund of Central and Eastern Canada ("Administrator") failed to disclose information pertaining to his family law valuation and the costs associated with it at the time of Mr. M's enrolment and again at the time of his retirement; and
 - b. that the Administrator did not have authorization to charge Mr. M a fee of \$600 plus HST for providing a statement of imputed value for family law purposes of Mr. M's pension benefits.
2. The Superintendent is of the opinion that the Plan has not contravened the requirements of either the PBA or the regulations and refuses to issue an order for the following reasons.

ADMINISTRATOR'S DISCLOSURE OBLIGATIONS:

3. The Plan is a multi-employer pension plan established on February 23, 1972, to provide retirement benefits for employees covered by the agreements negotiated between employers and the Union, and employers and the Administrator.
4. The Board of Trustees of the Labourers' Pension Fund of Central and Eastern Canada is the Administrator of the Plan.
5. Mr. M is a retired member of the Plan. His first contribution to the Plan was made on November 1, 1975, and he retired on August 1, 2013.
6. On June 10, 2013, Mr. M applied for a retirement pension by completing a "Pension Application Form" and listed his marital status as married. On October 10, 2013, Mr. M filed a retirement declaration with the Plan Administrator which was signed by Mr. M and his spouse.
7. On November 15, 2016, Mr. M updated his marital status from "married" to "separated" when he filed a "Beneficiary Designation Form" with the Administrator.
8. Mr. M alleges that he was not provided with any information by the Administrator as to how the change in his marital status would affect his pension benefits, specifically, the cost for an application for a statement of the imputed value for family law purposes.
9. The Administrator has not breached its member disclosure obligations to Mr. M under the PBA, either at the time of his enrolment in the Plan or at the time of his retirement from the Plan.
10. Section 25 of the PBA imposes an obligation upon the Administrator to disclose information in writing to each person who will be eligible or is required to become a member of the pension plan, including:
 - a. an explanation of the provisions of the pension plan that apply to the person;
 - b. an explanation of the person's rights and obligations in respect of the pension plan; and
 - c. any other information prescribed by the regulations.

The disclosure requirements in section 25 of the PBA are further elaborated in Regulation 909. Section 38 of Regulation 909 specifies the timing of when the information referred to in section 25 of the PBA shall be provided, but does not require an administrator to proactively advise a member of the existence of a fee for providing a statement of the imputed value.

REASONABLENESS OF FEE PAYABLE TO THE ADMINISTRATOR:

11. Section 44 of Regulation 909 outlines the information that the Plan Administrator is required to provide members upon retirement. The Superintendent has reviewed Mr. M's forms and confirms that the Administrator has not contravened these requirements. Neither the PBA, nor the regulations, impose an obligation upon the Administrator to provide information regarding a fee for the statement of imputed value for family law purposes to a member upon retirement. Further, there is no statutory requirement to provide this information to a plan member who notifies the administrator of a change in marital status. The obligation arises when a plan member applies for statement of imputed

value for family law purposes.

12. Neither the PBA nor the regulations impose any obligation upon the Administrator to calculate the imputed value for Mr. M, in anticipation of his change in marital status, nor was the Administrator required to disclose the fee for such a calculation, either at the time of his enrolment in the plan or at the time of his retirement. However, even if the Administrator did breach this disclosure obligation to the member, the PBA does not provide a remedy for such breach.

APPLICATION FEE:

13. Section 67.2(6) of the PBA authorizes a retired member to apply to the plan administrator for a statement of imputed value for family law purposes. The application to the administrator has to be made in accordance with section 21 of Ontario Regulation 287/11. FSCO has published FSCO Family Law Form 1 for the purpose of section 21 of the regulation.
14. Section 67.2(7) of the PBA states that the application must be accompanied by a fee, if applicable, and this fee cannot exceed the prescribed amount. The maximum fee that an administrator can charge for the statement of imputed value is set out in section 23 of the Ontario Regulation 287/11:
 1. \$200, if the pension plan provides defined contribution benefits to the member or former member.
 2. \$600, if the pension plan provides defined benefits to the member, former member or retired member.
 3. \$800, if the pension plan provides a separate defined benefit and a defined contribution benefit to the member or former member.
15. The Administrator was authorized to charge Mr. M a fee of \$600 plus HST for a total of \$678.00 under the PBA. The fee charged was justified, since his Plan provided defined benefits, and the fee does not exceed the maximum amount that can be charged under the PBA.
16. An order by the Superintendent under section 87 of the PBA, requiring an administrator to take or refrain from taking any action in respect of a pension plan, can be made only if the Superintendent is of the opinion, upon reasonable and probable grounds:
 - a. that the pension plan or pension fund is not being administered in accordance with this Act, the regulations or the pension plan;
 - b. that the pension plan does not comply with this Act and the regulations; or
 - c. that the administrator of the pension plan, the employer or the other person is contravening a requirement of this Act or the regulations.

It is the Superintendent's opinion that the conditions specified in section 87 of the PBA have not been made out. Therefore, the Superintendent refuses to issue an order to the Administrator of the Plan to refund the application fee plus HST to Mr. M.

17. Such further and other reasons as may come to the attention of the Superintendent.

DATED at Toronto, Ontario, this 18th day of March, 2019.

Original Signed By

Lester J. Wong
Deputy Superintendent, Pensions
By delegated authority from the
Superintendent of Financial Services

1 NOTE - Pursuant to section 112 of the PBA any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by regular mail and any document sent by regular mail shall be deemed to be given, served or delivered on the fifth day after the date of mailing.

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