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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, as amended (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 Trinity College Pension Plan, Registration Number 0311258.

NOTICE OF INTENDED DECISION

TO:

SD

Applicant

AND TO:

Pension Committee of the Trinity College Pension Plan

6 Hoskin Avenue
Toronto ON M5S 1H8

Attention:

Jason MacIntyre
Bursar & Chief Administrative Officer

Administrator

AND TO:

Trinity College

6 Hoskin Avenue
Toronto ON M5S 1H8

Attention:

Jason MacIntyre
Bursar & Chief Administrative Officer

Employer

I INTEND TO REFUSE TO MAKE AN ORDER that the Employer provide monetary compensation to the Applicant in connection with alleged breaches of fiduciary duty in respect

of the Trinity College Pension Plan, Registration Number 0311258 (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 before 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 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 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 (the “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 its regulations, and for such purposes, the Tribunal may substitute its opinion for that of the Superintendent.

A completed Request for Hearing (Form 1) must be received by the Tribunal within 30 days after this Notice is served on you. Forms may be mailed, faxed, or delivered to:

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

Attention: The Registrar
Fax: 416-226-7750

The hearing before the Tribunal will proceed in accordance with the Rules of Practice and Procedure 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: 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. The Plan is a contributory defined benefit pension plan registered under the PBA covering employees of the University of Trinity College in the University of Toronto.
2. The Plan is administered by a pension committee established pursuant to section 13.01 of the Plan and composed of:
 - a. one person selected to represent members engaged in active employment with the Employer;
 - b. one person selected to represent those in receipt of a pension from the Plan; and
 - c. such other persons as the Employer may determine.
3. The Applicant is entitled to a deferred pension payable from the Plan.

4. The Applicant was not represented by a union and his terms and conditions of employment were not subject to a collective agreement.
5. The Employer terminated the Applicant's employment effective May 31, 2016.
6. Pursuant to a letter from the Employer to the Applicant dated May 4, 2016 (the "Termination Letter"), the Employer continued the Applicant's salary from May 31, 2016 until December 31, 2017 (the "Salary Continuance Period").
7. The Employer agreed to pay the Applicant \$7,311.67 per month, less deductions required by law. No reference was made to any adjustments to that amount, including any cost of living adjustments ("COLA").
8. Pursuant to the Termination Letter, the Applicant continued to accrue pensionable service under the Plan until December 31, 2017.
9. The Applicant alleges that the Employer had a fiduciary duty to him pursuant to the PBA, as the administrator of the Plan.
10. The Applicant alleges that the Employer breached its fiduciary duty by:
 - a. failing to disclose, in an earlier version of the Termination Letter that was provided to the Applicant, that he was entitled to continue accruing pension benefits during the Salary Continuance Period;
 - b. failing to inform the Applicant that the salary continuance pursuant to the Termination Letter would not include COLA and, thereby, affect the final value of his pension;
 - c. failing to inform the Applicant that, because his termination of employment was stated to be "as a result of organizational change", he was entitled to a waiver of payroll deductions for pension contributions pursuant to the Employer's manual of staff policies for administrative staff; and
 - d. failing to allow the Applicant reasonable opportunity to obtain independent legal advice before he signed the Termination Letter.
11. The Applicant alleges that the result of the alleged breaches of fiduciary duty is that:
 - a. his pension will be less than it otherwise would have been, since COLA was not included, thereby adversely affecting his highest average earnings calculation under section 6.01 of the Plan; and
 - b. he was economically disadvantaged because he was required to contribute to the Plan.
12. The Applicant is seeking monetary compensation for losses the Applicant alleges he suffered as a result of breaches of fiduciary duty by the Employer. The alleged losses consist of the loss of future pension benefits, non-payment of COLA and the requirement to pay pension contributions during the Salary Continuance Period.
13. The allegations raised by the Applicant relate to the amount of salary paid to him during the Salary Continuance Period.
14. The PBA does not regulate the amount of salary paid by an employer to an employee, the manner in which a salary is negotiated or determined or the entitlements of employees upon termination of employment.

15. The Employer offered the Applicant salary continuation pursuant to the Termination Letter in its role as employer.
16. The Employer is not the administrator of the Plan and, therefore, is not subject to the duties imposed on an administrator by the PBA.
17. The Superintendent does not have jurisdiction to determine what, if any, fiduciary duty the Employer may have owed the Applicant in its role as employer. Furthermore, the Superintendent does not have jurisdiction to make an award of damages for a breach of a fiduciary duty.
18. Section 87(1) of the PBA states that the Superintendent may issue an order if the Superintendent is of the opinion, "upon reasonable and probable grounds", that a pension plan is not being administered in accordance with the PBA or the pension plan, that the pension plan does not comply with the PBA, or that the administrator of the pension plan, the employer or other person is contravening the PBA.
19. The allegations made by the Applicant with respect to the Employer do not support a finding that the Plan is not being administered in accordance with the PBA, the regulations thereunder or the terms of the Plan.
20. The allegations made by the Applicant with respect to the Plan do not support a finding that the Plan does not comply with the PBA and the regulations thereunder.
21. The allegations made by the Applicant do not support a finding that the Administrator, the Employer or any other person is contravening the PBA.
22. Accordingly, the preconditions for the issuance of an order under section 87 of the PBA have not been met in this case and the Superintendent intends to refuse to issue the requested order under section 87(1).
23. Such further and other reasons as may come to my attention.

DATED at Toronto, Ontario, this 27th day of July, 2018.

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.

2 Section 10.04 was amended once in 2004 by City of Toronto By-Law No. 243-2004. Previously, the first sentence of section 10.04 was: "Each July 1, the monthly incomes of the following Members will be increased...".