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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 sections 42 and 87 of the PBA relating to the Ontario Public Service Employees’ Union Pension Plan, Registration Number 1012046.

NOTICE OF INTENDED DECISION TO REFUSE TO MAKE AN ORDER

TO:

RB

AND TO:

OPSEU Pension Trust

1200-1 Adelaide Street East
Toronto ON M5C 3A7

Attention:

Sandra Cober
Actuarial Services & Pension Policy

Administrator of the Plan

I INTEND TO REFUSE TO MAKE AN ORDER in respect of the Ontario Public Service Employees’ Union Pension Plan, Registration Number 1012046 (the “Plan”), under sections 42 and 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 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 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 30 days after this Notice is served on you, TAKE NOTICE THAT the Superintendent will carry out the refusal to make an order pursuant to section 42 and 87 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 form 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 defined benefit contributory pension plan established for employees of the Ontario Public Service (“OPS”) who are members of the Ontario Public Service Employees’ Union (“OPSEU”). Membership in the Plan is mandatory.
2. OPSEU Pension Trust (“OPTrust”) is the administrator of the Plan.
3. RB is an employee of the OPS who is a member of OPSEU.
4. RB has been employed with the OPS since October 2002. He was permitted to suspend his contributions to the Plan on or about April 30, 2014.
5. OPTrust permitted RB to suspend his contributions based on Financial Services Commission of Ontario Policy M100-502, which states under the heading “Mandatory Membership”:

If the terms of the plan specify mandatory membership for a class of employees, all employees in that class are required to become members of the plan. However, if an employee, because of his or her religious beliefs, objects to becoming a member of the plan, he or she should be permitted to opt out even though the membership in the pension plan is mandatory.

6. After RB was permitted to suspend his contributions to the Plan, he advised OPTrust that he wished to withdraw the full value of his accrued pension benefit as a lump sum, or to withdraw a refund of his past contributions. If any interest was paid to him as part of the

transfer, he advised that he would donate it to a charity. Any transfer of these amounts would be an arrangement that would not be locked in and that would not fall within section 42 of the PBA.

7. The PBA does not permit a withdrawal of benefits in circumstances where the suspended member remains employed by an employer related to the pension plan. Section 42 of the PBA allows a “former member” to require the administrator of a pension plan to transfer an amount equal to the commuted value of the former member’s deferred pension to various alternative retirement vehicles.
8. RB is not a “former member” as defined in subsection 1.1(2) of the PBA because he has not terminated membership in the Plan, and because he is not entitled to a deferred pension under the Plan. Entitlement to a deferred pension only arises under section 37(1) of the PBA if employment has been terminated with the employer before reaching the person’s normal retirement date under the plan terms.
9. In addition, section 42 of the PBA only permits transfers to be made to certain specified retirement vehicles, none of which fall within RB’s proposed transfer as set out in paragraph 6.
10. Such further and other reasons as may come to my attention.

DATED at Toronto, Ontario, this 18th day of June, 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.

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