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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 Public Service Pension Plan, Registration Number 0208777.

NOTICE OF INTENDED DECISION

TO:

AK

Plan Member and Applicant

AND TO:

Ontario Pension Board
200 King St. W. Suite 2200
Toronto ON M5H 3X6

Attention:

Mark Fuller
President and CEO

Administrator

I INTEND TO REFUSE TO MAKE AN ORDER in respect of the Public Service Pension Plan, Registration Number 0208777 (the “Plan”) under section 87 of the PBA requiring the Ontario Pension Board (the “OPB”) to pay the Applicant such part of the commuted value of the Applicant’s pension benefits that was not transferred to the Public Service Superannuation Plan (the “Federal Plan”).

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 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, pursuant to section 89(7) of the PBA, the Superintendent will carry out the intended decision set out herein.

A completed Request for Hearing form 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 defined benefit pension plan covering members of the Ontario Public Service (the "OPS"). The OPB is the administrator of the Plan.
2. As a result of the harmonization of the provincial sales tax with the federal harmonized sales tax, the functions and employment of a number of employees of the OPS were divested from the Government of Ontario to the Canada Revenue Agency in 2012. In conjunction with this divestment, the Applicant, as well as many other OPS employees, became an employee of the Government of Canada and a member of the Federal Plan in 2012.
3. The transfer of the affected employees' pensions was governed by the *Ministry of Revenue Act*, R.S.O. 1990, c. M.33 (the "MRA"). Section 6.1 of the MRA provided that the divestment was deemed to be a transaction described in section 80(2) of the PBA but exempted the transfer from certain subsections of section 80 of the PBA, including the requirement that the Superintendent consent prior to any assets being transferred.
4. Instead, the MRA provided that the transfer was to be done in accordance with a reciprocal transfer agreement entered into between the OPB and the Government of Canada. Section 6.1(9) of the MRA contemplated that the Plan might be amended to facilitate the transfers and specifically exempted such amendments from the application of section 14 (void amendments) and section 26 (notice requirements for adverse

amendments) of the PBA.

5. The applicable reciprocal transfer agreement was the Pension Transfer Agreement between the Ontario Pension Board and the Government of Canada effective July 2, 2001, as amended (the "2001 PTA"). Members of the Plan who were affected by the divestment had the option of leaving their accrued benefits in the Plan and joining the Federal Plan for future service, or consolidating all of their benefits in the Federal Plan.
6. Where an affected member of the Plan opted to transfer the member's pension to the Federal Plan, the 2001 PTA required the OPB to pay to the Federal Plan the lesser of the OPB Transfer Amount or the Federal Transfer Amount. The OPB Transfer Amount is defined in the 2001 PTA as an amount calculated by the Plan's actuary as being equal to the value of all benefits accrued under the Plan in relation to the member as calculated using the method and assumptions in Appendix C of the 2001 PTA. Appendix C provides for the use of the greater of (i) the amount determined using the method and assumptions under Appendix C; and (ii) the commuted value of the member's benefits under the Plan at the end of the month preceding payment, in accordance with the provisions of the Plan.
7. Where the transfer amount paid by OPB to the Federal Plan "is less than the return of contributions or the commuted value that would have been calculated in respect of the eligible employee under the Plan, whether or not that employee would otherwise be entitled to that commuted value, **the difference shall be dealt with in accordance with the provisions of the Plan**" (2001 PTA, section 3, clause 9) [emphasis added].
8. There is no provision in the Plan that provides for the payment of an excess commuted value arising under the terms of the 2001 PTA or any other reciprocal transfer agreement, nor is there a more general provision that applies to have such an effect. While the MRA contemplated the possibility of a Plan amendment to facilitate the transfer, the Plan was not amended in this regard. Therefore, the payment of an excess commuted value to the Applicant is not authorized under the Plan terms and nothing in the 2001 PTA nor in the PBA requires such a payment.
9. The Applicant elected to transfer his pension to the Federal Plan in accordance with the terms of the 2001 PTA. The OPB did not pay the Applicant the excess commuted value of his pension benefits. The Applicant has requested that the Superintendent order the OPB to pay him such excess commuted value. The Applicant's position is that the OPB should have paid the excess commuted value to him in cash on the transfer of his pension from the Plan to the Federal Plan. The Applicant is of the view that since the Plan documents and the PBA are silent on the payment of excess commuted values, the OPB has a discretion to make the payment which should be exercised in favour of the members.
10. The fact that the Plan documents and the PBA are silent on the matter does not confer such a discretion on the OPB. Neither the Plan nor the PBA authorize the payment of excess commuted values to the Applicant in these circumstances, so such payment is not permitted. OPB does not have a discretion in this regard.
11. 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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