

## Disclaimer

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Superintendent of  
Financial  
Services



Surintendant des  
services  
financiers

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**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 subsection 22(1), clause 42(1)(b) and subsection 87(2) of the PBA relating to the Public Service Pension Plan, Registration Number 0208777 (the “Plan”).

**TO:**

Ontario Pension Board  
2200-200 King Street West  
Toronto ON M5H3X6

Attention:

Mark J. Fuller, President & CEO

Plan Administrator

**AND TO:**

PB

Plan Member

### NOTICE OF INTENDED DECISION

**I INTEND TO REFUSE TO MAKE AN ORDER** under subsection 22(1), clause 42(1)(b) and subsection 87(2) of the PBA that the Plan administrator, the Ontario Pension Board (“OPB”), transfer the commuted value of plan member PB’s pension benefits under the Plan to PB’s prescribed retirement savings arrangement.

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.**<sup>1</sup> 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](http://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**, subsections 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 subsection 22(1), clause 42(1)(b) and subsection 87(2) 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. They 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 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](http://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. OPB is the administrator of the Plan.
2. The Plan is a large public sector pension plan established under the *Public Service Pension Plan Act*.
3. PB is a retired member of the Plan who terminated his employment on November 25, 2015. PB was over 55 years of age, but fewer than 65 years of age, on the date of his termination.
4. PB has elected to receive an immediate early retirement pension under the Plan, which he stated was without prejudice to his request for a transfer of the commuted value of his pension benefits.
5. PB has requested that OPB transfer the commuted value of his pension benefits from the Plan into a prescribed retirement savings arrangement pursuant to clause 42(1)(b) of the PBA.
6. PB alleges that he was led by OPB to believe that he could transfer the commuted value of his pension benefits out of the Plan after he reached age 55 and relied on that belief in

his retirement planning. PB submits that OPB has breached its fiduciary duties to him under section 22 of the PBA.

7. OPB has refused to transfer the commuted value of PB's pension benefits to him on the basis that such a transfer in the circumstances is not permitted by the terms of the Plan or the provisions of the PBA.
8. Clause 42(1)(b) of the PBA gives a former member of a pension plan who is entitled to a deferred pension the right to require the administrator of the pension plan to transfer the former member's deferred pension into a prescribed retirement savings arrangement (emphasis added):

42. (1) A former member of a pension plan is entitled to require the administrator to pay an amount equal to the commuted value of the former member's deferred pension,

...

(b) into a prescribed retirement savings arrangement;

...

9. However, subsection 42(3) limits the right to a commuted value where the former member is entitled to receive an immediate pension from the pension plan unless the plan entitles the former member to the transfer:

(3) Subsection (1) does not apply to a former member who is entitled to immediate payment of a pension under the pension plan or under section 41 unless the pension plan provides such an entitlement.

10. Subsection 41(1) of the of PBA provides that a former member is entitled to receive an immediate early retirement pension under the pension plan if he or she has terminated membership in the plan and is within 10 years of his or her normal retirement date under the plan:

41. (1) A former member is entitled to elect to receive an early retirement pension under the pension plan if he or she has terminated employment and is within 10 years of reaching the normal retirement date.

11. The normal retirement date under the Plan is age 65 pursuant to subsection 15(1) of the Plan. Therefore, the early retirement date under the Plan is age 55.
12. Because PB is over the age of 55, PB is entitled (and is in fact receiving) an immediate early retirement pension under the Plan. PB was also entitled to a deferred pension under section 16 of the Plan as a result of his termination.
13. The Plan does not entitle members who have attained the age of 55 to transfer the commuted value of their pension benefits out of the Plan. Clause 16(6)(b) of the Plan only permits a member who has not attained the age of 55 years to do so:

(6) A former member who is entitled to a [deferred pension] and who has not attained fifty-five years of age... may require the commuted value of the pension to be paid, subject to section 42 of the Pension Benefits Act and to the regulations made under that Act,

...

(b) into a retirement savings arrangement prescribed under the Pension Benefits Act...

14. As a result of subsection 42(3) of the PBA, the right to a commuted value transfer under subsection 42(1) of the PBA does not apply to PB because he is entitled to receive an immediate early retirement pension under the Plan by virtue of having attained the age of 55, and the terms of the Plan do not permit the transfer of the commuted value of PB's pension benefits after the age of 55.
15. There is no evidence on which to conclude that PB was misled regarding his options on termination. OPB has not breached its duty of care under subsection 22(1) of the PBA.
16. However, even if OPB had breached its duty of care, there is no remedy provided under the PBA for such a breach. There is no provision of the PBA or the Plan that applies to permit OPB to make a commuted value transfer in breach of the PBA or the terms of the Plan.
17. Subsection 87(2) of the PBA states that the Superintendent may make an order 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.
18. The Superintendent is not of the opinion that the Plan or Plan fund is not being administered in accordance with the PBA, the regulations or the pension plan, nor that the Plan does not comply with the PBA or the regulations, nor that OPB is contravening a requirement of the PBA or the regulations in respect of its refusal to transfer the commuted value of PB's pension benefits to a prescribed retirement savings arrangement under clause 42(1)(b) of the PBA.
19. Such further and other reasons as may come to my attention.

**DATED** at Toronto, Ontario, this 14th day of June, 2016.

*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.

