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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 section 87 of the PBA relating to the Healthcare of Ontario Pension Plan, Registration Number 0346007.

### **NOTICE OF INTENDED DECISION**

**TO:**

RFL  
c/o Perley-Robertson, Hill & McDougall LLP  
1400-340 Albert Street  
Ottawa ON K1R 0A5

**Attention:**

David Migicovsky  
Partner

Solicitors to RFL and the Civic Institute of Professional Personnel

**AND TO:**

Board of Trustees of the  
Healthcare of Ontario Pension Plan  
c/o The Healthcare of Ontario Pension Plan  
1 Toronto Street, Suite 1400  
Toronto ON M5C 3B2

**Attention:**

Graham Hills  
Senior Director, Plan Services

**AND TO:**

See Schedule "A"

**I INTEND TO REFUSE TO MAKE AN ORDER** in respect of the Healthcare of Ontario Pension Plan, Registration Number 0346007 ("HOOPP"), under section 87 of the PBA or otherwise, requiring that the complainant ("RFL") be permitted to transfer his pension benefits from HOOPP to the Ontario Municipal Employees Retirement System Primary Pension Plan ("OMERS").

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](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 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. 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 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: [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 DECISION**

1. HOOPP is a defined benefit pension plan that provides pension and other benefits to Ontario healthcare sector workers and their related beneficiaries.
2. The Board of Trustees of the Healthcare of Ontario Pension Plan (“HOOPP Board”) is the administrator of HOOPP.
3. RFL is a retired member of HOOPP.

4. RFL was eligible for membership in HOOPP as a result of his employment with the Sisters of Charity of Ottawa Health Service ("Sisters of Charity") where RFL worked as a member of the Sisters of Charity's Ottawa Central Ambulance Communications Centre ("Ottawa CACC").
5. RFL's employment with the Sisters of Charity ended in 2002 when RFL became an employee of the City of Ottawa and as a consequence thereof, a member of OMERS.
6. RFL's employment with the Sisters of Charity ended due to a decision of the Sisters of Charity to cease carrying on the ambulance communications business that RFL was engaged in. It is the Superintendent's understanding that the Sisters of Charity had carried on such ambulance communications business since 1969.
7. As a result of the desire of the Sisters of Charity to cease carrying on the ambulance communications business that RFL and others were engaged in at the Ottawa CACC, the Province of Ontario, which is responsible for communication services used in dispatch ambulances under the Ambulance Act, issued a Request for Proposals in order to select a new operator to carry on the ambulance communications business that RFL and others were engaged in at the Ottawa CACC (the "RFP").
8. The City of Ottawa was the successful proponent under the RFP.
9. The Superintendent understands that the RFP required any successful proponent to provide offers of employment with similar conditions and benefits to all existing Sisters of Charity employees and that RFL accepted such an offer from the City of Ottawa effective December 1, 2002, the effective date of the transfer of the business of the Ottawa CACC to the City of Ottawa.
10. RFL was not provided with transfer rights under section 42 of the PBA following the termination of his employment with the Sisters of Charity in 2002 because the HOOPP Board was of the view that section 80 of the PBA (as it read on December 1, 2002) applied to RFL and the other affected Sisters of Charity employees.
11. Staff at the Financial Services Commission of Ontario ("FSCO") received a complaint from the solicitors representing RFL and his staff association, the Civic Institute of Professional Personnel, on July 31, 2013, stating that it was RFL's view that section 80 did not apply to the change in RFL's employment and suggesting that RFL should be permitted to transfer his pension from HOOPP to OMERS "pursuant to the transfer agreement that exists between OMERS and HOOPP" in order to receive a single pension.
12. Effective January 1, 2014, the PBA was amended to authorize the transfer of pension benefits that related to certain public sector divestments that occurred before January 1, 2014. OMERS Administration Corporation (OMERS AC) confirmed by letter to FSCO dated June 13, 2014, and copied to RFL that OMERS AC, the HOOPP Board and another public sector pension plan administrator were working together to provide eligible members with a one-time opportunity to make a transfer election pursuant to a transfer agreement made under authority of the PBA amendments and entered into between the HOOPP Board, OMERS AC and another public sector pension plan (the "Divestment Transfer Agreement") and that they anticipated that eligible members such as RFL would receive their personal information packages between August and October of 2014.
13. A Divestment Transfer Agreement personal information package was later sent to RFL by OMERS AC. Following a review of the personal information package provided to RFL,

RFL declined to exercise the transfer option provided thereunder due to the additional credited service costs involved and his solicitors indicated to FSCO that it remained RFL's position that section 80 was improperly applied.

14. Based on a review of the submissions of RFL's solicitors and those provided to FSCO by the HOOPP Board and OMERS AC and for the reasons below, the Superintendent is in agreement with the HOOPP Board and OMERS AC that section 80 of the PBA (as it read on December 1, 2002) applies to RFL and that he is not entitled to transfer rights under section 42 accordingly.
15. Sections 80(1), (2) and (3) as they read on December 1, 2002, state that:

**Continuation of benefits under successor employer**

80. (1) Where an employer who contributes to a pension plan sells, assigns or otherwise disposes of all or part of the employer's business or all or part of the assets of the employer's business, a member of the pension plan who, in conjunction with the sale, assignment or disposition becomes an employee of the successor employer and becomes a member of a pension plan provided by the successor employer,

(a) continues to be entitled to the benefits provided under the employer's pension plan in respect of employment in Ontario or a designated province to the effective date of the sale, assignment or disposition without further accrual;

(b) is entitled to credit in the pension plan of the successor employer for the period of membership in the employer's pension plan, for the purpose of determining eligibility for membership in or entitlement to benefits under the pension plan of the successor employer; and

(c) is entitled to credit in the employer's pension plan for the period of employment with the successor employer for the purpose of determining entitlement to benefits under the employer's pension plan.

**Exception**

(2) Clause (1) (a) does not apply if the successor employer assumes responsibility for the accrued pension benefits of the employer's pension plan and the pension plan of the successor employer shall be deemed to be a continuation of the employer's plan with respect to any benefits or assets transferred.

**Employment deemed not terminated**

(3) Where a transaction described in subsection (1) takes place, the employment of the employee shall be deemed, for the purposes of this Act, not to be terminated by reason of the transaction.

16. The PBA is minimum standards legislation and section 80 of the PBA is a benefit protection provision that applies to both private sector and public sector sponsored pension plans. It must be interpreted broadly in a manner that provides benefit protection to members in keeping with its intent which is to protect employees in a sale, assignment or transfer of business situation. When engaged, section 80 provides affected employees with the specified additional benefit protections, including the deemed continuation of employment (and therefore membership in the pension plan) for purposes of the PBA. While the effect of the deeming provision is that the affected employees are not subject to the PBA provisions that normally apply on termination, including the option to exercise transfer rights, section 80 benefit protections are in the larger scheme more beneficial. By

deeming employment and therefore plan membership to continue, affected employees remain entitled to count their credited service in the successor employer's pension plan for the purpose of qualifying for any enhanced benefits (such as early retirement provisions) offered under the original employer's pension plan, or alternatively to count their service in the original employer's pension plan for the purpose of qualifying for any enhanced benefits offered under the successor employer's pension plan. Without the deeming provision, transferred employees would be treated as terminated for pension plan purposes and lose valuable rights and entitlements associated with continuous pension plan membership.

17. The decision of the Sisters of Charity to cease carrying on the ambulance communications business that RFL was engaged in at the Ottawa CACC constitutes a disposition of all or part of the business and/or assets of the employer within the meaning of section 80(1). The ambulance communications business carried on by the Sisters of Charity was transferred to the City of Ottawa as a consequence of the decision of the Sisters of Charity to cease carrying on such business. Further, the transfer of employment and pension plan membership of RFL was "in conjunction" with the disposition because the ambulance communications business performed by the Ottawa CACC was to continue to be performed by RFL and the other members of the Ottawa CACC whom the Superintendent understands were all offered employment with the City of Ottawa consistent with the terms of the RFP.
18. The application of section 80(1) of the PBA is not affected by section 80(2) because the City of Ottawa has not assumed responsibility for the accrued pension benefits of RFL and other affected former employees of the Sisters of Charity.
19. Accordingly, section 80(3) of the PBA applies because the disposition falls within the protective scope of section 80(1). By operation of section 80(3), the employment of RFL is "deemed, for the purposes of this Act, not to be terminated by reason of the" divestment. RFL is therefore not entitled to transfer rights under section 42 of the PBA but is entitled to the protection offered by section 80, including the right to count credited service in OMERS for the purpose of qualifying for any enhanced benefits (such as early retirement provisions) offered under HOOPP, or alternatively to count service in HOOPP for the purpose of qualifying for any enhanced benefits offered under OMERS.
20. The Superintendent understands that the reason RFL seeks section 42 transfer rights is to facilitate the transfer of his pension benefits effective in 2002 pursuant to the transfer agreement between the HOOPP Board, OMERS AC and certain other major Ontario public sector plans (the "MOPPS Agreement").
21. The Superintendent notes however that the MOPPS Agreement, at section 2.3, provides that the MOPPS Agreement does not apply where either section 80 of the PBA applies, or "...if in the opinion of the Importing Plan or the Exporting Plan, the person transferring is or is likely to be one of more than five persons transferring as a result of an Employer's decision to add to, delete from, change, re-organize or restructure all or part of its business or assets, whether or not such activities are subject to section 80 of the Pension Benefits Act, Revised Statutes of Ontario, 1990." Therefore RFL and the other affected former employees of the Sisters of Charity may not be permitted to transfer their pension benefits, notwithstanding any determination that section 80 does not apply to them. Accordingly, a finding that section 80 does not apply in this case may materially prejudice RFL and the other affected former employees of the Sisters of Charity who would then neither be entitled to the protections of section 80 nor to consolidate their pension

entitlement pursuant to a transfer under the MOPPS Agreement.

22. The Superintendent also notes that if section 80 does not apply to RFL and the other affected former employees of the Sisters of Charity, then those affected members who elected to transfer pursuant to the Divestment Transfer Agreement, an opportunity which RFL declined, may be required to have their transfers unwound, to their potential detriment.

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

**DATED** at Toronto, Ontario, March 8, 2016.

*Original Signed By*

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

### **Schedule "A"**

**AND TO:**

OMERS Administration Corporation  
One University Avenue, Suite 400  
Toronto ON M5J 2P1

**Attention:**

Ingrid Chingcuanco  
Director, Pension Policy & Research

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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