

Content on this page has been transferred from the Financial Services Commission of Ontario (FSCO) site as a PDF for reference. Links that appear as related content have also been transferred and can be found at the end of this document.

University of Toronto Pension Plan. Registration Number 312827

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 make an Order under section 69 of the PBA, respecting University of Toronto Pension Plan. Registration Number 312827

TO: University of Toronto
215 Huron Street, 2nd Floor
Toronto ON M5S 1A2

Attention: Mr. Pierre Piche
Controller and Director of Financial

Employer and Administrator

AND TO: E.O.
Applicant

NOTICE OF INTENDED DECISION

I INTEND TO REFUSE TO MAKE AN ORDER in respect of the University of Toronto Pension Plan, Registration Number 312827, (the "Plan") under section 87 of the *PBA* requiring the University of Toronto to amend the Plan to extend an early retirement window beyond its expiry date to permit E.O. to receive an unreduced pension and other benefits on early retirement and to retire effective July 1, 2008.

I ALSO INTEND TO REFUSE TO MAKE AN ORDER in respect of the Plan under section 87 of the *PBA* requiring the University of Toronto to administer the Plan on the basis that section 6.03(b) of the Plan applies to both active members and deferred vested members of the Plan.

REASONS:

1. The University of Toronto (the "University") is the employer, sponsor and administrator of the Plan. The Plan is a defined benefit pension plan registered under the *PBA*.
2. E.O. is a former employee of the University and a deferred vested member of the Plan.
3. The University of Toronto amended the Plan to provide an early retirement window (with an enhanced early retirement pension) to members in E.O.'s class of employment who informed the University in writing of their election to retire no later than June 30, 2008.
4. E.O. was given notice of indefinite layoff prior to June 30, 2008. E.O. was eligible to retire under the early retirement window. E.O. was engaged in a grievance procedure and was

advised by the University of the choice between continuing with the grievance and taking advantage of the early retirement window. E.O. chose to continue with the grievance. E.O. did not elect in writing to retire prior to the time limit for the early retirement window as required by the terms of the Plan.

5. An early retirement window is a time-limited offering of a special early retirement benefit, payable to a member who voluntarily chooses to stop active employment and retire during the time limit. It is designed to induce voluntary early retirement. If a member decides to pursue a grievance past the time limit of the early retirement window, the member is not voluntarily choosing to stop active employment during the time limit.
6. The Superintendent's authority to make an Order or take other action with regards to a pension plan and its administrator or sponsor is derived from the *PBA*. In order for the Superintendent to make an order under section 87 of the *PBA* to require the plan administrator or any other person to take an action or refrain from taking an action in order to bring the plan or the administration of the plan into compliance with the *PBA*, the Superintendent must be "of the opinion, upon reasonable and probable grounds" that there has been a contravention of the *PBA* or the terms of the pension plan. In the present case, this requirement has not been satisfied. Therefore, the Superintendent is not authorized under the *PBA* to order the University to amend the Plan to extend the early retirement window beyond its expiry date to permit E.O. to receive an unreduced pension and other benefits on early retirement and to retire effective July 1, 2008.
7. Section 6.03(b) of the Plan permits certain active members of the plan to retire and receive an unreduced early retirement pension. The language is clear in this regard:

Voluntary Unreduced Pension

Notwithstanding paragraph (a) above, a Member who is a member of the Administrative Staff, Unionized Administrative Staff or the Unionized Staff, who has attained age 60 and whose sum of years and completed months of age and years and completed months of Continuous Service total at least 80, or who has attained age 65, shall be entitled to Retire and receive the annual pension described in paragraph (a) above, but without reduction on account of Retirement prior to the Normal Retirement Date.

8. In order to qualify for the unreduced early retirement pension under section 6.03(b), the Member must also be "a member of the Administrative Staff, Unionized Administrative Staff or the Unionized Staff". This requirement is stated in the present tense and, therefore, to be eligible, a Member must be a member of Staff as defined in the Plan at the time of retirement. Further, "Staff" is defined in section 2.38 of the Plan as "employees of the University who belong to one or more of the following categories...". The categories listed include Administrative Staff, Unionized Administrative Staff and Unionized Staff.
9. Moreover, pension entitlements for Members who terminate employment, and are not eligible to or do not elect to retire immediately, are dealt with in section 9.01 of the Plan which specifically provides that "if the Member elects to have his or her pension commence prior to the Normal Retirement Date, the pension shall not be reduced pursuant to paragraph (a) of Section 6.03 (Early Retirement Pension), but rather shall be the Actuarial Equivalent of the pension that would have been payable upon the first day of the month following the Member's Normal Retirement Date." Section 6.03(b) is an exception to the early retirement reductions set out in section 6.03(a) of the Plan. As section 6.03(a) does not apply to deferred vested members, neither does section 6.03(b).
10. By allowing only active members of the Plan to benefit from section 6.03(b), the University of Toronto is administering section 6.03(b) of the Plan in accordance with its terms and the filed documents as required by section 19 of the *PBA*.
11. The Superintendent's authority to make an Order or take other action with regards to a pension plan and its administrator or sponsor is derived from the *PBA*. In order for the Superintendent to make an order under section 87 of the *PBA* to require the plan

administrator or any other person to take an action or refrain from taking an action in order to bring the plan or the administration of the plan into compliance with the *PBA*, the Superintendent must be "of the opinion, upon reasonable and probable grounds" that there has been a contravention of the *PBA* or the terms of the pension plan. In the present case, this requirement has not been satisfied.

12. Such further and other reasons as may come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to section 89(6) of the *PBA*. To request a hearing, you must deliver to the Tribunal a written notice that you require a hearing, within thirty (30) days after this Notice of Intended Decision is served on you.¹

YOUR WRITTEN NOTICE must be delivered to:

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

Attention: The Registrar

FOR FURTHER INFORMATION on a Form for the written notice, please see the Tribunal website at www.fstontario.ca or contact the Registrar of the Tribunal by phone at 416-590-7294, toll free at 1-800-668-0128, ext. 7294, or by fax at 416-226-7750.

If you fail to request a hearing within thirty (30) days, I may carry out the intended decision as described in this notice.

DATED at Toronto, Ontario, this 4th day of April, 2012.

K. David Gordon
Deputy Superintendent, Pensions

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.