



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 Proposal of the Superintendent of
Financial Services to Refuse to Consent to Transfers of Assets under
section 81 of the *PBA* in respect of the following pension plans:

- a) Staff Pension Plan for Employees of Canadian Brotherhood of
Railway, Transport and General Workers, Registration Number
0232801 (the .CBRT Plan“)
- b) C.A.W. Canada Office Employees Pension Plan, Registration
Number 0263293 (the .Office Employees Plan“) and
- c) C.A.W. Canada Staff Employees Pension Plan, Registration
Number 0415372 (the .Staff Plan“)

TO: C.A.W. Canada
205 Placer Court
North York ON M2H 3H9

Attention: Peter Kennedy
Assistant to the Secretary-Treasurer

COPY TO: Mr. Martin Faucher
Poulin Actuarial Services, Inc.
615 Rene-Levesque Blvd. West
Suite 425
Montreal QC H3B 1P5

AMENDED NOTICE OF PROPOSAL

I PROPOSE TO REFUSE TO CONSENT to transfers of assets effective January 1, 1998, from the CBRT Plan to the Office Employees Plan, and the transfer of assets from the CBRT Plan to the Staff Plan, under section 81 of the *PBA*.

REASONS:

1. C.A.W. Canada (the Applicant), is the Employer and Administrator of the CBRT Plan, the Office Employees Plan and the Staff Plan.

2. On March 14, 2001, the Applicant filed with the Superintendent of Financial Services (the "Superintendent") an application for consent to the transfers of assets set out in paragraph 1 above, effective January 1, 1998 under section 81 of the *PBA*.

3. *Aegon Canada Inc. v. ING Canada Inc.* [2003] O.J. No. 4755 (... *Transamerica*) is a case about an asset transfer or merger from a pension plan that was subject to a trust and in a surplus position, to a pension plan that was not subject to a trust and in a deficit position. After the transfer, the actuarial surplus that derived from the trust plan was used to fund the employer's obligations to the non-trust plan. The Court of Appeal for Ontario held that this was "cross-subsidization" that was not permitted by the terms of the trust, stating:

In my view, the clear terms of the Halifax Trust [the exporting plan] precluded any part of the capital or income of the fund from being diverted to any purpose other than the exclusive benefit of the beneficiaries of the Halifax Trust, namely the former Halifax employees. The terms of [the] Halifax Trust were not altered by the transfer of assets to the NN Life Plan [the importing plan] in 1989. I do not accept the submission that NN Life's rights and obligations in relation to Halifax Trust assets were somehow affected by what counsel referred to as the "merger" of the two pension plans. NN Life was obliged by the terms of the Halifax Trust and by the terms of the undertakings it gave to the P.C.O. [Pension Commission of Ontario] to maintain the assets of the Halifax Trust separate and apart from the other assets and liabilities of the NN Life Plan. There was no amendment to the Halifax Trust. Nor is there anything "authorized or permitted by law" to allow NN Life to use the assets of the Halifax Trust for any purpose other than the benefit of its beneficiaries. . .

Simply put, as NN Life cannot call upon the assets of the Halifax Trust to satisfy liabilities owed to the non-Halifax employees, it follows that there was no basis for NN Life to refer to the Halifax Trust's surplus in determining its service costs to

account for actuarial liabilities in relation to the non-Halifax employees. The Halifax Trust obligation prevents the assets of that trust from ever being used to pay the benefits of non-Halifax employees .

(Court of Appeal for Ontario, December 8, 2003, Docket C39652)

4. Following the direction of the Ontario Court of Appeal in *Transamerica*, as part of the process for granting consent to a transfer of assets under section 81 of the *PBA* the Superintendent considers whether the transfer of assets, and their subsequent use, would result in a breach of any trust regarding the assets of the plan that is or was subject to a trust.

5. The Superintendent reviews all of the plan and trust documents for the exporting plans, including all of the predecessor plans from which any of the trust assets in the exporting plans are derived, in order to comply with the *Transamerica* directive.

CBRT Plan

6. The Applicant indicated that the Plan was established effective May 1, 1950 and has admitted that plan text versions that existed between May 1, 1950 and January 1, 1992, and insurance contracts that existed between May 1, 1950 and June 1989, are missing (the .Missing CBRT Plan Documents“). The Applicant has provided an analysis of the plan and trust documents in its possession, which includes Group Deposit Administration Policy No. GD-N31669 with North American Life Insurance dated June 1, 1989 and an extract from Amendment No.1 dated April, 1994 to the Staff Pension Plan for Employees of Canadian Brotherhood of Railway, Transport and General Workers. The Missing CBRT Plan Documents were not provided by the Applicant and not included as part of the analysis.

Office Employees Plan

7. The Applicant has provided an analysis of the Office Employees Plan and has represented that the Plan was established effective December 31, 1966. The Applicant has admitted that plan documents are missing. The following documents are missing and were not included as part of the analysis:

- trust related documents between the date of the establishment of the Plan and the trust agreement between International Union, United Automobile Aerospace & Agricultural Implement Workers of America ” UAW and Montreal Trust Company dated November 1, 1973 (the .1973 Montreal Trust“)
- some trust documents between the 1973 Montreal Trust and the Royal Trust Agreement dated December 16, 1998
- some versions of the pension plan texts between December 31, 1966 and July 1, 1986

(collectively the .Missing Office Employees Plan Documents“).

Staff Plan

8. The Applicant has provided an analysis of the Staff Plan and has represented that the Staff Plan was established effective January 1, 1966. The Applicant has admitted that plan text versions for the period January 1, 1966 and June 1, 1980 are missing and as a result were not included as part of the analysis (collectively referred to as "the Missing Staff Plan Documents").

9. Due to the large volume of missing documents including the Missing CBRT Plan Documents, the Missing Office Employees Documents and the Missing Staff Plan Documents, it is not possible to do a complete analysis of all the relevant plan documents in respect of the three pension plans to determine whether a merger of plans would be approved.

10. The Applicant has therefore not satisfied the Superintendent that the terms of the trusts for the CBRT Plan, the Office Employees Plan and the Staff Plan, and their predecessor plans and trusts from which their trust fund originates, authorize or permit the transfer of assets to the Staff Plan and the Office Employees Plan, as required by the Court of Appeal in *Transamerica*.

11. 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 Proposal 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

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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 seventh day after the date of mailing.

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 416-226-7752, toll free at 1-800-668-0128, ext. 7752, or by fax at 416-226-7750.

IF YOU FAIL TO REQUEST A HEARING WITHIN THIRTY (30) DAYS, I MAY CARRY OUT THE PROPOSAL AS DESCRIBED IN THIS NOTICE.

DATED at Toronto, Ontario, this **18th** day of **June, 2010**

K. David Gordon
Deputy Superintendent, Pensions