

**FSRA**Financial Services Regulatory  
Authority of Ontario**ARSF**Autorité ontarienne de réglementation  
des services financiers[www.fsrao.ca](http://www.fsrao.ca)5160 Yonge Street  
16th Floor  
Toronto ON  
M2N 6L9Telephone: 416 250 7250  
Toll free: 1 800 668 01285160, rue Yonge  
16<sup>e</sup> étage  
Toronto (Ontario)  
M2N 6L9Téléphone : 416 250 7250  
Sans frais : 1 800 668 0128**VIA E-Mail**

November 24, 2020

Mr. Thapa Parakram  
Manager, Pension & Retirement Plans  
Brewers Retail Inc.  
5900 Explorer Drive  
Mississauga, ON  
L4W 5L2[parakram.thapa@thebeerstore.ca](mailto:parakram.thapa@thebeerstore.ca)

Dear Mr. Parakram:

**Re: Brewers Retail Inc. Pension Plan for Salaried Employees  
Registration Number 0336099**

---

Enclosed, please find the Notice of Intended Decision with respect to the above noted pension plan.

Yours truly,

A handwritten signature in black ink, appearing to read 'Mitzi D'Souza'.

Mitzi D'Souza  
Administrative Assistant, Pensions

Enclosure

c: Mr. Ari Kaplan, Kaplan Law  
Mr. David Pahn, Financial Services Regulatory Authority of Ontario

**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the “Act”), in particular sections 14, 14.1, 18, 19, 87 and 89;

**AND IN THE MATTER OF** the Brewers Retail Inc. Pension Plan for Salaried Employees, Registration Number 0336099 (the “Plan”).

### **NOTICE OF INTENDED DECISION**

**TO:**

Brewers Retail Inc.  
5900 Explorer Drive  
Mississauga, ON L4W 5L2

Attention: Parakram Thapa  
Manager, Pension & Retirement Plans

*Employer and Administrator*

**AND TO:**

Ari Kaplan  
Kaplan Law  
393 University Avenue, Suite 2000  
Toronto, ON M5G 1E6

*Legal Counsel to certain Plan members*

**TAKE NOTICE THAT** pursuant to clause 18(1)(d) of the Act, and by delegated authority from the Chief Executive Officer of the Financial Services Regulatory Authority of Ontario (the “Chief Executive Officer”), the Head, Pension Plan Operations and Regulatory Effectiveness (the “Head”) intends to refuse to register:

- (i) Amendment No. 1 to the Plan dated December 28, 2012 (“Amendment No. 1”);
- (ii) Amendment No. 3 to the Plan dated April 1, 2015 (“Amendment No. 3”); and
- (iii) Amendment No. 9 to the Plan dated July 28, 2020 (“Amendment No. 9”).

**AND TAKE FURTHER NOTICE THAT** pursuant to clause 18(1)(g) of the Act, and by delegated authority from the Chief Executive Officer, the Head intends to revoke

**the registration of:**

- (i) section 10.7 of the**
  - a. Restated and Amended Plan text effective January 1, 1988 (the “1988 Restatement”),**
  - b. Restated and Amended Plan text effective January 1, 1992 (the “1992 Restatement”), and**
  - c. Restated and Amended Plan text effective January 1, 1998 (the “1998 Restatement”);**
  
- (ii) the words “from active service”, “from service” and “in service” in those parts of Article 10 of the**
  - a. 1988 Restatement,**
  - b. 1992 Restatement, and**
  - c. 1998 Restatement**

**that contain the phrases “retired from active service”, “retiring from service” and “dies in service”;**
  
- (iii) the phrase “or include the value of indexation” where used in subsections 10.1(2) and 10.5(1), and paragraphs 10.5(2)(a) and (b) of the 1988 Restatement;**
  
- (iv) the phrase “and the Commuted Value of such benefits shall be calculated accordingly” where used in**
  - a. paragraph 10.5(2)(e) of the 1988 Restatement, and**
  - b. subsection 10.5(e) of the 1992 Restatement and the 1998 Restatement;**
  
- (v) the phrase “or include the value of indexation” where used in**
  - a. subsections 10.1(2), 10.5(a) and 10.5(b) of the 1992 Restatement and the 1998 Restatement, and**
  - b. subsections 9.02(a) and (b) of Part 3 of the Restated and Amended Plan text effective January 1, 2010 (the “2010 Restatement”);**
  
- (vi) subsection 11.1 (4) of the 1988 Restatement, the 1992 Restatement and the 1998 Restatement;**
  
- (vii) the word “non-indexed” in the second paragraph of section 11.2 of the 1988 Restatement, the 1992 Restatement and the 1998 Restatement;**
  
- (viii) the phrase “who is accruing Continuous Service” where used in clauses 9.02(b)(ii)(A) and (B) of Part 3 of the 2010 Restatement;**

- (ix) the phrase “from the service of the Company” in paragraph 9.03(b)(ii) of Part 3 of the 2010 Restatement;
- (x) section 9.04 of Part 3 of the 2010 Restatement; and
- (xi) any other parts of the 1988 Restatement, the 1992 Restatement, the 1998 Restatement, the 2010 Restatement, or any prior or subsequent amendments that purport, or could be interpreted to purport, to restrict the indexation provisions of the Plan to members who retire from active employment with the employer that sponsors the Plan.

**AND TAKE FURTHER NOTICE THAT pursuant to clauses 87(1)(a), (b) and (c) of the Act, and by delegated authority from the Chief Executive Officer, the Head intends to order the employer and administrator of the Plan to**

- (i) immediately begin administering the indexation provisions of the Plan so that they apply to all years of credited service prior to 2010 regardless of whether a member retires from active employment with the employer that sponsors the Plan, and without regard to the current and previous parts of the Plan for which registration is refused or revoked;
- (ii) as soon as reasonably possible, but no later than 6 months from the date of the order, recalculate and adjust all pension benefit payments, survivor/death benefit payments, disability benefit payments and commuted value payments paid under the Plan since 1974, so as to apply the indexation provisions of the Plan to all years of credited service prior to 2010 regardless of whether the member, former member or retired member retired from active employment with the employer that sponsors the Plan, and without regard to the current and previous parts of the Plan for which registration is refused or revoked;
- (iii) prepare a work plan and timetable for recalculating and adjusting payments in accordance with the order and file it with the Chief Executive Officer no later than 45 days from the date of the order; and
- (iv) prepare an amended and restated Plan text that complies with the order and the Act no later than 6 months from the date of the order, and apply for registration of that text in accordance with section 12 of the Act.

**SI VOUS DÉSIREZ RECEVOIR CET AVIS EN FRANÇAIS**, veuillez nous envoyer votre demande par courriel immédiatement à: [contactcentre@fsrao.ca](mailto:contactcentre@fsrao.ca).

**YOU ARE ENTITLED TO A HEARING BY THE FINANCIAL SERVICES TRIBUNAL**

**(THE “TRIBUNAL”) PURSUANT TO SUBSECTION 89(6) OF THE ACT.** A hearing before the Tribunal about this Notice of Intended Decision may be requested by completing the enclosed Request for Hearing Form (Form 1) and delivering it to the Tribunal within thirty (30) days after this Notice of Intended Decision is served on you. 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).

**TAKE NOTICE THAT if no written request for a hearing is delivered to the Tribunal within thirty (30) days after this Notice of Intended Decision is served on you,** an order to refuse registration will be issued as described in this Notice of Intended Decision.

In order to request a hearing, a completed Request for Hearing Form (Form 1) must be delivered to the Tribunal within thirty (30) days after this Notice of Intended Decision is served. The form must be mailed, delivered, faxed, or emailed to:

Address: Financial Services Tribunal  
5160 Yonge Street  
14th Floor  
Toronto ON M2N 6L9

Attention: Registrar

Fax: 416-226-7750

Email: [contact@fstontario.ca](mailto:contact@fstontario.ca)

The hearing before the Tribunal will proceed in accordance with the *Rules of Practice and Procedure for Proceedings Before the Financial Services Tribunal* (“Rules”) made under the authority of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, as amended. The 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 extension 7294.

## **REASONS FOR INTENDED DECISION**

### **Background**

1. The Plan is a single employer, combination defined benefit and defined contribution pension plan that has been registered in Ontario since July 1, 1945.
2. Brewers Retail Inc. (“Brewers”) is the employer and administrator with respect to the Plan.
3. The 1964 amended and restated Plan text was amended effective January 1, 1974 to add a new subsection 5(e) that provided an annual escalation (“Indexation”) for defined benefit pensions paid to employees who were D.E.S. Servicemen and Non-Bargaining Unit Clerical:

*5 Each Member who retires on his normal retirement date shall be entitled to receive an annual basic pension commencing on normal retirement date and payable monthly for life, subject to the provisions of Section 13, equal to the sum of the amounts determined as follows:...*

*(e) A Member retiring after January 1, 1974, shall have his basic pension benefit accrued at retirement subject to an annual escalation based on the increase in the Consumer Price Index. The adjustment will be made on January 1 each year, based on a 12 month percentage increase as of the prior September 1 to a maximum of 2%.*

Section 13 of the Plan addressed death benefits after retirement.

4. The term "Member" was defined as follows:

*"Member" shall mean an Employee who is a participant of the Plan, as is hereafter provided, and who has completed the proper application form, and has authorized the Employer to deduct the required member contributions hereunder.*

5. Section 11 of the Plan set out the entitlement of a Member on termination of employment other than for disability, death or retirement:

#### *11. TERMINATION OF EMPLOYMENT*

*Upon termination of employment with the Employer other than by disability, death or retirement, a Member shall be entitled to a benefit as hereafter set forth:*

*(a) Termination With Less Than One Year of Membership:*

*Upon termination with less than one year of membership in the Plan a Member shall receive a refund of his own contributions without interest.*

*(b) Termination With at Least One Year of Membership but Less Than Ten Years of Continuous Service:*

*Upon termination with at least one year of membership in the Plan but less than ten years of Continuous Service with the Employer, a Member shall receive a deferred pension, commencing at his normal retirement date, based on his required and additional voluntary contributions, if any, with Accumulated Interest.*

*(c) Termination After at Least 10 Years of Continuous Service:*

*Upon termination with at least ten years of Continuous Service with the*

*Employer, a Member shall receive a deferred pension benefit commencing at his normal retirement date, such benefit to be the full amount of pension accrued to him under the terms of the Plan and/or the 1945 Plan in respect of his service with the Employer up to his date of termination.*

6. Section 11 primarily addressed vesting with respect to employer contributions. Once vested in those contributions, a member was entitled to the “*full amount of pension accrued*” which was to be determined pursuant to section 5. There is no basis for reading the basic pension formula in section 5 as applying to those members who terminate employment under section 11 but not reading the Indexation provision (subsection 5(e)) as applying to such members.
7. Effective January 1, 1983, the Plan was amended to add a new subsection 5(e), in the part of the Plan governing management staff, to provide Indexation for those employees:

*5(e) Effective January 1, 1983, Members who retire on and after January 1, 1974, shall have their basic pension benefit accrued at retirement subject to an annual escalation based on the increase in the Consumer Price Index. The adjustment will be made on January 1 each year, based on a 12 month percentage increase as of the prior September 1 to a maximum of 2%.*

8. Like the Indexation amendments made in 1974, the Indexation amendments made in 1983 did not restrict Indexation to members who retired from active employment with Brewers.
9. The Plan was amended effective July 1, 1963 to prohibit any amendments that would “*adversely affect any rights acquired by a Member at that time...*”
10. That restriction on the amendment powers remained essentially unchanged until the 2010 Restatement which included the following restriction on amendments:

*... provided that no such action shall adversely affect any benefit accrued immediately prior to the time such action is taken, except as provided in section 7.02.*

Section 7.02 of the Plan refers to amendments required to maintain pension plan registration.

11. In December 1990, Brewers filed the 1988 Restatement. That restatement included an amendment that added a new section 10.7 and a new subsection 11.1(4) that both purported to restrict Indexation to those members who retired from active service with Brewers.
12. Section 10.7 and subsection 11.1(4) were retained in the 1992 Restatement and the 1998 Restatement.

13. Various parts of Article 10 of the 1988 Restatement contained the words “*retired from active service*”, “*retiring from service*” and “*dies in service*”, purportedly to qualify who was entitled to Indexation and to deny it to members who terminated employment but did not retire from active service with Brewers. That same wording also was used in the 1992 Restatement and the 1998 Restatement.
14. Various parts of Article 10 of the 1988 Restatement contained words that purported to exclude the value of Indexation from the calculation of benefits accrued and payable in respect of members who terminated employment but did not retire from active service with Brewers. The same or similar wording also was used in the 1992 Restatement, the 1998 Restatement and the 2010 Restatement.
15. The 1988 Restatement included an amendment to add section 11.2 regarding the entitlement to a deferred annual pension for employees who had at least 24 months of continuous service but terminated employment before age 55. The second paragraph of section 11.2 stated that the deferred annual pension “*shall be a non-indexed annual pension*”, purportedly to deny Indexation to members who terminated employment but did not retire from active service with Brewers. That same wording also was used in the 1992 Restatement and the 1998 Restatement.
16. In December 2009, Brewers filed an amendment to terminate Indexation for pension benefits accrued with respect to service on and after January 1, 2010. That amendment was registered by the Financial Services Commission of Ontario (“FSCO”) and is not in dispute.
17. In January 2011, Brewers filed the 2010 Restatement.
18. Section 9.04 of Part 3 of the 2010 Restatement purported to deny Indexation to members who terminated employment for any reason other than death or retirement from active service with Brewers.
19. Various parts of Article 9 of Part 3 of the 2010 Restatement contained words that purported to exclude the value of Indexation from the calculation of benefits accrued and payable in respect of members who terminated employment but did not retire from active service with Brewers.
20. In December 2012, Brewers filed Amendment No. 1 to add a new Section 9.05 to Part 3 of the Plan text, purportedly to eliminate Indexation for pension benefits and pre-retirement death benefits in respect of credited service prior to 2010 for members who
  - a. were not eligible to retire as of January 1, 2013 and who retired on or after January 1, 2015; or
  - b. die while in the service of Brewers on or after January 1, 2015.
21. The Notice of Amendment with respect to Amendment No. 1, dated December 27, 2012, that was sent to Plan members by Brewers stated as follows:



*Members who are eligible to retire as of January 1, 2013 will receive indexation on their pensions accrued up to December 31, 2009 whether they retire before or after January 1, 2015. Also, current retirees are not affected by these changes.*

22. In early 2013, FSCO received complaints about Amendment No. 1 from certain Plan members.
23. From 2013 to 2018, Brewers, legal counsel for certain members of the Plan (“Kaplan”) and FSCO staff had discussions about a possible settlement agreement in respect of Amendment No. 1 that would be subject to court approval through a class action proceeding.
24. In November 2015, Brewers filed Amendment No. 3 (effective April 1, 2014) that purported to extend the eligibility for Indexation to Plan members who were not eligible to retire as of January 1, 2013 but who became eligible on or before December 1, 2014 and who retired on or before December 1, 2015.
25. Amendment No. 3 purported to amend section 1.11 of Part 1 of the Plan text but did not purport to amend Section 9.05 of Part 3 of the Plan text.
26. From January 2016 to December 2019, in apparent anticipation of court approval of a proposed settlement, Brewers filed Amendments No. 4, 5, 6, 7 and 8 to provide *ad hoc* increases of 0.9% to that portion of benefits in pay related to pensionable service prior to 2010.
27. In December 2018, FSCO provided a letter to Brewers and Kaplan expressing support for a proposed settlement in respect of Amendment No. 1 that would be subject to court approval through a class action proceeding (the “FSCO Letter”).
28. Effective June 8, 2019, the Financial Services Regulatory Authority of Ontario (“FSRA”) assumed regulatory duties for registered pension plans from FSCO. In that month, Brewers and Kaplan approached FSRA to request a letter confirming that FSRA would adopt the position taken by FSCO in the FSCO letter.
29. In October 2019, FSRA informed both Brewers and Kaplan, in writing, that it would not provide the confirmation letter they had requested.
30. FSRA informed Brewers and Kaplan that it had significant concerns about the process followed in this matter, particularly in light of the relatively recent decision of the Financial Services Tribunal (the “FST”) in the case of *General Motors of Canada Limited v. Ontario (Superintendent Financial Services)*, 2014 ONFST 11, (the “CAMI Decision”) which addressed the issue of the ability to remove indexation benefits from a pension plan. In the CAMI Decision, the FST held that indexation is a pension benefit that accrues over the course of plan membership.

31. FSRA informed Brewers and Kaplan that, based on the CAMI Decision and a review of the terms of the Plan, the proposed settlement would be tantamount to a contracting out of the minimum standards set out in the Act. Furthermore, FSRA expressed the opinion that the court did not have the inherent jurisdiction to waive statutory minimum standards.
32. FSRA staff had subsequent discussions with Brewers and Kaplan into the winter of 2020.
33. In July 2020, Brewers filed Amendment No. 9 which purports to
  - a. rescind all previous Indexation provisions,
  - b. approve all prior Indexation payments, and
  - c. provide *ad hoc* increases in accordance with Brewers' past administrative practice.

## **The Act**

### ***Void Amendment***

34. Clauses 14 (1)(a) and (b) of the Act provides as follows:

*14 (1) An amendment to a pension plan is void if the amendment purports to reduce,*

*(a) the amount or the commuted value of a pension benefit accrued under the pension plan with respect to employment before the effective date of the amendment;*

*(b) the amount or the commuted value of a pension or a deferred pension accrued under the pension plan; ....*

35. The term "pension benefit" is defined in subsection 1(1) of the Act as follows:

*"pension benefit" means the aggregate monthly, annual or other periodic amounts payable to a member, former member or retired member during his or her lifetime to which he or she will become entitled under the pension plan or to which, upon his or her death, any other person will become entitled;*

36. The term "pension" is defined as a pension benefit that is in payment.
37. The term "deferred pension" is defined as a pension benefit the "*payment of which is deferred until the person entitled to the pension benefit reaches the normal retirement date under the pension plan.*"
38. Indexation payments are part of the "aggregate, monthly, annual or other periodic amounts payable" under the Plan.

39. The *Pension Benefits Act, 1987* (the “PBA 1987”), which came into force on January 1, 1988, also had a void amendment provision similar to section 14 of the Act.

### ***Gradual and Uniform Accrual***

40. Subsection 11(1) of the PBA 1987 also provided that a pension plan was not eligible for registration unless it provided for the accrual of pension benefits in a gradual and uniform manner.
41. Section 105 of the PBA 1987 provided that every pension plan registered prior to the coming into force of the PBA 1987 was deemed to be registered when the PBA 1987 came into force.
42. Section 19 of the PBA 1987 required every employer who maintained a pension plan on the date the PBA 1987 came into force to amend the pension plan to conform with the PBA 1987. The 1988 Restatement was filed in purported compliance with this requirement.
43. The “gradual and uniform” requirement of subsection 11(1) of the PBA 1987 was continued and is set out in section 14.1 of the Act, which requires a pension plan to provide for the accrual of pension benefits in a “*gradual and uniform manner*”.
44. Therefore, the right to a pension benefit cannot be subject to one or more triggering events, such as retiring from active employment with the employer that sponsors pension plan.

### ***Refusal or revocation of registration***

45. Clauses 18(1)(d) and (g) of the Act provide as follows:

18 (1) The Chief Executive Officer may,

...

(d) refuse to register an amendment to a pension plan if the amendment is void or if the pension plan with the amendment would cease to comply with this Act and the regulations;

...

(g) revoke the registration of a part of an amendment that does not comply with this Act and the regulations.

### ***Administration***

46. Subsection 19(1) of the Act requires a pension plan administrator to administer the pension plan in accordance with the Act. Subsection 19(2) of the Act provides that this requirement applies regardless of whether a pension plan is amended to comply with the Act.

47. Subsection 19(3) of the Act requires a pension plan administrator to ensure that the pension plan is administered in accordance with documents filed with the CEO, such as plan texts and amendments. However, subsection 19(4) specifies that this requirement does not enable an administrator to administer a pension plan contrary to the Act.
48. Section 20 of the PBA 1987 set out the same requirements as described in paragraphs 46 and 47.
49. Subsection 87(1) of the Act authorizes the Chief Executive Officer to make orders with respect to administration that contravenes the Act:

*87 (1) Subject to section 89, the Chief Executive Officer may make an order requiring an administrator or any other person to take or refrain from taking any action in respect of a pension plan or a pension fund if the Chief Executive Officer 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, the Authority rules or the pension plan;*

*(b) that the pension plan does not comply with this Act, the regulations and the Authority rules; or*

*(c) that the administrator of the pension plan, the employer or the other person is contravening a requirement of this Act, the regulations or the Authority rules.*

### **Registration of Amendments**

50. Amendments No. 1, 3 and 9 are void pursuant to clauses 14(1)(a) and (b) of the Act because they purport to eliminate Indexation with respect to credited service prior to 2010.
51. Section 9.04 of Part 3 of the 2010 Restatement purports to restrict the accrual of Indexation in a manner that is not gradual and uniform. Consequently, it does not comply with section 14.1 of the Act. It also is void pursuant to clause 14(1)(a) of the Act with respect to any Indexation accrued prior to the effective date of the 2010 Restatement.
52. The words “who is accruing Continuous Service” and “from the service of the Company” were used in parts of Article 9 of the 2010 Restatement purportedly to qualify who was entitled to Indexation in a manner that was not gradual and uniform. Consequently, the use of those words in that manner renders those parts of Article 9 non-compliant with the Act. Furthermore, the words render those parts of Article 9 void with respect to any Indexation accrued prior to the effective dates of the 2010 Restatement.

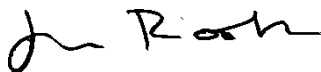
53. Section 10.7 and subsection 11.1(4) of the 1988 Restatement, the 1992 Restatement and the 1998 Restatement (collectively, the “Prior Restatements”) purported to restrict the accrual of Indexation in a manner that was not gradual and uniform. Consequently, section 10.7 and subsection 11.1(4) did not comply with the PBA 1987 or the Act.
54. The Indexation amendments made in 1974 and 1983 did not restrict Indexation to members who retired from active employment with Brewers. Therefore, section 10.7 and subsection 11.1(4) of the Prior Restatements also were void with respect to any Indexation accrued prior to the date they came into effect.
55. The words “*from active service*”, “*from service*” and “*in service*” were used in parts of Article 10 of the Prior Restatements purportedly to qualify who was entitled to Indexation in a manner that was not gradual and uniform. Consequently, the use of those words in that manner rendered those parts of Article 10 non-compliant with the PBA 1987 and the Act. Furthermore, the words rendered those parts of Article 10 void with respect to any Indexation accrued prior to the effective dates of the Prior Restatements.
56. Various words used in parts of the 2010 Restatement and the Prior Restatements purported to exclude the value of Indexation from the calculation of benefits accrued and payable and, therefore, were contrary to the gradual and uniform requirement in the Act and the PBA 1987. Furthermore, the words rendered those parts of the 2010 Restatement and the Prior Restatements void with respect to any Indexation accrued prior to the effective dates of the restatements.
57. The word “*non-indexed*” was used in the second paragraph of section 11.2 of the Prior Restatements, purportedly to apply Indexation in a manner that was not gradual and uniform. Consequently, the use of that word in section 11.2 rendered that part of the section non-compliant with the PBA 1987 and the Act. Furthermore, the word rendered that part of section 11.2 void with respect to any Indexation accrued prior to the effective dates of the Prior Restatements.
58. To the extent that there are words in the Prior Restatements, the 2010 Restatement, or any prior or subsequent amendments that purport, or could be interpreted to purport, to restrict Indexation to members who retire from active employment with Brewers, the use of such words is not compliant with the gradual and uniform requirement in the Act and the PBA 1987.

### **Administration of the Plan**

59. As noted above, various Plan amendments and restatements purported to restrict Indexation to those members who retired from active service with Brewers.
60. Pursuant to the terms of the Plan, the Act and the PBA 1987, Plan members accrued rights to Indexation during the course of their employment prior to 2010.

61. The amendments that purported to restrict Indexation to those members who retired from active service with Brewers did not comply with the amendment restrictions in the Plan since those amendments adversely affected the rights to Indexation accrued by members pursuant to the 1974 and 1983 Indexation amendments.
62. The various Plan amendments that purported to remove and restrict Indexation were contrary to the Act and the PBA 1987 because they did not provide for gradual and uniform accrual and were void to the extent they purported to reduce the value of benefits accrued by members pursuant to the Indexation provisions.
63. Based on representations from Brewers, Indexation has only been given to those members who retired from active service with Brewers. In this respect, Brewers has not administered the Plan in accordance with its terms or in accordance with the Act and the PBA 1987.
64. By filing various Plan amendments and restatements purporting to restrict or revoke Indexation accrued by members of the Plan, and by not administering the Plan to provide for the gradual and uniform accrual of Indexation, Brewers has contravened the Act and the PBA 1987 in its capacity as the administrator of the Plan.
65. Currently, Brewers is contravening the Act to the extent that it is not providing for Indexation in the calculation and payment of pension benefits, survivor/death benefits, disability benefits and commuted values (a) with respect to the credited service prior to 2010, and/or (b) for members who did not retire from active service with Brewers.
66. Such further and other reasons as may come to my attention.

**DATED** at Toronto, Ontario, November 24, 2020.



---

Jennifer Rook  
Head, Pension Plan Operations and Regulatory Effectiveness

By delegated authority from the Chief Executive Officer