

FSRAFinancial Services Regulatory
Authority of Ontario

Ontario

ARSFAutorité ontarienne de réglementation
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October 19, 2021

Attn: Evan Howard
ehoward@caatpension.ca
Vice President, Pension Management
The Colleges of Applied Arts & Technology Pension Plan
2900 – 250 Yonge Street
P. O. Box 40
Toronto, ON M5B 2C7

**Re: Colleges of Applied Arts and Technology Pension Plan
Registration Number 0589895**

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: JA, Complainant
C: David Pahn, Financial Services Regulatory Authority of Ontario

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

AND IN THE MATTER OF the Colleges of Applied Arts and Technology Pension Plan, Registration Number 0589895 (the “Plan”).

NOTICE OF INTENDED DECISION

TO: JA

Complainant

AND TO: Board of Trustees of the Colleges of Applied Arts and Technology Pension Plan
250 Yonge Street, Suite 2900
P.O. Box 40
Toronto, ON M5B 2L7

Attention: Evan Howard
Vice President, Pension Management

Administrator

TAKE NOTICE THAT pursuant to sections 87 and 89 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 make an order in respect of the Plan. Details of this intended decision are described below.

SI VOUS DÉSIREZ RECEVOIR CET AVIS EN FRANÇAIS, veuillez nous envoyer votre demande par courriel immédiatement à: 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 by 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. The Request for Hearing Form (Form 1) must be mailed, delivered, faxed or emailed to:

Address: Financial Services Tribunal
25 Sheppard Avenue West, 7th Floor

Toronto, ON
M2N 6S6
Attention: Registrar

Fax: 416-226-7750

Email: contact@fstontario.ca

TAKE NOTICE THAT if you do not deliver a written request for a hearing to the Tribunal within thirty (30) days after this Notice of Intended Decision is served on you, a refusal to make an order will be issued as indicated in this Notice of Intended Decision.

For additional copies of the Request for Hearing Form (Form 1), visit the Tribunal's website at www.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. The Rules are available at the website of the Tribunal: 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

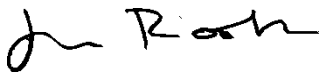
1. JA claims that his grandfather, HCA, was a member of a predecessor pension plan to the Plan (the "Predecessor Plan").
2. HCA died in 1985.
3. JA purports to have legal authority to act on behalf of HCA's estate for the following reasons: *"I was appointed the executor of Harold Charles Ardron's Estate in this matter by all his beneficiaries in succession. Further, I have been formally appointed as his executor with the Canada Revenue Agency."*
4. JA alleges that HCA was never paid his pension benefit from the Predecessor Plan.
5. JA claims that HCA worked for the Telegram Publishing Co. Ltd. ("Telegram") from 1925 until he retired in 1973.
6. JA claims that HCA applied for a pension from the Predecessor Plan on July 2, 1973.
7. In support of his claims and allegations, JA provided the Administrator and the Financial Services Regulatory Authority of Ontario ("FSRA") with a variety of documents and submissions including:

- (a) documents intended to prove that HCA was a member of a union (“Mailers Union”) that was not precluded from participation in the Predecessor Plan;
 - (b) a booklet from The Crown Life Insurance Company (“Crown Life”) providing information about both a group retirement annuity plan (effective January 1, 1955) and a group life insurance plan which booklet indicates that full-time employees were eligible to join the annuity plan, unless such employees were precluded from participation by actions or decisions of the union (the “Booklet”); and,
 - (c) a copy of a group life insurance certificate from Crown Life (effective date May 1, 1964) in respect of HCA as an employee of Telegram (the “Insurance Certificate”).
8. The submissions of JA to FSRA rely on the various documents provided to support JA’s claim that HCA was a member of the Predecessor Plan and entitled to a pension benefit from the Plan.
9. The documents and submissions provided to FSRA by JA do not support a finding of fact that HCA was a member of the Predecessor Plan and entitled to a pension benefit from the Plan.
10. The Booklet purportedly applied to Telegram employees and indicated that those hired after January 1, 1955 were required to participate in the group retirement annuity plan described in the Booklet, but those who were hired prior to that date were eligible to join the plan (other than those precluded from participation in the Plan by actions or decisions of bargaining units).
11. According to JA’s submissions, HCA was a member of a bargaining unit (the Mailers Union) and was hired prior to 1955.
12. JA has not produced any documentary evidence to prove that HCA elected to join the group retirement annuity plan to which the Booklet relates.
13. JA provided a document to support his claim that HCA applied for a pension but that document
- a. is not completed or dated;
 - b. is not signed by HCA; and
 - c. refers to an “*old age pension of the International Typographical Union*” and not a Telegram pension plan.
14. JA has not produced any documentary evidence that proves HCA:
- (a) was a member of the Predecessor Plan;

- (b) applied for a pension from the Predecessor Plan on July 2, 1973 (or at any other time); or
 - (c) questioned, challenged, or followed up with the administrator of the Predecessor Plan about a pension entitlement between 1973 and 1985.
- 15. In an email to the Administrator dated December 2, 2020, JA stated that HCA had contributed to the Predecessor Plan. However, JA has not provided any documentary evidence to prove that HCA made contributions (e.g., pay stubs or similar records).
- 16. In the same December 2, 2020 email, JA acknowledged that the Insurance Certificate only confirmed that HCA participated in the group life insurance plan, but JA went on to allege that “*apparently the employer required his certificate in order to apply for his pension/annuity and the certificates were not returned leaving him only with his insurance certificate*”.
- 17. JA has not provided any documentary evidence to prove that HCA was provided with a certificate of participation in the Predecessor Plan, that such a certificate was submitted by HCA to his employer, or that such a certificate was requested or obtained by HCA’s employer pursuant to an application for a pension.
- 18. The Administrator, the Torstar Group of Companies (the successor to the Telegram), The Canada Life Assurance Company (which subsequently acquired Crown Life), and the successor to the Mailers Union all have responded to JA’s inquiries by searching their records and confirmed to JA that they found no record of pension plan participation or entitlement in respect of HCA.
- 19. The Administrator has informed JA that it cannot pay any benefit in respect of HCA without evidence proving that HCA participated in the Predecessor Plan or is entitled to a benefit under the Plan.
- 20. In the case of *Hunte v. Ontario (Superintendent of Financial Services)*, 2013 ONFST 11 the Financial Services Tribunal held that the fundamental burden of proof that an applicant has an entitlement under a pension plan is on the applicant.
- 21. Subsection 87(1) of the Act states that the CEO may issue an order if the CEO is of the opinion, upon reasonable and probable grounds, that a pension plan is not being administered in accordance with the Act or the pension plan, that the pension plan does not comply with the Act, or that the administrator of the pension plan, the employer or other person is contravening the Act.
- 22. The information provided by JA and obtained by the CEO does not support a finding that the Plan is not being administered in accordance with the Act, the regulations thereunder or the terms of the Plan.
- 23. The information provided by JA and obtained by the CEO does not support a finding that the Plan does not comply with the Act and the regulations thereunder.

24. The information provided by JA and obtained by the CEO does not support a finding that the Administrator, the employer, or any other person has contravened the Act.
25. Accordingly, the preconditions for the issuance of an order under section 87 have not been met in this case and the Head proposes to refuse to issue an order under subsection 87(1).
26. Such further and other reasons as may come to my attention.

DATED at Toronto, Ontario, October 19, 2021.



Jennifer Rook
Head, Pension Plan Operations and Regulatory Effectiveness
Financial Services Regulatory Authority of Ontario

By delegated authority from the Chief Executive Officer