

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act"), in particular sections 87

AND IN THE MATTER OF the Ontario Public Service Employees' Union Pension Plan, Registration Number 1012046 (the "Plan").

NOTICE OF INTENDED DECISION

TO:

Board of Trustees of the OPSEU Pension Trust
1 Adelaide St. E., Suite 1200
Toronto ON M5C 3A7

Attention: Dani Goraichy
Chief Risk Officer and Senior Vice President Actuarial Services and
Plan Policy

Administrator

AND TO:

BC

Applicant

TAKE NOTICE THAT pursuant to section 87 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, intends to refuse to make an order to pay a spousal survivor pension to BC in respect of the Plan.

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 SECTION 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.

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 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

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. 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. BC is the former spouse of a retired member of the Plan, WGC (the "Plan Member").
2. The Plan is a defined benefit contributory pension plan established for employees of the Ontario Public Service. Members of the Ontario Public Service Employees' Union ("OPSEU") are required to participate in the Plan.
3. The Board of Trustees of the OPSEU Pension Trust ("Administrator") is the legal administrator of the Plan.
4. The Plan Member retired from the Plan and started receiving pension payments in 1999 as a retiree without a spouse.
5. The Plan Member and BC started living together in November 1991. Later, they separated and lived separate and apart at the time the Plan Member retired. After four years apart, the Plan Member and BC reconnected and on July 3, 2004, the Plan Member and BC were married.

6. Section 44 of the Act requires that a pension plan pay a survivor pension to the spouse of a retired member only if that person is a spouse on the date that the payment of the first instalment of the pension is due. Article 10.13 of the Plan mirrors this requirement. The Plan will pay survivor benefits to a member's spouse if, on the first day of the month in which payment to the member is to commence, the member had a spouse who is not living separate and apart from the member.
7. The Act does not require pension plans to offer post-retirement spousal survivor benefits to partners who are living separate and apart when the first instalment of the pension is due, even if the partners subsequently marry.
8. Article 10.15 of the Plan gives members the option to elect a survivor pension for a person who became a spouse after the pension payments started. This option is only effective if a direction is delivered to the board and the member's pension is reduced to pay for the benefit pursuant to Article 10.15(2).
9. The Plan Member wrote to the Plan on September 29, 2004, to notify the Plan that he had married and to instruct the Plan to add BC to his health benefit coverage.
10. The Plan Member wrote to the Plan on February 25, 2008, to add BC as a beneficiary for any benefits that may be payable after his death.
11. The Administrator advised the Plan Member on March 3, 2008, that post retirement survivor benefits are not conferred automatically on BC since BC was not an eligible spouse when the Plan Member started receiving his pension.
12. The Administrator needed to confirm BC's eligibility to be added a new spouse for a survivor pension and asked for copies of the Plan Member's marriage certificate, proof of birth and a Certificate of Health.
13. The Plan Member did not submit any documentation. Therefore, the Administrator did not provide a Survivor Pension Election Form to the Plan Member.
14. The Plan Member died on December 17, 2018.
15. The Administrator determined that BC is not entitled to a survivor pension because she and the Plan Member did not provide the documentation required to enroll BC as a new spouse for post retirement survivor benefits and did not have his retirement pension actuarially reduced to fund the survivor benefit. This determination is consistent with the Plan terms and the Act.

16. An order under section 87 of the Act requiring an administrator to take any action in respect of a pension plan can only be made if the Chief Executive Officer or his delegate is of the opinion, upon reasonable and probable grounds:
 - a. that the pension fund is not being administered in accordance with the Act, the regulations or the pension plan;
 - b. that the pension plan does not comply with the Act and the regulations; or
 - c. that the administrator of the pension plan, the employer or the other person is contravening a requirement of the Act or the regulations.
17. The Head, Pension Plan Operations and Regulatory Effectiveness, through delegated authority from the Chief Executive Officer, refuses to issue an order to require the Administrator to pay BC a spousal survivor pension because the conditions specified in section 87 of the Act have not been established. The Plan Member's pension benefits were administered in accordance with the Act and the Plan terms.
18. Further, the Head, Pension Plan Operations and Regulatory Effectiveness, through delegated authority from the Chief Executive Officer, refuses to issue an order to require the Administrator to provide BC with survivor health benefits because this is beyond the scope of the jurisdiction of the Financial Services Regulatory Authority of Ontario.
19. Such further and other reasons as may come to my attention.

DATED at Toronto, Ontario, *December 19.*, 2019.



Joseph Shiner
Head, Pension Plan Operations and Regulatory Effectiveness

By delegated authority from the Chief Executive Officer