

**FSRA**Financial Services Regulatory  
Authority of Ontario**ARSF**Autorité ontarienne de réglementation  
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January 25, 2021

Mr. Robin Doobay  
Director, Rewards  
Labatt Brewing Company Limited  
299-207 Queens Quay West  
Toronto, ON  
M5J 1A7[robin.doobay@labatt.com](mailto:robin.doobay@labatt.com)

Dear Mr. Doobay:

**Re: Labatt Breweries Retirement Pension Plan for Salaried Employees  
Registration Number 0344093**

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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: AB, Plan Member  
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 Labatt Breweries Retirement Plan for Salaried Employees, Registration Number 0344093 (the “Plan”).

### NOTICE OF INTENDED DECISION

**TO:** AB

*Former Member*

**AND TO:** Labatt Brewing Company Limited  
299-207 Queen’s Quay West  
Toronto ON M5J 1A7

Attention: Robin Doobay  
Director, Rewards

*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

- (i) refuse to make an order to require the Administrator to apply the 2013 ITA Limit (defined below) to calculate AB’s pension benefit; and
- (ii) order the Administrator to apply the Correct 1991 ITA Limit (defined below) to calculate AB’s pension benefit and recalculate and adjust all pension benefit payments made to AB since October 1, 2013.

**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](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 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  
5160 Yonge Street  
14th Floor, Box 85  
Toronto ON M2N 6L9

Attention: Registrar

Fax: 416-226-7750

Email: [contact@fstontario.ca](mailto: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, an order will be issued as described 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](http://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](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. AB was employed by the Labatt Brewing Company Limited and terminated employment on September 1, 1991.
2. On or about November 10, 1991, AB elected to receive a deferred pension from the Plan.
3. AB selected the following option on the option form provided to him in 1991 (the "1991 Option Form"):

*I elect to receive a deferred monthly pension. Revenue Canada maximum rules may restrict my pension to \$584.53 monthly payable at age 65 with 60% continuing to my spouse. The pension I will receive under the plan is actuarially adjusted depending on annuity factors in effect, my marital status and my spouse's age, if applicable at the time I retire."*

4. The Plan text effective January 1, 1987 (the “1987 Plan Text”) was in force at the date of AB’s termination of employment.
5. Since AB’s employment was terminated, Article 12 of the 1987 Plan Text applies.
6. Subparagraph 12.02(a)(ii) of the 1987 Plan Text provides that AB is entitled to “*retirement income ... commencing at normal retirement date*” in an amount “*computed ... using the member’s date of termination of employment as his date of determination*”.
7. Section 2.13 of the 1987 Plan text defines the “*date of determination*” as the date “*as of which*” a benefit is to be calculated under the Plan.
8. The amount computed in accordance with subparagraph 12.02(a)(ii) of the 1987 Plan Text is subject to a limit imposed by section 9.01 of the 1987 Plan Text which is based on the *Income Tax Act* maximum pension limit (the “ITA Limit”):

*In no event shall the total amount of retirement income payable at an annual rate under the plan or any other pension plan of a participating company upon termination of employment, death, retirement or discontinuance of the plan exceed the lesser of (a) and (b) where:*

- a) *Is two percent (2%) of the average of the best consecutive three (3) years’ remuneration of the member, not exceeding thirty-five (35), of pensionable service which is acceptable for such purposes under the revenue rules, and*
  - b) *Is \$1,715 multiplied by the number of years, not exceeding thirty-five (35), of pensionable service which is acceptable for such purposes under the revenue rules, or such other higher amount as may be acceptable under revenue rules.*
9. AB’s pension benefit, as computed in accordance with subparagraph 12.02(a)(ii) of the 1987 Plan Text, exceeded the ITA Limit. Therefore, in accordance with section 9.01 of the 1987 Plan Text, the Administrator reduced the amount payable to AB by applying an ITA Limit of \$1,715.
  10. The actual ITA Limit in force at the date AB terminated employment was a higher amount, i.e., \$1,722.22 (the “Correct 1991 ITA Limit”).
  11. AB was given a retirement benefit statement on or about August 9, 2013 (the “2013 Statement”) which includes the following statement:

*Please note that your entitlements are limited by the maximum pension that can be paid from a registered pension plan under the Income Tax Act of Canada, based on the limits in effect on your date of termination of membership.*

12. The 2013 Statement shows the “Date of Benefit Calculation” as October 1, 2013 and the “Date of Termination of Membership” as September 1, 1991.
13. The 2013 Statement also includes a statement that AB’s benefits are subject to “*the terms of the Plan at your Date of Termination of Membership*”.
14. AB commenced receiving a pension as of October 1, 2013, his normal retirement date under the Plan.

### **Relief requested**

15. AB claims that the pension benefit paid to him is too low because the Administrator did not use the ITA Limit of \$2,696.67 in force on his normal retirement date (the “2013 ITA Limit”) to calculate his pension entitlement.
16. AB takes the position that the applicable ITA Limit is not determined by the date of determination specified in the 1987 Plan Text (i.e., the date of termination of employment) but should be the ITA Limit in force at the time of his retirement.
17. AB has asked the Chief Executive Officer to order the Administrator to calculate his pension benefit using the 2013 ITA limit and that the difference between the amount so calculated and the amount calculated previously by the Administrator be paid to AB retroactive to his October 1, 2013 normal retirement date.
18. In the alternative, AB has asked the Chief Executive Officer to order the Administrator to calculate his pension benefit using the Correct 1991 ITA Limit and that the difference between the amount so calculated and the amount calculated previously by the Administrator be paid to him retroactive to his October 1, 2013 normal retirement date.

### **Section 87 of the Act**

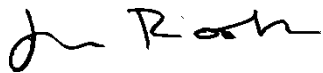
19. Subsection 87(1) of the Act states that the Chief Executive Officer may issue an order if the Chief Executive Officer is of the opinion, upon reasonable and probable grounds, that a pension plan is not being administered in accordance with the Act or the pension plan, that the pension plan does not comply with the Act, or that the administrator of the pension plan, the employer or other person is contravening the Act.
20. The allegations made by AB with respect to the failure of the Administrator to use the 2013 ITA Limit do not provide reasonable and probable grounds for issuing an order under subsection 87(1) of the Act.
21. The ITA Limit imposed by section 9.01 of the 1987 Plan Text applies to the “*total amount of retirement income payable...upon termination of employment*” to AB. The amount of retirement income payable must be calculated in accordance with subparagraph 12.02(a)(ii) of the 1987 Plan Text.

22. Subparagraph 12.02(a)(ii) of the 1987 Plan Text requires that the amount of AB's "retirement income" be computed using his date of termination of employment as the date of determination.
23. Since the date of determination is defined in section 2.13 as the date "as of which" a benefit is to be calculated, AB's benefit was to be calculated as of the date of termination of his employment (i.e., September 1, 1991).
24. Section 9.01 of the 1987 Plan Text provides that "in no event" shall the amount of retirement income payable to AB upon termination of employment exceed the ITA Limit.
25. Since the ITA Limit applies to the amount of retirement income payable to AB upon termination of employment, and that amount payable must be calculated by reference to AB's date of determination, the applicable ITA Limit is that which was in force on AB's date of determination (i.e., September 1, 1991).
26. Paragraph 9.01(b) of the 1987 Plan Text specifies that the applicable ITA Limit is \$1,715 or "*such other higher amount as may be acceptable under revenue rules.*" Those words do not explicitly or implicitly require that the 2013 ITA Limit be used to compute AB's benefit. Instead, those words acknowledge that for any given date of determination, the ITA Limit in force at the time may be greater than \$1,715.
27. The "Date of Benefit Calculation" on the 2013 Statement does not support a conclusion that the Administrator was required, either expressly or implicitly, to use the 2013 ITA Limit to compute AB's pension benefit.
28. Since the records of the Administrator indicated that AB had a spouse at his date of determination, the pension entitlement described in the 1991 Option Form was a joint and survivor pension. Therefore, at the date of AB's retirement, the Administrator was required to confirm the 1991 benefit calculation in light of the facts in 2013, particularly whether AB still had a spouse.
29. The deferred pension option that AB selected in the 1991 Option Form included the following statement:

*"The pension I will receive under the plan is actuarially adjusted depending on annuity factors in effect, my marital status and my spouse's age, if applicable at the time I retire."*
30. The 1987 Plan Text does not expressly require the Administrator to use the ITA Limit in force at the date of retirement regardless of the date of determination prescribed by the terms of the Plan.
31. Based on a plain, ordinary and contextual reading of the 1987 Plan Text as a whole, the Administrator did not fail to comply with the terms of the Plan or the Act by not using the 2013 ITA Limit.

32. The failure of the Administrator to use the Correct 1991 ITA Limit in calculating AB's pension does provide reasonable and probable grounds for issuing an order under subsection 87(1) of the Act since the Plan is not being administered in accordance with its terms.
33. The words "*such other higher amount as may be acceptable under revenue rules*" in paragraph 9.01(b) of the 1987 Plan Text require that the Correct 1991 ITA Limit be used to compute AB's benefit since that was the ITA Limit in force as of AB's date of determination.
34. Such further and other reasons as may come to my attention.

**DATED** at Toronto, Ontario, January 25, 2020.



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Jennifer Rook  
Head, Pension Plan Operations and Regulatory Effectiveness

By delegated authority from the Chief Executive Officer