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Superintendent of
Financial
Services



Surintendant des
services
financiers

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 Notice of Intended Decision of the Superintendent of Financial Services to Refuse to Make an Order under section 87 of the PBA relating to the Nortel Networks Managerial and Non-Negotiated Pension Plan, Registration Number 0342048

NOTICE OF INTENDED DECISION

TO:

IC

Member

AND TO:

Morneau Shepell Ltd.
895 Don Mills Road, Suite 700
Toronto, ON M3C 1W3

Attn: Regulatory Services – 9th Floor (Nortel Managerial)

Administrator

I INTEND TO REFUSE TO MAKE AN ORDER in respect of the Nortel Networks Managerial and Non-Negotiated Pension Plan, Registration Number 0342048, (the “Plan”) under section 87 of the PBA, requiring Morneau Shepell Ltd. to calculate the amount of the lump sum payment to the Nortel LIF on the basis of a joint and survivor pension or requiring the Plan Administrator to otherwise recalculate IC’s pension.

Si vous désirez recevoir cet avis en français, veuillez envoyer votre demande immédiatement à: Adjointe, audiences, Greffe, Commission des services financiers de l’Ontario, 5160 rue Yonge, boîte 85, Toronto ON M2N 6L9.

YOU ARE ENTITLED TO A HEARING before the Financial Services Tribunal (the “Tribunal”) pursuant to section 89(6) of the PBA. **A hearing before the Tribunal about this Notice of Intended Decision may be requested by completing the enclosed Request for Hearing (Form 1) and submitting it to the Tribunal within 30 days after this Notice of Intended Decision is served on you.**¹ **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.

If a Request for Hearing (Form 1) is submitted to the Tribunal within 30 days after this Notice of Intended Decision is served on you, sections 89(8) and 89(9) of the PBA provide that the Tribunal shall appoint a time for and hold a hearing, and by order may direct the Superintendent of Financial Services (the “Superintendent”) to make or refrain from making the intended decision indicated in this notice and to take such action as the Tribunal considers the Superintendent ought to take in accordance with the PBA and its regulations, and for such purposes, the Tribunal may substitute its opinion for that of the Superintendent.

IF NO WRITTEN REQUEST FOR A HEARING IS MADE within 30 days after this Notice is served on you, TAKE NOTICE THAT the Superintendent will not make an order pursuant to section 87 of the PBA.

A completed Request for Hearing form must be received by the Tribunal within 30 days after this Notice is served on you. Forms may be mailed, faxed, or delivered to:

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

Attention: The Registrar
Fax: 416-226-7750

The hearing before the Tribunal will proceed in accordance with the Rules of Practice and Procedure for Proceedings before the Financial Services Tribunal made under the authority of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22. Those 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 ext. 7294.

REASONS FOR PROPOSAL

1. The Nortel Networks Limited Managerial and Non-Negotiated Pension Plan, Registration No. 0342048 (the “Plan”), is administered by Morneau Shepell Ltd. (the “Plan Administrator”) pursuant to an appointment by the Superintendent necessitated by the insolvency of Nortel Networks Limited.
2. The Plan was a multi-jurisdictional, single-employer, contributory, defined benefit pension plan.
3. The Plan was wound up effective October 1, 2010.
4. IC is a retired member of the Plan.
5. IC accrued service under the Plan in both Ontario and Quebec. IC retired from the Plan in 2000 in Ontario, and, as such, the PBA is the relevant legislation regarding the determination of IC’s entitlement from the Plan.
6. IC was married to RP when he retired.
7. IC began receiving a joint and survivor pension from the Plan after he retired. On the date that the first instalment of IC’s pension was due, RP was an eligible spouse under section 44 of the PBA because they were married, not living separate and apart and RP did not sign a statutory waiver. At that time, RP had a vested contingent interest in the survivor pension.

8. After his retirement, IC moved to Quebec.
9. In 2003, IC separated from his spouse RP.
10. The Superior Court of Quebec granted a Divorce Order on October 20, 2008 (the “2008 Divorce Order”), on consent.
11. The 2008 Divorce Order stated: “Each party shall be deemed the sole and complete owner of those assets (of every sort, description and location) which are presently and may in the future be registered/deposited in the name of such party or which are or shall be in such party’s possession (including, without in any way limiting the generality of the foregoing, all contributions made and to be made by such party into any private pension plan) and the other party shall have absolutely no right or interest therein”.
12. RP has now reportedly left the country.
13. IC wished to exercise the option to transfer the commuted value of his pension into a Nortel Life Income Fund (“Nortel LIF”) as provided for under section 102(2) of the PBA and Ontario Regulation 10/13. The entitlement to this transfer is subject to prescribed conditions. One of these conditions is that any person who is entitled to a survivor benefit under the pension plan must consent to the transfer. As a result, the Plan Administrator required that IC obtain the consent of RP to the transfer of the commuted value of the pension into a Nortel LIF.
14. IC has not obtained the consent of RP to the transfer.
15. IC took the position that RP had relinquished her right to a survivor pension under the Plan in the 2008 Divorce Order. IC requested that the Superintendent order the Plan Administrator to transfer the commuted value of the pension into a Nortel LIF.
16. The Superintendent indicated that while the 2008 Divorce Order provided that IC and RP make no claims against the pensions of the other, it did not provide that either party gave up any pension entitlements that they already had. As RP’s entitlement to a survivor pension had crystalized when the first pension payment was due, she did not lose this entitlement in the 2008 Divorce Order.
17. IC applied for a second order from the Superior Court of Quebec. On August 30, 2017, on an unopposed motion, the Superior Court of Quebec granted the order (the “2017 Order”). The Court ordered that RP “has no rights, titles nor interest in [the Plan] as she gave up any rights that she may have had in application of articles 8, 10 and 14 of the Consent agreement signed by the Parties on the 25th of October, 2007”.
18. The Plan Administrator has accepted the 2017 Order and has recalculated IC’s pension as a life-only pension. As a result, the commuted value of the pension has decreased substantially.
19. IC objects to the recalculation of his pension. He has indicated that he wants: “full rights to his Joint & Survivor Pension entitlement and management as he sees fit”.
20. IC has also objected to the calculation of his pension benefits and the commuted value of his pension. IC believes that the wrong service split between Ontario and Quebec was used by the Plan Administrator in calculating his pension, that the wrong funded ratio was

used, and that other pension benefit calculations were performed incorrectly.

21. As noted above, the Plan Administrator, acting in its fiduciary capacity, has determined that the 2017 Order extinguishes RP's entitlement under the Plan. As a result, the Plan Administrator has made the determination that IC is entitled to a life-only pension under the Plan terms.
22. The Superintendent accepts the determination of the Plan Administrator that the 2017 Order has extinguished RP's entitlement to a survivor pension and that IC's pension must be recalculated as a life-only pension in accordance with the Plan terms.
23. The Superintendent accepts that the pension benefits and the commuted value of IC's pension have been properly calculated in accordance with the PBA and the terms of the Plan text.
24. For the reasons outlined above and for such further and other reasons as may come to his attention, the Superintendent does not intend to make an order pursuant to section 87 of the PBA requiring the Plan Administrator to calculate the amount of the lump sum payment to the Nortel LIF on the basis of a joint and survivor pension nor requiring the Plan Administrator to otherwise recalculate IC's pension.

THE ADMINISTRATOR IS REQUIRED pursuant to subsection 89(2) of the PBA to make best efforts to transmit a copy of this Notice of Intended Decision to **RP**.

DATED at Toronto, Ontario, this 30th day of July, 2018.

Original Signed By

Lester J. Wong
Deputy Superintendent, Pensions
By delegated authority from the
Superintendent of Financial Services

1 *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 fifth day after the date of mailing.*

2 *Section 10.04 was amended once in 2004 by City of Toronto By-Law No. 243-2004. Previously, the first sentence of section 10.04 was: "Each July 1, the monthly incomes of the following Members will be increased..."*

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