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Superintendent of  
Financial  
Services



Surintendant des  
services  
financiers

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**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 sections 18(1) and 89(1) of the *PBA* relating to the Canadian Commercial Workers Industry Pension Plan, Registration Number 0580431.

### NOTICE OF INTENDED DECISION

**TO:**

Board of Trustees  
Canadian Commercial Workers Industry Pension Plan  
10-61 International Boulevard  
Toronto ON M9W 6K4

**Attention:**

Paul Meinema  
Chair of the Board of Trustees

**AND TO:**

Mark Stone on behalf of  
JJ  
122 Country Road 39  
Consecon ON KOK 1T0

**I INTEND TO REFUSE TO MAKE AN ORDER** revoking the registration of Amendment Number 15 of the Canadian Commercial Workers Industry Pension Plan, Registration Number 0580431 (the “Plan”) under sections 18(1) and 89(1) of the *PBA*.

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** by 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](http://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**, subsections 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 the 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 carry out the refusal to make an order pursuant to section 89(1) 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. They may be mailed, faxed, or delivered to:

Financial Services Tribunal  
5160 Yonge Street  
14th Floor  
Toronto, Ontario  
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](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 ext. 7294.

## **REASONS FOR DECISION**

### Facts:

1. The Plan is a multi-employer defined benefit pension plan covering employees employed in grocery stores and other companies operating in the food service and food processing sector. The Plan is administered by a board of trustees (the “Trustees”).
2. Prior to September 2010, a member who terminated membership in the Plan would continue participation in the Plan without interruption if they were employed by another participating employer within 12 months of their termination date. A terminating member’s Plan benefits would not be reduced unless the termination of membership was included as part of a partial Plan wind up.
3. Amendment Number 15 amended the Plan effective September 1, 2010 (“Amendment No. 15”), to provide that where a participating employer or a bargaining unit of a union withdraws from participation in the Plan (a “Withdrawal Event”), a termination of membership in the Plan is triggered for the active and deferred members related to the employer or bargaining unit. Amendment No. 15 also requires that the benefits of such

active and former members not entitled to commence a pension at the time of the Withdrawal Event be reduced to reflect the transfer ratio for the Plan described in the most recent valuation report filed with the Superintendent. Benefits for retirees or those entitled to an immediate pension at the time of the Withdrawal Event (that is, members or former members age 50 or over at the time of the Withdrawal Event) are unaffected.

4. Amendment No. 15 was adopted by the Trustees in April 2011 and was filed with the Superintendent in May 2011. Notice of Amendment No. 15 was provided to those affected by the amendment, including JJ, in June 2011. The amendment was registered by the Superintendent in May 2013 after it was revised in accordance with comments made by the Superintendent.
5. JJ was employed by Picton Manor, a participating employer in the Plan. Picton Manor ceased participating in the Plan on September 28, 2012, as a result of its closure. The Plan administrator determined this was a Withdrawal Event as contemplated by section 14.05 of the Plan text, as amended by Amendment No. 15.
6. JJ's membership in the Plan terminated on September 28, 2012, as a result of Picton Manor's Withdrawal Event. As JJ was not entitled to an immediate pension at the time of the Withdrawal Event, her accrued benefit under the Plan was reduced to reflect the Plan's transfer ratio pursuant to the Plan terms.
7. Following her termination of membership, JJ alleges that she was provided incorrect information from a UFCW representative regarding her pension under the Plan. JJ states that she was advised that her membership in the Plan would continue and her accrued entitlement would not be reduced if she was re-employed by another employer participating in the Plan within one year of Picton Manor's Withdrawal Event. The Plan administrator advised JJ that the alleged information received by JJ was inconsistent with the Plan terms.
8. JJ was employed by Crown Ridge, another participating employer under the Plan, two months following the Withdrawal Event affecting Picton Manor.
9. JJ objects to the reduction of her accrued pension under the Plan. She asserts that her accrued entitlement should not be reduced as the registration of Amendment No. 15 to the Plan should be revoked since it did not comply with the registration requirements prescribed by section 26 of the PBA. Further, JJ asserts that that her benefit should not be reduced based on the erroneous information regarding the effect of her subsequent employment with Crown Ridge that she alleges was provided to her by a UFCW representative.
10. The Superintendent's consideration of the details of JJ's objections is set out below.

Registration of Amendment No. 15:

11. JJ asserts that she and others affected by Amendment No. 15 should have been notified of the changes proposed to the Plan before the amendment was adopted. The PBA does not require that notice of a reduction in pension benefits be provided to those affected before an amendment is adopted. Instead, section 26 of the PBA requires the administrator to provide notice to those affected before the Superintendent registers the amendment. In this case, the Superintendent has determined that the administrator complied with the notice requirements in section 26 of the PBA by providing notice to those affected by Amendment No. 15 before it was registered by the Superintendent.
  
12. In terms of the content of the notice, section 26 requires that the notice contain an explanation of the amendment and also an invitation to those affected by the amendment to provide comments regarding the amendment to the administrator and the Superintendent. Further, section 26 provides that the Superintendent may not register an amendment until after a period of 45 days has elapsed after the notice is provided to those affected, to allow time for comments to be submitted to the Superintendent. JJ asserts that the notice did not clearly describe the nature of the amendment, and therefore did not comply with the PBA. The Superintendent has reviewed the contents of the notice and determined it to be in compliance with the PBA. In addition, the Superintendent has determined that the notice contained contact information for both the Superintendent and the administrator in the event that those affected, like JJ, had questions or required further explanation of the amendment.
  
13. JJ also raised issue with respect to the Plan administrator's ability to administer the Plan in accordance with Amendment No.15, since the Superintendent did not register the amendment until May 2013. Section 19(5) of the PBA provides that a pension plan may be administered in accordance with an amendment pending registration. In this case, the administrator filed Amendment No. 15 in May 2011. The administrator revised and filed a revised Amendment No. 15 in 2013 to reflect comments with respect to the amendment made by the Superintendent. The Superintendent registered the revised Amendment No. 15 in 2013. Accordingly, there is no breach of the PBA with respect to the administration or registration of Amendment No. 15.

Information regarding the Plan terms:

14. JJ alleges that she was informed by UFCW representatives that if she was re-employed by another participating employer within one year of Picton Manor's Withdrawal Event, her accrued entitlement under the Plan would not be reduced. Further, JJ alleges that she received information regarding the impact of Amendment No. 15 on her pension a year after leaving Picton Manor. As such, she asserts that both constitute a contravention of section 22 of the PBA, and asserts that Amendment No. 15 be "struck down".
  
15. The Plan does not contain a provision negating the reduction required by a Withdrawal Event where an individual affected by a Withdrawal Event is employed within one year by another Plan participating employer. Further, if the information regarding the impact of Picton Manor withdrawing from the Plan on JJ's pension entitlement was incorrectly relayed to JJ by a UFCW representative, that does not provide a basis for the revocation of Amendment No. 15 under the PBA.

16. Finally, notice of Amendment No. 15 was provided in accordance with the PBA, as described above.

17. In conclusion, the Superintendent has reviewed JJ's objections regarding Amendment No. 15 and has determined that there has been no contravention of the PBA which would provide the Superintendent with the authority to issue an Order under the PBA.

18. Such further and other reasons as the Superintendent may advise.

**DATED** at Toronto, Ontario, this 26<sup>th</sup> day of April, 2016.

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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.*

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