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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 a Notice of Intended Decision of the Superintendent of Financial Services to Refuse to Make an Order under sections 87(2)(a) and 18(1)(e) of the *PBA* relating to The Royal Ontario Museum Pension Plan, Registration Number 0469866

TO:

The Royal Ontario Museum Curatorial Association
100 Queens Park
Toronto ON M5S 2C6

Association of some of the Members of the Plan

NOTICE OF INTENDED DECISION

I INTEND TO REFUSE TO MAKE AN ORDER in respect of The Royal Ontario Museum Pension Plan, Registration Number 0469866, (the “Plan”) under sections 87(2)(a) and 18(1)(e) of the *PBA*.

REASONS:

1. The Plan is a defined benefit, single employer pension plan established on July 1, 1983.
2. The Royal Ontario Museum (the “ROM”) is the employer and administrator of the Plan.
3. The Royal Ontario Museum Curatorial Association (the “Association”) is an association that has members who are members of the Plan.
4. On or about November 2, 2009, the ROM gave notice to the Association of an amendment (the “Amendment”) to the Plan that was to be effective January 1, 2010.
5. Prior to January 1, 2010, the Plan defined “Final Average Earnings” as an employee’s average Earnings for the 36 consecutive months of employment with the ROM prior to retirement in which the employee received the greatest earnings.
6. The Amendment added a definition to the Plan of “Best Average Earnings”, which is the greater of the new “Frozen Average 3 Earnings” (if applicable) (as described in paragraph 7 below) or the new “Final Average 5 Earnings” (as described in paragraph 8 below) as at the date a determination is required. The “Best Average Earnings” replaces the prior “Final Average Earnings” as the basis for calculation of pension benefits as at January 1, 2010.

7. The Amendment defines “Frozen Average 3 Earnings” as meaning the average Earnings of an employee for the 36 consecutive months of employment with the ROM prior to January 1, 2010, in which the employee received the greatest earnings.
8. The Amendment defines “Final Average 5 Earnings” as meaning the average earnings of an employee from the ROM for the 60 consecutive months of employment prior to retirement in which the employee received the greatest earnings.
9. The Amendment was registered by the Financial Services Commission of Ontario on January 13, 2010.
10. The Association’s position is that the Amendment is a void amendment pursuant to section 14 of the PBA.
11. Section 14(1)(a) of the PBA states that an amendment is void if it purports to reduce the amount or the commuted value of a pension benefit accrued under the pension plan with respect to employment before the effective date of the amendment.
12. The Superintendent of Financial Services (the “Superintendent”) is not of the opinion that the Amendment is void. The Amendment preserves the highest average salary accrued under the terms of the Plan prior to the effective date of the Amendment. The change in the way pension benefits are calculated applies only to earnings after the effective date of the Amendment. Future earnings levels are contingent events that do not form part of the amount of the commuted value of a pension benefit that has accrued as at the effective date of an amendment.
13. Section 18(1)(e) of the PBA states that the Superintendent may revoke the registration of an amendment that does not comply with the PBA or regulations.
14. For the reasons set out in paragraph 12, there are no grounds for the Superintendent to revoke the registration of the Amendment.
15. Section 87(2)(a) of the PBA states that the Superintendent may by written order require an administrator or any other person to take any action in respect of a pension plan or pension fund if the Superintendent is of the opinion, upon reasonable and probable grounds, that the pension plan or pension fund is not being administered in accordance with the PBA, the regulations, or the pension plan.
16. For the reasons in paragraph 12, the Superintendent does not have reasonable and probable grounds to order the ROM to administer the Plan in accordance with the pre-2010 definition of “Final Average Earnings”.
17. Such further and other reasons as may come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the “Tribunal”) pursuant to section 89(6) of the *PBA*. **To request a hearing, you must deliver to the Tribunal a written notice that you require a hearing, within thirty (30) days after this Notice of Intended Decision is served on you.**¹

YOUR WRITTEN NOTICE must be delivered to:

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

Attention: The Registrar

FOR FURTHER INFORMATION on a Form for the written notice, please see the Tribunal website at www.fstontario.ca or contact the Registrar of the Tribunal by phone at 416- 590-7294,

toll free at 1-800-668-0128, ext. 7294, or by fax at 416-226-7750.

IF YOU FAIL TO REQUEST A HEARING WITHIN THIRTY (30) DAYS, I MAY CARRY OUT THE INTENDED DECISION AS DESCRIBED IN THIS NOTICE.

DATED at Toronto, Ontario, this **8th** day of **August, 2012**.

Original Signed By

K. David Gordon

Deputy Superintendent, Pensions

¹NOTE - 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.

copy:

Sack Goldblatt Mitchell LLP
20 Dundas Street West, Suite 1100
Toronto ON M5G 2G8

Attention: Darrell Brown

The Royal Ontario Museum
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Toronto ON M5S 2C6

Attention: Christopher H. Koester
Vice President, Human Resources

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Attention: Ariella Fuhrmann

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