



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 Public Service Pension Plan,
Registration Number 0208777

TO: Persons Listed on Schedule “A”

Applicants

AND TO: Ontario Pension Board

200 King Street West
Suite 2200
Toronto, ON M5H 3X6

Attention: Mark Fuller
President and CEO

Administrator

NOTICE OF INTENDED DECISION

I INTEND TO REFUSE TO MAKE AN ORDER in respect of the Public Service Pension Plan, Registration Number 0208777, (the “Plan”) under section 87 of the *PBA* requiring that the Ontario Pension Board (the “OPB”) allow the Applicants to commence receiving pension benefits effective the date they commence employment with the Canada Revenue Agency (“CRA”).

REASONS:

1. The Plan is a defined benefit pension plan covering members of the Ontario Public Service. The OPB is the administrator of the Plan.

2. The Applicants are members of the Plan employed by the Ontario Ministry of Revenue. The functions performed by the Applicants are to be transferred to the Canada Revenue Agency as a result of the Canada-Ontario Comprehensive Integrated Tax Co-ordination Agreement ("CITCA") which provides for the transfer of functions related to the collection and administration of provincial sales tax to the federal government. In conjunction with the divestment, the Applicants are to become employees of the federal government effective March 1, 2012. The Applicants will also become members of the federal Public Service Superannuation Plan upon their transfer. The Applicants will not be 65 at the time of the anticipated transfer but will have reached eligibility for an undiscounted early retirement pension.

3. The Applicants have requested that they be permitted to commence payment of their pensions effective the transfer of their employment. The Applicants' position is based on the fact that pension payments under the Plan can commence upon the cessation of membership in the Plan. The Applicants rely upon section 3(c) of the Plan text which states that a member, "where that member is not required to be a member of the Plan", may cease membership in the Plan by "filing a written election with the [OPB] indicating that he no longer wishes to be a member of the Plan".

4. The Applicants argue that they will not be required to be members of the Plan because the transfer of their employment to CRA will result in a change in their employment status under the Plan such that they are no longer required to be members of the Plan under section 2 of the Plan text.

5. The OPB has denied the Applicants' requests on the basis that the divestment is a transaction within the meaning of section 80(1) and that the transfer of the Applicants' employment was in conjunction with the transaction. As such, section 80(3) states that the employment of the Applicants is deemed not to be terminated for the purposes of the *PBA*.

6. For the reasons set out below, the Superintendent agrees with the position of the OPB and intends to refuse to make the order requested by the Applicants.

7. Sections 80(1), (2) and (3) state:

80(1) Where an employer who contributes to a pension plan sells, assigns or otherwise disposes of all or part of the employer's business or all or part of the assets of the employer's business, a member of the pension plan who, in conjunction with the sale, assignment or disposition becomes an employee of the successor employer and becomes a member of a pension plan provided by the successor employer,

(a) continues to be entitled to the benefits provided under the employer's pension plan in respect of employment in Ontario or a designated jurisdiction to the effective date of the sale, assignment or disposition without further accrual;

(b) is entitled to credit in the pension plan of the successor employer for the period of membership in the employer's pension plan, for the purpose of determining eligibility for membership in or entitlement to benefits under the pension plan of the successor employer; and

(c) is entitled to credit in the employer's pension plan for the period of employment with the successor employer for the purpose of determining entitlement to benefits under the employer's pension plan.

(2) Clause (1) (a) does not apply if the successor employer assumes responsibility for the accrued pension benefits of the employer's pension plan and the pension plan of the successor employer shall be deemed to be a continuation of the employer's plan with respect to any benefits or assets transferred.

(3) Where a transaction described in subsection (1) takes place, the employment of the employee shall be deemed, for the purposes of this Act, not to be terminated by reason of the transaction.

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8. The divestment constitutes a sale, assignment or disposition of the assets of the employer within the meaning of section 80(1) of the *PBA*. The provincial sales tax operation of the Ontario government was transferred to the CRA as a result of CITCA. Further, the transfer of employment and pension plan membership was "in conjunction" with the divestment because the job tasks and functions currently performed by the Applicants are to be performed by the Applicants after the transfer. In fact, CITCA provides for the negotiation of a Human Resources Agreement which, in turn, governs the transfer of the Applicants.

9. The application of section 80(1) is not affected by section 80(2) because the federal government has not assumed responsibility for the accrued pension benefits of the Applicants.

10. Accordingly, section 80(3) applies because the divestment constitutes a transaction described in section 80(1). By operation of section 80(3), the employment of the Applicants is "deemed, for the purposes of [the *PBA*], not to be terminated by reason of the" divestment. The Applicants (provided they are less than 65 years of age) continue to fit within the categories of persons who are required to be members of the Plan as set out in section 2 of the Plan text. Therefore, they are not eligible to elect to terminate their membership in the Plan under section 3(c) of the Plan text.

11. 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, 2011**.

K. David Gordon
Deputy Superintendent, Pensions

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.