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SECTION:	Disclosure – By the Superintendent
INDEX NO.:	D110-100
TITLE:	Decisions made under the Pension Benefits Act, R.S.O. 1990, c. P.8 and the Financial Services Commission of Ontario Act, 1997, S.O. 1997, c. 28 - PBA ss. 87, 88, 89 and 91 - FSCO Act s. 11(3)
APPROVED BY:	Superintendent of Financial Services
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REPLACES:	I100-003

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This policy replaces I100-003 (Publication of Decisions made under the Pension Benefits Act, R.S.O. 1990, c. P.8) as of the effective date of this policy.

*Note: Where this policy conflicts with the Financial Services Commission of Ontario Act, 1997, S.O. 1997, c. 28 (FSCO Act), Pension Benefits Act, R.S.O. 1990, c. P.8 (PBA) or Regulation 909, R.R.O. 1990 (Regulation), the FSCO Act, PBA or Regulation govern.*

*Note: The electronic version of this policy, including direct access to all linked references, is available on FSCO's website at [www.fSCO.gov.on.ca](http://www.fSCO.gov.on.ca). All pension policies can be accessed from the **Pensions** section of the website through the **Pension Policies** link.*

The purpose of this policy is to identify the types of decisions made by the Superintendent of Financial Services (Superintendent) under the PBA, the rights to a hearing by those parties affected by decisions of the Superintendent, and the types of decisions that will be routinely published by FSCO on the [FSCO website](#).

The PBA provides that the Superintendent may make certain decisions or give notice of the intention to make certain decisions under the PBA. FSCO publishes significant decisions or Notice of Intended Decisions (NOIDs) made by the Superintendent under the PBA. As set out in section 11(3) of the FSCO Act, FSCO has a mandate to publish information that is in the public interest. Publication of notices and decisions of the Superintendent is in the public interest because it enhances the transparency of the regulatory process. Stakeholders and consumers who use the services of the Superintendent and FSCO are better informed about how the PBA is administered and enforced. This enables them to make more informed decisions when deciding whether to request the services of the Superintendent, and allows stakeholders and consumers to become more engaged by suggesting changes to the regulatory system. It also improves accountability, as stakeholders, individual parties and the public are made aware of how the Superintendent exercises his or her authority, and the basis on which that authority is exercised.

Consistent with the purposes of the Freedom of Information and Protection of Privacy Act (FIPPA), FSCO has implemented measures to minimize the disclosure of personal information in the publication of its decisions and NOIDs under the PBA, unless it is in the public interest to do so. In this context, “personal information” refers to information that would identify individuals who are involved in regulatory proceedings in a private capacity only. It does not include individuals who are acting in an official or professional capacity (e.g., trustees of pension plans, actuaries who prepare valuation reports for pension plans, etc.). These measures include using initials rather than names to identify individuals in decisions or NOIDs, omitting personal home addresses from NOIDs, and minimizing the use of personal details within the NOIDs where possible (e.g., the age of a plan member).

### Orders

The Superintendent may make an order that requires the administrator of a pension plan (administrator) or any other person to take or refrain from taking any action regarding a pension plan or pension fund. As set out in section 87 of the PBA, the Superintendent makes an order along with reasons, in the following situations:

- the plan or fund is not being administered in accordance with the PBA, Regulation or terms of the plan;
- the plan does not comply with the PBA or Regulation; and
- the administrator, employer or any other person is contravening a requirement of the PBA or Regulation.

The Superintendent may also order an administrator under section 88 of the PBA to take specific action when the Superintendent believes:

- the assumptions or methods used in the preparation of a report required under the PBA or Regulation regarding the pension plan are inappropriate for the plan or are not consistent with accepted actuarial practice; and
- a report submitted regarding the plan does not meet the requirements and qualifications of the Act, Regulation or plan.

When the Superintendent intends to make an order under the PBA, a NOID is issued and is served on the persons affected by the order. These persons have the right to request a hearing before the Financial Services Tribunal (FST). Anyone who is required to comply with an order of the Superintendent may appeal the order to the FST. A Notice of Appeal may be filed with the FST and served on the Superintendent within 30 days after the date the order is served. The procedures that must be followed and the parties that must be served when the Superintendent issues a NOID are set out in section 89 of the PBA. The procedures and parties vary depending on which section(s) of the PBA the order is made and which parties are affected by the order. The NOID will also refer to a right to a hearing and indicate the timeframe for exercising that right.

### The Financial Services Tribunal

The Tribunal is an independent decision making body that reviews the Superintendent’s intended decisions. To request a hearing before the Tribunal a [Request of Hearing \(Form 1\)](#) must be completed. A Request for Hearing may be filed by the individuals who are affected by a proposed or intended decision of the Superintendent and wish to have a hearing before the Tribunal.

The Tribunal has exclusive jurisdiction to exercise the powers granted or duties assigned under the FSCO Act, the PBA and other acts. The Tribunal has exclusive jurisdiction to determine all questions of fact or law that arise in any proceeding before it. After the Tribunal holds a hearing it issues a decision in writing. The Tribunal may by order direct the Superintendent to make, or refrain from making the intended decision. A Tribunal order may require the Superintendent to take certain actions in accordance with the PBA and Regulation, and substitute the Tribunal’s opinion for that of the Superintendent. The Tribunal publishes information about its hearings and decisions on its website at [www.fstontario.ca](http://www.fstontario.ca). A decision or order of the Tribunal may be appealed to the Divisional Court as set out in section 91 of the PBA.

FSCO Publication of Decisions

The categories of information relating to decisions or NOIDs under the PBA routinely published are:

1. Final decisions of the Superintendent and intended decisions of the Superintendent on all matters where a NOID has been issued;
2. Final decisions of the Superintendent on certain matters where a NOID is not required, including final decisions on significant matters (e.g., the allocation of assets from the Pension Benefits Guarantee Fund); and
3. Charges laid under the PBA, after a first appearance before the courts, and the outcome of prosecutions.

Superintendent consents, declarations, notices of intended decisions and orders from 2009 onwards are available on the FSCO Pension website and may be accessed through the left navigation item [Enforcement Actions](#). Decisions dating back to December 1998 may be found via the [Pension Bulletin](#) web page. FSCO does not publish Superintendent's decisions that relate to routine matters (e.g., approval of a wind up report).