



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
33, 22, and 87 of the *PBA* relating to the St. Michael's Hospital Pension Plan,
Registration Number 0302851

TO: M.C.

AND TO: St. Michael's Hospital
30 Bond Street
2nd Floor, Bond Wing
Toronto, ON M5B 1W8

Attention: Arthur Bosua
Director, Total Compensation

Employer and Administrator of the Plan

NOTICE OF INTENDED DECISION

I INTEND TO REFUSE TO MAKE AN ORDER in respect of the St. Michael's
Hospital Pension Plan, Registration Number 0302851, (the "Plan") under sections 33, 22, and 87
of the *PBA*.

REASONS:

- 1) The Plan was established on January 1, 1974 as a single employer, defined benefit pension plan.
- 2) M.C. is a member of the Plan. M.C. has requested the Superintendent of Financial Services (the "Superintendent") to make an Order that St. Michael's Hospital (the "Hospital") admit her to the Plan as a member for the period from January 1, 1988 to April 10, 1992.

- 3) M.C. commenced employment with the Hospital on or about August 30, 1976 as a part-time nurse.
- 4) On or about October 12, 1976, M.C. became employed by the Hospital on a full time basis.
- 5) M.C. became a member of the Plan on or about January 1, 1977.
- 6) M.C.'s employment with the Hospital reverted to part-time on or about March 8, 1982.
- 7) M.C.'s membership in the Plan was terminated when her employment reverted to part-time in March 1982. On or about March 26, 1982, M.C. received a lump sum of \$3,624.03 from the Plan. This sum represented M.C.'s contributions to the Plan during the period while she was a full-time employee of the Hospital from 1977 to 1982, plus interest.
- 8) The Plan in 1982 authorized the return of contributions to M.C. Article 7.1(b) of the Plan text in effect as of March 1982 (the "1974 Plan Text") provided in part:

7.1 In the event that any Member ceases to be employed by the Employer for any reason other than death and has accumulated at least one year of continuous service, if such Member is not entitled to an annual pension under other provisions of this Plan, he shall upon termination of his service, at his option, be entitled to:

 - (a) a deferred annual pension commencing at his Normal Retirement Date and payable during his own life only equal to the annual pension, determined in accordance with the provisions of Article V hereof; or
 - (b) provided that if at the date he ceased to be employed by the Employer, the Member had not attained the age of 45 years and completed 10 years of continuous service, he shall, in lieu of the deferred annual pension be entitled to an amount in cash equal to the sum of all contributions made to the Pension Fund by the Member to the date on which he ceased to be employed by the Employer together with Interest thereon to such date.
- 9) The 1974 Plan Text defined "Employee" as meaning any permanent full-time Hospital Employee of the Employer.
- 10) When M.C.'s employment with the Hospital reverted to part-time in March of 1982, she ceased to be an "Employee" under the terms of the Plan, and therefore ceased to be employed by the Employer for the purposes of the Plan pursuant to Article 7.1(b) of the 1974 Plan Text.
- 11) M.C. had not attained the age of 45 years and completed 10 years of continuous service when her employment with the Hospital reverted to part-time in March of 1982. She was

therefore not entitled to a deferred pension under Article 7.1(a) of the 1974 Plan Text or under section 20(1)(a) of the *PBA* as it stated in 1982.

- 12) On January 1, 1986, the Plan (the "1986 Plan Text") was amended to define "Employee" as any permanent full-time Hospital Employee of the Hospital, and provided that permanent full-time employment may be extended to encompass those part-time employees designated by the Employer, subject to certain conditions. However, the 1986 Plan Text specified that employees who received "premium pay in lieu of benefits under the terms of a collective agreement" were not permitted to participate in the Plan.
- 13) M.C. was a member of the Ontario Nurses' Association (the "ONA") and was therefore subject to the Part-Time Collective Agreement between the Hospital and the ONA at all times while she was employed on a part-time basis by the Hospital.
- 14) Article 18.01(b) of the Part-Time Collective Agreements that expired on March 31, 1988 and March 31, 1991 respectively, stated that the hourly salary rates, inclusive of the percentage in lieu of fringe benefits in effect during the term of the Collective Agreement for all regular and casual part-time nurses shall be those calculated in accordance with the following formula: applicable straight time hour rate plus 14%. Therefore, M.C. received premium pay in lieu of benefits pursuant to the Collective Agreements while she was a part-time employee of the Hospital and consequently was not eligible to join the Plan.
- 15) M.C. became employed by the Hospital on a full-time basis on or about October 1, 1991. On or about April 10, 1992, M.C. elected to become enrolled in the Plan as a full-time employee of the Hospital.
- 16) M.C. has requested the Superintendent to order the Hospital to retroactively admit M.C. to the Plan from January 1, 1988 to April 10, 1992. This request encompasses two periods of time in terms of the law and documents that govern.
 - a. **January 1, 1988 to September 30, 1991**
- 17) M.C. claims that she is entitled to membership in the Plan from January 1, 1988 to September 30, 1991, because the *Act* was amended as of January 1, 1988 to extend membership to part-time employees.
- 18) Section 32(1) of the *Act* as of January 1, 1988 provided that every employee of a class of employees for whom a pension plan is established is eligible to be a member of the pension plan, and is entitled to become a member of the pension plan upon application at any time after completing 24 months of continuous full-time employment.
- 19) The Plan was amended as of January 1, 1988 to reflect changes in the *Act*. The definition of "Employee" included:

An employee who is employed on a less than full-time basis who would otherwise qualify as an Employee shall not be considered to be an Employee for purposes of this Plan if:

- (a) such employee is in receipt of pay in lieu of participation in this Plan under the terms of a Collective Agreement.

- 20) Membership in the Plan as of January 1, 1988 continued to be limited to "Employees".
- 21) M.C. was not an "Employee" under the terms of the Plan as of January 1, 1988 because she was receiving 14% pay in lieu of benefits pursuant to the Collective Agreement.
- 22) Therefore, M.C. was not eligible to join the Plan because she did not belong to a class of employees for whom the Plan was established.

b. October 1, 1991 to April 10, 1992

- 23) M.C. was eligible to join the Plan when she became employed by the Hospital on a full-time basis as of October 1, 1991.
- 24) The Plan text as of January 1, 1988 was the Plan text that governed in October of 1991. Article 2.01 of this Plan text stated that all Employees who were not Active Members on December 31, 1987 shall join the Plan on the later of January 1, 1988 and the first day of the month coincident with or next following the date upon which the Eligibility Conditions of the Plan and the Application for membership are satisfied. Article 2.05 provided that each Employee who is entitled to become a Member of the Plan will become a Member by filing a completed Application for membership in accordance with the terms of the Plan.
- 25) M.C. did not apply for membership in the Plan until on or about April 10, 1992. Therefore, she was not eligible to be admitted as a member of the Plan until that date.
- 26) M.C. claims that the Hospital breached its fiduciary duty in refunding her contributions in 1982 and in refusing to admit her to the Plan for the above-mentioned periods and/or failing to inform her of her rights under the Plan.
- 27) Subsection 22(2) of the *PBA* states that the administrator of a pension plan shall use in the administration of the pension plan and in the administration and investment of the pension fund all relevant knowledge and skill that the administrator possesses or, by reason of the administrator's profession, business or calling, ought to possess.
- 28) Subsection 87(2) of the *PBA* states that the Superintendent may make an order requiring an administrator to take any action in respect of a pension plan or a 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, or that the administrator or employer is contravening a requirement of the *PBA* or the regulations.

- 29) For the above reasons, the Superintendent is of the opinion that the Hospital administered the Plan in accordance with its terms and with the *PBA* and regulations, and that the Hospital did not contravene a requirement of the *PBA* or the regulations in terminating M.C.'s membership in the Plan and refunding her contributions to the Plan in 1982.
- 30) For the above reasons, the Superintendent is also of the opinion that the Hospital administered the Plan in accordance with its terms and with the *PBA* and regulations, and that the Hospital did not contravene a requirement of the *PBA* or the regulations in refusing to retroactively admit M.C. to the Plan for the period from January 1, 1988 to April 10, 1992.
- 31) 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 2nd day of December 2014.



Lester Wong
Deputy Superintendent, Pensions (Interim)

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.