



IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990,
c. P.8, as amended (the “*PBA*”)

AND IN THE MATTER OF an Intended Decision of the Superintendent of
Financial Services to Refuse to Make an Order under sections 19(3) and 87(1)(a)
of the *PBA* relating to the **Pension Plan for Executives of Shoppers Drug Mart,
Registration Number 1066083**

TO: **Robin Boys**
37 Haddon Street
Toronto, ON M5M 3N1

Former Member of the Plan

AND TO: **Shoppers Drug Mart Inc.**
243 Consumers Road
North York, ON M2N 4W8

Attention: John Caplice
SVP Treasurer & Investor Relations

Employer

COPIED: **Shoppers Drug Mart Inc.**
TO: 243 Consumers Road
North York, ON M2N 4W8

Attention: Annie Boulianne
Manager, Benefits & Retirement

Administrator of the Plan

NOTICE OF INTENDED DECISION

I INTEND TO REFUSE TO MAKE AN ORDER in respect of the Pension Plan for
Executives of Shoppers Drug Mart, Registration Number 1066083 (the “Plan”), under sections
19(3) and 87(1)(a) of the *PBA*.

REASONS:

- 1) The Plan is a defined benefit pension plan that was established on February 4, 2000 and that is registered with the Superintendent of Financial Services (the "Superintendent").
- 2) The Plan was established as a successor pension plan by Shoppers Drug Mart Inc. ("Shoppers") to the Imperial Tobacco Corporate Pension Plan (the "Imasco Plan"). All accrued assets and liabilities remained in the Imasco Plan as at the date the Plan was established.
- 3) Robin Boys ("Mr. Boys") is a former member of the Plan and of the Imasco Plan who ceased to be employed by Shoppers on or about February 11, 2000 and who therefore ceased to be a member of the Plan in or around that date.
- 4) When Mr. Boys ceased to be employed by Shoppers, the commuted value of his pension benefit in the Plan was not more than 2 per cent of the Year's Maximum Pensionable Earnings ("YMPE") for the year of 2000. Therefore, pursuant to the terms of the Plan and pursuant to section 50 of the *PBA*, he received the commuted value of his pension benefit as a lump sum. The sum of \$558.00 was paid to Mr. Boys on or about May 8, 2002.
- 5) Mr. Boys claims that the commuted value of his pension benefit in the Plan as at February 11, 2000 should have been calculated as though he was taking early retirement at age 55. However, that would be contrary to the plain wording of section 50(1) of the *PBA*, which states:

50(1) A pension plan may provide for payment to a former member of the commuted value of a benefit if the annual benefit payable at the normal retirement date is not more than 2 per cent of the Year's Maximum Pensionable Earnings in the year that the former member terminated employment.
- 6) On June 8, 2005, the Superintendent issued a Notice of Proposal to partially wind up the Plan. Shoppers agreed to partially wind up the Plan effective April 22, 2005 with respect to all members of the Plan who ceased to be employed between January 1, 2000 and October 26, 2004. Mr. Boys was included in the partial wind up.
- 7) As a result of Mr. Boys' inclusion in the partial wind up, he became entitled to an additional lump sum amount payable from the Plan in respect of "grow-in" benefits triggered by the partial wind up under section 74 of the *PBA*. On or about November 6, 2009, Mr. Boys received an option statement advising that he was entitled to the sum of \$47,551.00 plus interest, for a total payment of \$89,087.00.
- 8) Mr. Boys requested Shoppers to leave this additional amount in the Plan to take as a deferred pension.

- 9) In a letter dated April 19, 2010, the Canada Revenue Agency (“CRA”) confirmed that the “*Income Tax Act and Regulations* do not permit the additional grow-in benefits to be paid as additional lifetime retirement benefits from a registered pension plan (RPP) where the individual has already had the full amount of his or her initial benefits commuted and transferred out of the particular registered pension plan”.
- 10) The Plan states in section 4 of Appendix B for Ontario members:
4. Commutation of Small Pensions
An annuity required to be paid under the Plan may be commuted and paid in a lump sum at the discretion of the Administrator if the annual retirement income that would be payable to the member at Normal Retirement Date is not more than 2% of the YMPE as at the Date of Determination. The amount of any such form of benefit settlement shall be the Actuarial Equivalent of the benefit remaining to be paid.
- 11) Mr. Boys claims that his pension benefits from the Shoppers Plan should be combined with his pension benefits from the Imasco Plan due to the effect of section 80(1)(a) of the *PBA*, which states:
- 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.
- 12) Section 80(1)(a) of the *PBA* does not have the effect, however, of allowing a member to treat the pension benefits from the original employer’s pension plan as a continuation with the pension benefits from the successor employer’s pension plan. Section 80(1)(a) simply ensures that the member has a continued entitlement to the benefits provided under the original employer’s pension plan without further accrual.
- 13) Mr. Boys also claims that Shoppers is not administering the Plan in accordance with its terms, contrary to section 19(3) of the *PBA* which states that the administrator of a pension plan shall ensure that the pension plan and fund are administered in accordance with the filed documents in respect of the plan or an amendment to the plan.

- 14) Shoppers has administered the Plan in accordance with the “small pension” commutation provision referred to in section 4 of Appendix B to the Plan cited in paragraph 10 above. Therefore, Shoppers has complied with section 19(3) of the *PBA* and the Superintendent does not have reasonable and probable grounds to make an order under section 87(1)(a) of the *PBA*.
- 15) 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 Proposal 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 DECISION AS DESCRIBED IN THIS NOTICE.

DATED at Toronto, Ontario, this **25th** day of **May, 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 seventh day after the date of mailing.