

FINANCIAL SERVICES TRIBUNAL

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c.P.8, as amended by the *Financial Services Commission of Ontario, 1997*, S.O. 1997, c.28;

AND IN THE MATTER OF a decision of the Superintendent Of Financial Services dated October 27, 1999, that a former member of the Ontario Teachers' Pension Plan, Registration Number 0345785, Thomas Caster, was not entitled to a transfer of the commuted value of his pension under the terms of the Plan and subsection 42(3) of the PBA;

AND IN THE MATTER OF a Hearing in accordance with subsection 89(8) of the Act

B E T W E E N:

THOMAS CASTER

Applicant

- and -

**SUPERINTENDENT OF FINANCIAL SERVICES
and ONTARIO TEACHERS' PENSION PLAN BOARD**

Respondents

BEFORE:

Ms. Martha Milczynski, Chair of the Tribunal
and the Panel
Ms. Judith Robinson, Member of the Tribunal
Mr. William Forbes, Member of the Tribunal

APPEARANCES:

For the Applicant:
Mr. Alan Redway, Q.C.

For the Superintendent:
Ms. Deborah McPhail

For the Ontario Teachers' Pension Plan Board:
Ms. Anne Slivinskas

HEARING DATE: January 19, 2000
Toronto, Ontario

REASONS FOR DECISION

ISSUE AND SUMMARY

1. On January 19, 2000, the Tribunal dismissed an application brought by the Applicant, Thomas Caster, a member of the Ontario Teachers' Pension Plan (the "Plan"). The issue was whether:

In the circumstances of this case, and in the event of the Applicant's termination of employment, should the Ontario Teachers' Pension Plan Board (the "Board") be required to transfer an amount equal to the commuted value of the Applicant's pension pursuant to section 42 of the *Pension Benefits Act*?

2. The Tribunal held that section 42(3) of the *Pension Benefits Act* ("PBA") is clear that the option to transfer the commuted value of an accrued pension on termination is not available to a pension plan member who is eligible to receive immediate payment of a pension benefit unless the terms of the pension plan provides for such an entitlement. Having become eligible for an immediate pension on June 1, 1998 under section 43(1a) of the Plan and by virtue of section 37(2) of the Plan that expressly excludes a member who is entitled to an immediate pension from entitlement to a transfer of the commuted value of his or her pension, the Applicant does not therefore have the option to transfer his commuted value in the event of the termination of his employment.

FACTS

3. Mr. Caster was born on March 2, 1945 and commenced his teaching career and participation in the Plan in 1967. He is currently employed as a teacher and is still a member of the Plan.

4. On April 24, 1998, the Plan announced that an early retirement window would be in effect from June 1, 1998 to December 31, 2002. Effective June 1, 1998, a Plan member whose age and qualifying years of service equalled 85 points would be eligible for the improved early retirement option ("Factor 85") under the Plan. Information regarding Factor 85 was communicated through a "Teachers' Pension Plan Board Bulletin" dated April 24, 1998 and a "Teachers' Pension Plan Board Exchange" dated April 1998. The "Exchange" indicated that Factor 85 affected the ability of an eligible Plan member to take the commuted value of his or her pension:

...You can only transfer the commuted value of your pension before you're eligible for an immediate pension. An 85-factor window means you may be eligible to retire with an unreduced pension sooner.

If you already have your 85-factor and are interested in taking a commuted value transfer, you must resign by May 31, 1998.

5. The Applicant was aware that he would be eligible for Factor 85 on June 1, 1998 and on April 28, 1998 he requested that the Board provide him with an estimate of his termination options as at May 31, 1998.

6. On or about May 6, 1998, the Board provided the Applicant with details of his estimated termination options and advised that once the Factor 85 took effect on June 1, 1998, any member who ceased employment with at least Factor 85 would not be eligible for a commuted value transfer. Mr. Caster also received a brochure entitled "Weighing Your Options", dated April 22, 1998 that indicated:

To take the CV transfer option, teachers eligible for an 85-factor pension June 1, 1998 must apply by May 31, 1998.

You must quit and apply for a CV transfer before you're eligible for an 85-Factor pension or age 55. For example, teachers under age 55 who are eligible for an 85-factor pension on June 1, 1998 must terminate employment and apply by May 31, 1998.

7. In his evidence, the Applicant stated that he knew the effect Factor 85 would have on his ability to take the commuted value of his accrued pension if he terminated his employment on or after June 1, 1998. The Applicant also testified that he made his decision not to terminate his employment before June 1, 1998 because:

- (1) He did not want to leave his students prior to the end of the school year on such short notice;
- (2) There was uncertainty as to his eligibility for certain other benefits and payments if he were to terminate and opt for a commuted value transfer – this issue was the subject of grievance arbitration proceedings which did not involve the Applicant but which could affect his decision; these proceedings had not concluded by June 1, 1998; and
- (3) He was concerned with the haste and lack of detailed information surrounding the amendment process.

8. The Tribunal can understand that the Applicant had concerns regarding such a significant decision with which he was faced. However, in considering his request for a transfer of the commuted value of his pension, the Tribunal is bound by the provisions of the *PBA*, and the terms of the Teachers' Plan.

PENSION BENEFITS ACT

9. The relevant provisions of the *PBA* are:

s.42 (1) A former member of a pension plan who, on or after the 1st day of January, 1988, terminates employment or ceases to be a member of the pension plan and who is entitled to a deferred pension is entitled to require the administrator to pay an amount equal to the commuted value of the deferred pension,

(a) to the pension fund related to another pension plan, if the administrator of the other pension plan agrees to accept the payment;

(b) into a prescribed retirement savings arrangement; or

(c) for the purchase for the former member of a life annuity that will not commence before the earliest date on which the

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- (3) Subsection (1) does not apply to a former member whose employment is terminated and who is entitled to immediate payment of a pension benefit under the pension plan or under section 41, unless the pension plan provides such an entitlement.

TEACHERS' PENSION PLAN

10. Effective June 1, 1998 the relevant provisions of the Plan are as follows:

- s. 37 (1) A member entitled to a deferred pension who ceases to be employed in education is entitled to a transfer of the commuted value of the deferred pension to another retirement savings arrangement in accordance with section 42 of the *Pension Benefits Act* and to a refund or transfer of excess contributions, calculated under section 36, subject to the limitations of the *Income Tax Act* (Canada). (Last amended June 1, 1995 - Effective June 1, 1995)
- (2) A member who is entitled to an immediate pension is not entitled to a refund or transfer under this section. (Last amended June 1, 1995 - Effective June 1, 1995)
- s. 43 (1) A member who has accumulated at least that number of years of qualifying service that, when added to the member's age upon termination of employment in education, totals ninety years is entitled to a retirement pension for the member's lifetime calculated under subsection (4). (Last amended October 10, 1995 - Effective September 1, 1995)
- (1a) A member who ceases to be employed in education between June 1, 1998 and December 31, 2002, or during any extension of this period, and who has accumulated at least that number of years of qualifying service that, when added to the member's age upon termination of employment in education, totals eighty-five years is entitled to a

retirement pension for the member's lifetime calculated under subsection (4). (Last amended May 27, 1998 - Effective June 1, 1998)

- (2) A member who ceases to be employed in education after the 31st day of May, 1987 and before the 1st day of September, 1990 and who has thirty-five years of qualifying service is entitled to a retirement pension for the member's lifetime calculated under subsection (4). (Last amended October 10, 1995 - Effective September 1, 1995)
- (2a) A member who has accumulated thirty-five or more years of credited service is entitled to a retirement pension for the member's lifetime calculated under subsection (4). (Last amended February 20, 1997 - Effective January 1, 1997)

11. As set out above, the Teachers' Plan does not permit a Plan member to elect the transfer of the commuted value of an accrued pension, once the member has become entitled to immediate payment of a pension.

ORDER

12. While invited by counsel for the Applicant to consider the fairness of the process and the proposition that the Tribunal had equitable jurisdiction by virtue of the parties' right of appeal under s. 91 of *PBA* and s. 98 of the *Courts of Justice Act*, we find that our jurisdiction as an administrative body established by statute is fully set out in this case under the *PBA* and the *Financial Services Commission of Ontario Act*. Further and in any event, we find that the provisions governing portability of accrued pensions are clearly reflected in the Plan, which in this case have been administered in accordance with the terms of the Plan and the *PBA*.

13. Accordingly, having become eligible for immediate payment of a pension benefit under the Plan on June 1, 1998, in the event of the Applicant's termination of employment, he will not be entitled to elect the transfer of the commuted value of his pension.

14. The application is dismissed.

Dated at Toronto, this 9th day of February, 2000.

"Martha Milczynski"
Martha Milczynski
Chair, Financial Services Tribunal

"Judith Robinson"
Judith Robinson
Member, Financial Services Tribunal

"William Forbes"
William Forbes
Member, Financial Services Tribunal