

June 21, 2011

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VIA E-MAIL

WITH PREJUDICE

Financial Services Commission
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ATTENTION: Mr. Dave Wild, Superintendent

Dear Mr. Wild:

**Re: May 3, 2011 Decision of Regina City Council
Correspondence of Board to Superintendent of Pensions, Dated May 13, 2011
Our File No. 10-1961**

Thank you for your letter of June 13, 2011 wherein you decline to direct the participating employers in the Regina Civic Employees Superannuation and Benefit Plan (the "Plan") to remit the increased contributions required by the Valuation Report filed as at December 31, 2009.

You have indicated that you do not share our client's sense of urgency and that you are not inclined to take immediate regulatory action, in favour of relying on discussions that are currently being contemplated by the bargaining parties to find a resolution.

We have the following comments on your decision and reasons:

1. In our experience it is unique that a person charged with the duty and authority to ensure regulatory compliance by this Pension Plan, and pension plans in the province generally – the Superintendent of Pensions – is not "concerned" by an employer expressly refusing to comply with applicable law.
2. A significant contribution increase (5.92% for salary below the YMPE and 8.76% for salary above) was recommended by the actuary, in accordance with the Plan terms, effective January 1, 2011. That contribution increase is required to pay for the existing benefits accruing under the Plan. By definition, failure to remit those contributions – and the failure to make an order to remit those contributions – means that accrued and currently-accruing benefits are under-funded, contrary to the spirit and letter of the *Pension Benefits Act, 1992*.

Although the parties have indicated their willingness to negotiate changes, the existing Plan continues to be the registered plan, and the existing Plan terms are the ones that must be administered by the Administrative Board and that bind the participating employers. This Plan remains in force unless and until there are amendments registered with your office.

Accordingly, your decision not to act has two certain effects:

- a. It ensures that contributions required to meet current Plan terms will not be made and the funded status of the Plan will further deteriorate.
- b. A failure to sanction an employer's stated and direct refusal to comply with the *Pension Benefits Act, 1992*, sets a dangerous and unnecessary precedent for other plan sponsors who no longer wish to comply with pension legislation and regulation.

Both of these results have a material and adverse impact on Plan members' rights and interests.

3. You have indicated that you are content to refrain from giving notice of an order (or otherwise acting) while the bargaining parties negotiate a solution. Our client is prepared to sit down with the employer to discuss changes and bargain a resolution of this situation. However, the employer has not yet agreed to negotiate any terms, no bargaining dates have been set and CUPE awaits cooperation from the employer in that regard. In the absence of meaningful cooperation from the employer, CUPE is extremely concerned that the continued failure of the employers to adequately and properly fund the plan in accordance with regulation will result in irreparable harm to Plan members. In that event, our client will seek a remedy from the Court, including compensation, from all responsible parties.

Our client is prepared to refrain from taking further action at this time to enforce your obligations under the *Pension Benefits Act, 1992*, in order to provide the bargaining parties an opportunity to reach a consensual solution. Our client does, however, reserve its right to seek an order enforcing the employer's contribution obligations, and this letter and any delay shall not be taken as acquiescence in any respect.

Yours truly,
KOSKIE MINSKY LLP



Susan Philpott
SP:mp

- c Canadian Union of Public Employees
Simon Archer, Koskie Minsky LLP