

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 Act, 1997, c. 28* (the “Act”);

AND IN THE MATTER OF a proposal of the Superintendent of Financial Services to Refuse to Make an Order under section 87(1) of the *Pension Benefits Act* respecting the Ontario Public Service Employees’ Union Pension Plan, Registration No. 1012046 (the “Plan”);

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

B E T W E E N:

JULIAN PAUL

Applicant

- and -

**SUPERINTENDENT OF FINANCIAL SERVICES
and the OPSEU PENSION TRUST**

Respondents

BEFORE:

Mr. John M. Solursh
Vice Chair of the Tribunal and Chair of the Panel

Mr. Shiraz Bharmal
Member of the Tribunal and of the Panel

Ms. Florence Holden
Member of the Tribunal and of the Panel

APPEARANCES:

Mr. Julian Paul
Appearing on his own behalf

For the Superintendent of Financial Services
Mr. Mark Bailey

For the OPSEU Pension Trust
Mr. Ari Kaplan
Ms. Donna Walwyn

HEARING DATE:
April 27, 2005

REASONS

A. INTRODUCTION

The Applicant, Julian Paul, is a member of the Ontario Public Service Employees' Pension Plan (the "Plan"). The Plan is a defined benefit pension plan covering employees of the Government of Ontario who are represented by the Ontario Public Service Employees Union ("OPSEU"). The Plan is administered by a board of trustees (the "Administrator"). The Applicant also was a member of two plans which are predecessors to the Plan as set out below.

This hearing results from a request made by Mr. Paul to the Financial Services Commission of Ontario ("FSCO"), that he be allowed to purchase certain past service credits in the Plan for the periods of his service prior to April 2, 1979. In response to that request the Superintendent of Financial Services (the "Superintendent") issued a Notice of Proposal dated November 30, 2004 (the "NOP") in which the Superintendent proposed to refuse to make an order directing the Plan to permit the Applicant to purchase (i.e. "Buy Back") the requested past service credits.

The Administrator of the Plan, the OPSEU Pension Trust, filed an application for party status with the Tribunal and was granted full party status at the Pre-hearing Conference on February 24, 2005.

B. ISSUES

As agreed by the parties, the issues in this matter are:

- (a) should the Applicant be allowed to purchase credit for his identified past service under the provisions of the *Pension Benefits Act*, R.S.O. 1990, c. P.8 (the “PBA”) or the terms of the Plan?; and
- (b) if the answer to question (a) is yes, what, if any, remedy should be granted by the Tribunal?

C. FACTS

(a) The Old Plan

The parties submitted an Agreed Statement of Facts to the Tribunal, a copy of which is attached as an Appendix to these Reasons.

The Applicant worked with the Ministry of Natural Resources (the “Employer”) on a casual basis beginning on July 19, 1976 as a summer student and throughout 1977, 1978 and for the first quarter of 1979 (the “Applicant’s Prior Service”). During that period, the Applicant’s employment was not continuous and he did not make any contributions to the predecessor plan in place at the time, the Public Service Superannuation Plan (the “Old Plan”). In accordance with the terms of the Old Plan as set out in the *Public Service Superannuation Act*, R.S.O. 1970, c. 387, (the “Old Act”), the Applicant did not receive credit for that service under the Old Plan.

The Applicant began contributing to the Old Plan upon his appointment to classified service on April 2, 1979.

The Applicant was entitled under section 8 of the Old Plan to Buy Back his Prior Service upon giving notice of his intention to purchase Prior Service and paying the cost of the Prior Service into the Public Service Superannuation Fund. Details of the Applicant’s

Prior Service between July 19, 1976 and April 1, 1979, were set out in reports prepared by the Employer to the Ministry of Government Services (the "MGS"). The MGS was at that time the Administrator of the Old Plan.

The Applicant indicated to the MGS in an application form signed by him on March 27, 1979, that he wished to purchase periods of his recorded non-contributory service occurring prior to his appointment to classified service.

The MGS reviewed the Applicant's periods of non-contributory service based on the Service and Earnings Reports and consistent with the practice at that time, did an assessment and determined the periods of eligible service that the Applicant was qualified to purchase pursuant to the Old Act. The MGS mailed a Notification of Arrears and Agreement to Contribute form (the "Notification") to the Applicant on October 10, 1980, setting out the period of eligible service the Applicant was entitled to purchase.

In order to proceed with the purchase as set out in the Notification, the Applicant was required to complete, sign and return the Notification. The Notification advised, in bold print, that if the MGS did not receive "the completed form within 3 months from the date of mailing" the MGS would treat the request as lapsed. The Applicant did not return the form within the 3 month period and he did not make any other attempt to purchase the Prior Service within the specified period.

The Applicant admitted that he considered the purchase and made the decision not to purchase his Prior Service because his pension was not important to him at that time. In his submissions, the Applicant states, in part, as follows:

...As stated in the Agreed statement of Facts I signed an application to (Buy Back) my pension when I was first hired on permanent staff in 1979. The reason I did this is not because I was interested in buying back my pension but because the administrator asked me to sign an application...

...

I had no interest in buying back my pension
between January 1, 1990 and December 31, 1991.

The Applicant was not restricted from making another application to purchase his Prior Service under the Old Plan. However there is no dispute that the Applicant did not purchase his Prior Service under the Old Plan in accordance with section 8 of the Old Act.

(b) The 1989 Plan

On December 31, 1989, the *Public Service Pension Act*, S.O. 1989, c. 73 (the “1989 Act”) came into force and the Old Act was repealed effective January 1, 1990. Pursuant to section 3 and section 5 of the 1989 Act, the Old Plan, as contained in the provisions of the Old Act, was continued as the Public Service Pension Plan (the “1989 Plan”) and the Public Service Superannuation Fund under the Old Act was continued as the Public Service Pension Fund. The Applicant continued his membership in the 1989 Plan. The terms of the 1989 Plan are set out in Schedule I in the 1989 Act. The 1989 Plan is administered by the Public Service Pension Board (the “Board”). Under section 5(2) of the 1989 Act, the Board was required to administer the 1989 Plan in accordance with the 1989 Act and the terms of the 1989 Plan as set out in Schedule I of the 1989 Act. The Old Act was repealed by the 1989 Act, and thus provisions of the Old Act, including those relating to the “Buy Backs”, ceased to apply.

The 1989 Act included a provision which gave members a right (the “Buy Back Window”) to exercise the option to purchase any period of eligible non-credited service occurring prior to 1990. Section 11(6) of Schedule I of the 1989 Act provided that individuals who were members on December 31, 1989, had to submit a written application within a period of 24 months after December 31, 1989 to the Administrator of the Plan for the purchase of any past service credit related to service prior to January 1, 1990.

The Applicant, as a member of the 1989 Plan on December 31, 1989 was eligible to exercise the time-limited option to purchase past service credit related to service prior to January 1, 1990 provided he submitted a written application to purchase the Prior Service within the period December 31, 1989 to December 31, 1991, and paid the amount determined by the Administrator.

The Board, as Administrator of the 1989 Plan, used various and extensive means (the “Buy Back Window Communications”) of informing 1989 Plan members as of December 31, 1989, of the deadline of December 31, 1991 set out in section 11(6) of Schedule I in the 1989 Act. It published items in the Government of Ontario newsletter, *Topical*, provided a pamphlet for payroll distribution, issued a new member’s booklet titled “Your Pension Plan”, hosted information sessions and issued “Fact sheets” and an “Administration Guidelines Manual” to advise Plan members of the December 31, 1991 deadline.

The Applicant acknowledges that he did not complete and submit a written application to purchase past service credits for his Prior Service within 24 months after December 31, 1989, the deadline imposed by section 11(6) of Schedule I in the 1989 Act. The Applicant does not deny having received the Buy Back Window Communications. However, he objected that neither his Employer nor the Plan Administrator sent him a personalized application form as he received 10 years earlier when he had the opportunity to Buy Back the same Prior Service and he made a deliberate decision not to do so.

(c) **The OPSEU Plan (the “Plan”)**

Pursuant to the Sponsorship Agreement between the Government of Ontario and the Ontario Public Service Employees’ Union (“OPSEU”) and the enactment of the *Public Service Employees’ Union Pension Act, 1994*, S.O. 1994, c. 17 (the “OPSEU Pension Plan Act”), the Plan was established and adopted, effective January 1, 1993, primarily for members of the Plan who were employees in a bargaining unit represented by OPSEU, including the Applicant. The Applicant became a member of the Plan on January 1, 1993. Article III of section 3.01 of the Sponsorship Agreement that established the Plan

and is referred to in the OPSEU Pension Plan Act provides that the Plan and the OPSEU Trust Fund were established as a successor plan and trust fund to the Public Service Pension Plan and the Public Service Pension Plan Trust Fund.

The Board of Trustees of the OPSEU Trust Fund (the "OPSEU Pension Trust") is the Administrator of the Plan. The OPSEU Pension Trust is a party to this proceeding.

The Applicant is entitled to a pension from the Plan in respect of all of his years of eligible contributory service in the Ontario Public Service. He has received Annual Pension Statements each year that show only credit that was earned since April 2, 1979.

The terms of the Plan permit the Applicant to purchase his Prior Service, but only if he submitted an application to the Administrator within the Buy Back Window. The Plan does not permit the purchase of the Applicant's Prior Service in the Applicant's present circumstances. In this respect the provisions of the Plan read, in part, as follows:

7.4(1)(b) for a period of service with an employer who contributed to the Fund or a predecessor fund throughout the period, and for which the member has no credit in the Plan and no claim for pension benefits from the Plan;

7.4(6) Any credit referred to in subsection (1) may be purchased only if application therefore is made to the Board in writing within twenty-four months after the latest of,

(a) the earlier of the day on which the member for whom credit is to be purchased became a member of the Plan or the PSPP; and

(b) the last day of the most recent continuous period for which credit is being purchased.

The Applicant has stated that by 1995 his situation had changed and he was interested in a Buy Back of his pension, as he submitted he was also entitled to under the Old Act when he was hired. He further submitted that he began to make enquiries by phone about

a Buy Back, possibly beginning in 1996 or 1997, and that the response was always negative and indicated that the opportunity for buying back was closed.

His written submissions further stated that in September 2001 he saw an Options Update that pushed him to phone the OPSEU Pension Trust again and that a representative of the OPSEU Pension Trust told him he did sign an application which was in his file from 1979 and that he could Buy Back his pension. He further submitted that he did not sign a new application between January 1, 1990 and December 31, 1991 in view of the input from the OPSEU Pension Trust representative that he had an application in his file from 1979, which led him to believe that no new application was needed.

The OPSEU Pension Trust has taken the position that it has no authority under the terms of the Plan or the provisions of the PBA to deviate from the Plan terms in respect of the Applicant or of any other of the employees in the Ontario Public Service who received the Buy Back Window Communications and were eligible to exercise Buy Back rights and who did not exercise those rights under the terms of the Plan.

OPSEU Pension Trust's Adjudication Panel (the "Adjudication Panel") considered the Applicant's position at an oral hearing on February 5, 2003. The Adjudication Panel's decision to deny the Applicant's appeal was rendered on the same day and the Applicant was provided with written reasons for the denial.

The Adjudication Panel concluded that, under the terms of the 1989 Act, the Applicant was not entitled to purchase credit for the Applicable Period, since "...the opportunity ended on December 31, 1989, with the repeal of that legislation".

The Adjudication Panel further concluded that:

As a Plan Member on December 31, 1989, the Applicant had a time-limited application window of 24 months, under the *Public Service Pension Act, 1989*, during which he could have submitted a second application to the administrator. The Applicant concedes that he did not submit a second

application to the administrator. The Applicant concedes that he did not submit a second application, within the requisite deadline.

While it is true that he was not given an application personally to complete, the Management Board Secretariat and later the Ontario Pension Board were aware of this deliberate and significant change to the pension Plan. They published items in the Government of Ontario's newsletter, *topical*, provided a stuffer for payroll distribution and issued a new member's booklet titled, "Your Pension Plan". The administrator made information available to each participating OPS employer, through information sessions and the issuance of "Fact Sheets" and an "Administration Guidelines" manual. Each of these items contained an explanation of the changes that became effective with the creation of the Public Service Pension Plan in 1990.

Based on these conclusions, the Adjudication Panel determined that the Applicant's claim must be denied such that the Applicant was not permitted to purchase credit for his Prior Service.

(d) The Superintendent's Notice of Proposal

On November 20, 2004, the Superintendent of Financial Services (the "Superintendent") issued a Notice of Proposal (the "NOP") to refuse to make an order under section 87(1) of the PBA directing the OPSEU Plan to allow the Applicant to purchase past service credits for his Prior Service in the OPSEU Plan.

The NOP states, in part, as follows:

14. The Superintendent of Financial Services (the "Superintendent") can make an order under section 87(1) of the PBA if he is of the opinion, on reasonable and probable ground, that the condition set out in section 87(2)(a) of the PBA exists: i.e. the pension plan or pension fund is not being administered in accordance with the PBA, the

Regulation 909, R.R.O. 1990, as amended (the “Regulation”) or the pension plan.

15. For the reasons set out above, the Superintendent is not of the opinion that the Plan is not being administered in accordance with its terms.

The basis for the NOP is that the Applicant failed to satisfy the conditions necessary for him to purchase past service credits under the terms of the 1989 Act, i.e. the Applicant failed to make a written application within the prescribed time limits and within the meaning of section 11(6) of the 1989 Act.

The Applicant requested a hearing before the Tribunal in connection with the NOP.

D. ANALYSIS

(a) First Issue: Can the Applicant Buy Back his Prior Service Under the Plan or Applicable Legislation Including the PBA

The Applicant’s argument is that he is allowed to complete the Buy Back of his Prior Service on the basis either that:

- (i) he had a new Plan membership date in 1989 and then again in 1993 which would bring him new rights to Buy Back his Prior Service; or
- (ii) there is no new Plan membership date and the Plan is just a continuation of the predecessor plans as specified in section 81 of the PBA, and accordingly, his original application in 1979 would suffice to meet the criteria for an application for Buy Back.

We have concluded that the Applicant is not allowed to Buy Back his identified Prior Service under the Plan or applicable legislation.

The Applicant submitted he has a right to Buy Back his Prior Service under the Old Plan as preserved by section 81 of the PBA. That provision states that where a pension plan is established by an employer to be a successor to an existing plan the new pension plan is

deemed to be a continuation of the original pension plan and benefits under the original pension plan in respect of employment before the establishment of the new pension plan shall be deemed to be benefits under the new pension plan.

There is no dispute that the Plan was a successor plan to the 1989 Plan which in turn was a successor to the Old Plan. This result flows from the clear wording of the 1989 Act and the OPSEU Pension Plan Act. Section 81 of the PBA is consistent with the provisions of that more specific legislation.

We do not agree, however, that section 81 of the PBA or the mere fact the 1989 Act provided that the 1989 Plan was a successor to the Old Plan was intended or effective to preserve indefinitely and unamended the terms of and the Old Plan in the 1989 Plan, or in any successor plan thereto such as the Plan. The 1989 Plan was a statutory pension plan which included a specific Buy Back provision available to but not exercised by the Applicant. The intention and effect of the 1989 Act and the 1989 Plan clearly was to provide a time limited Buy Back provision in place of any unexercised Buy Back option that was not exercised under the Old Act. Section 17 of the 1989 Act repealed the Old Act which set out the Old Plan. The 1989 Act established the 1989 Plan as set out in Schedule I to that legislation.

We do not agree that the existence of an unexercised Buy Back option under the Old Plan is a “benefit” continued under section 81 of the PBA in the 1989 Plan. However, even if it were a benefit so continued under the 1989 Plan the combined effect of the 1989 Act and the 1989 Plan was to replace the Buy Back provision in the Old Plan with the time limited Buy Back in the 1989 Plan.

There is no dispute that the terms of the 1989 Plan at the relevant time required the Applicant to apply in writing to purchase the Prior Service during the period December 31, 1989 to December 31, 1991. There also is no dispute that the Applicant did not do so in accordance with section 8 of the Old Act.

The 1989 Plan included a Buy Back Window. That Buy Back Window gave members a deadline to exercise the option to purchase prior non-credited service for periods prior to 1990. The Applicant's Prior Service fell into this category. Specifically, section 11(6) of Schedule I of the 1989 Plan provided that individuals who were members of the Old Plan on December 31, 1989 were eligible to purchase past service credit related to service prior to January 1, 1990 if they submitted a written application to the Board, as Administrator of the 1989 Plan, no later than December 31, 1991.

The Applicant was a member of the Old Plan on December 31, 1989 and in that capacity was eligible to exercise the time-limited option to purchase past service credit related to his Prior Service. The Board through the Buy Back Window Communications applied various and extensive methods to inform members including the Applicant, of the Buy Back Window.

The Applicant does not deny having received the Buy Back Window Communications. He has acknowledged that he did not complete and submit a written application to purchase past service credits for his Prior Service within 24 months after December 31, 1989, the deadline imposed by section 11(6) of Schedule I of the 1989 Plan.

Section 11(1)(b) of Schedule I in the 1989 Act provides for the purchase of credit in the Plan for any period of service "with an employer who contributed to the Fund [for the Plan] or a predecessor fund throughout the period, and for which the member has no credit in the Plan and no claim for pension benefits from the Plan." Section 11(1)(b) covers the past service periods at issue in this hearing.

Section 11(6) outlines the timing requirements for making a written application to purchase past service under section 11. Section 11(6) states:

(6) Any credit referred to in subsection (1) may be purchased only if application thereof is made to the Board in writing within twenty-four months after the latest of

- (a) the day on which the member for whom credit is to be purchased became a member of the Plan;
- (b) the last day of the most recent continuous period for which credit is being purchased; or
- (c) the 31st day of December, 1989.

Section 11(6) is unambiguous and mandatory. It states that past service can be purchased “only if” an application in writing is made by the Applicant between December 31, 1989 and December 31, 1991. Section 11(6) does not grant discretion to the Administrator to waive or modify this requirement.

Moreover, section 11(6) does not relieve a member from the obligation to file an application if an application was filed under the Old Act. By virtue of section 17 of the 1989 Act, the Old Act (and any provisions it may have contained concerning applications to Buy Back past service) was repealed. Section 11(1)(b) therefore would not bring any past service periods into the scope of the requirements in section 11(6) unless a member had completed such a Buy Back and already had credit in the Plan for the service at the time of the adoption of the 1989 Act.

The Applicant does not dispute that proposition. He states in his Submissions that, as a result of the changes in the 1989 Act,

...I must go through the same exercise in 1990 or 1991 as I went through in 1979 in order to preserve my rights under the plan. I must sign a new application between January 1, 1990 and December 31, 1991 and submit this to the administrator.

Accordingly, the fact that the Applicant completed an application to Buy Back service in 1979 does not affect the outcome in this case. The important fact is that the Applicant never completed that Buy Back process and therefore the application requirement in section 11(6), which he did not utilize, is applicable.

(b) What Remedy Could be Granted to the Applicant by the Superintendent or this Tribunal Under the PBA

The Applicant argued that the Superintendent under section 87 of the PBA can require the Administrator of the Plan to allow him to Buy Back his identified Prior Service and accordingly that the Tribunal has power under section 89(9) of the PBA and section 20 of the *Financial Services Commission Act*, S.O. 1997, c. 28 (the “FSCO Act”) to make such an order.

Section 87 of the PBA permits the Superintendent to make a written order requiring an Administrator or other person to take an 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 thereunder or the pension plan. In this case the provisions of the 1989 Act and the Plan have been administered in accordance with their terms and they are not contrary to the PBA or otherwise invalid. The powers of the Superintendent under section 87 of the PBA, the powers of the Tribunal under section 89 of the PBA and section 20 of the FSCO Act and the requirements of section 19(1) of the PBA (which relate to the requirement to administer a plan in accordance with the PBA and the Regulations thereunder) and section 22 of the PBA (which sets out the standard of care owed by plan administrators in connection with the administration of a pension plan or fund) do not come into play.

Accordingly, even if the Tribunal had answered “yes” to the first issue, there is no remedy available to the Applicant with respect to the Plan under the PBA. If the Applicant were permitted to Buy Back the requested service under the Plan, the Administrator of that Plan would be in breach of the Plan provisions and accordingly of its statutory requirement to administer the Plan in accordance with its terms and the PBA.

The Applicant’s case has been framed in part on what he claims are defects in the Buy Back Window Communications materials provided in respect of the application requirement in section 11(6) of Schedule I in the 1989 Act. We do not agree with that

submission. The extensive Buy Back Window Communications, as noted above, unambiguously indicated the requirement that a member who wished to Buy Back service occurring prior to 1990 must take steps to do so during the December 31, 1989 to December 31, 1991 period. The Buy Back Window Communications materials provided by the Board do not, as the Applicant asserted, constitute a contravention of section 19 or 22 of the PBA.

The Applicant has further submitted that even if the Buy Back Window Communications materials were clear he was misled by information provided to him by the OPSEU Pension Trust as the Administrator of the Plan. We are not required in view of our conclusions on the first issue to decide what if any remedy can or should be applied by the Tribunal. However, even if there was merit to the Applicant's unproven allegation that he was provided with misleading advice which he submits he chose to rely on notwithstanding the clear written Buy Back Window Communications materials, and the terms of the Plan, including the predecessor plans, we believe that the Tribunal does not have authority under the PBA or the FSCO Act to direct the Administrator of the Plan to permit the Applicant to Buy Back the requested service contrary to the terms of the Plan. We agree with the submission of the Superintendent's counsel that, if the Applicant can establish that the materials were erroneous or he was misled by incorrect advice from a member of the staff of the OPSEU Pension Trust, he is free to try to establish in a court the factual and legal basis of a valid claim (including reliance to his detriment on the materials or information provided) pursuant to a civil action in the courts seeking compensation for any losses he may have incurred.

E. CONCLUSION

For the reasons noted above, the Applicant is not permitted to purchase the requested periods of past service and the issue of the appropriate remedy does not arise in this case. The Tribunal confirms the Notice of Proposal of the Superintendent.

F. COSTS

If any party wishes to make application for an order of costs in this matter, it may do so by written request filed with the Tribunal and served on the other parties within 30 days of this decision. The other parties shall have 14 days to file and serve written responses to any such request.

Dated at the City of Toronto this 30th, day of September, 2005.

“John M. Solursh”
John M. Solursh
Vice Chair of the Tribunal and Chair of the Panel

“S. Bharmal”
Shiraz Bharmal
Member of the Tribunal and of the Panel

“F. Holden”
Florence Holden
Member of the Tribunal and of the Panel

APPENDIX

FST File No. P0246-2004

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JULIAN PAUL

Applicant

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SUPERINTENDENT OF FINANCIAL SERVICES

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AGREED STATEMENT OF FACTS

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1. The Applicant worked with the Ministry of Natural Resources (the "Employer") on a casual basis beginning on July 19, 1976 as a summer student and throughout 1977, 1978 and for the first quarter of 1979. During these periods the Applicant's employment was not continuous and he did not make any contributions to the prior plan in existence at that time, Public Service Superannuation Plan (the "PSPP") as set out in the *Public Service Superannuation Act R.S.O. 1970, c. 387* as amended (the "Old Act").
2. The Applicant was appointed to classified service on April 2, 1979 and began contributing to the PSPP on that date.
3. The Employer prepares a *Service and Earnings Report* which details the Applicant's non-contributory service between July, 1976 and April 1, 1979. This report was forwarded to the Administrator at that time (the Ministry of Government Services (the "MGS"))
4. The Applicant indicated to the Administrator of the Plan at that time, the MGS, that he wished to purchase the periods of non-contributory service between June 1977 to November 3, 1978 and November 14 to March 2, 1979 with the Ministry of Natural Resources by submitting a Statement and Application Elective Service Arrears form on August 5, 1980 ("Application Form"). The Application Form was signed by the Applicant on March 27, 1979.
5. MGS reviewed the Applicant's periods of non-contributory service based on the Service and Earnings Report provided by the Applicant's employer and consistent with the practice at that time, did an assessment and determined the periods of eligible service that the Applicant was qualified to purchase pursuant to the Old Act, which provided for the purchase of non-credited service. After completing the assessment, MGS mailed a Notification of Arrears and Agreement to Contribute form MGS 565 (the "MGS 565 Form") to the Applicant on October 10, 1980, setting out the period of eligible service the Applicant was entitled to purchase.
6. The MGS 565 form indicated that the Applicant was entitled to purchase 10 months and 4 days of prior non-contributory service between May 29, 1978 and April 1, 1979, for the lump sum cost of \$654.52. In order to proceed with the purchase as set out on the MGS 565 form, the Applicant was required to complete, sign and return the form to the MGS. The MGS 565 Form advised, in bolded print,

"We have not received the completed form within 3 months from the date of mailing, we shall treat your request as lapsed."

The Applicant did not return the MGS 565 Form or make any attempt to purchase this past service within the 3 month time period.

7. On December 31, 1989, the *Public Service Pension Act, 1989 c. 73* (the “New Act”) came into force and the Old Act was repealed effective January 1, 1990. The option to purchase prior non-credited service under the Old Act ceased with this repeal, however, the New Act included a provision which gave Plan members a deadline to exercise the option to purchase prior non-credited service for periods prior to 1990. Pursuant to section 11(6) of Schedule I of the New Act, individuals who were Plan members on December 31, 1989, had to submit a written application within 24 months after December 31, 1989 to the Administrator of the Plan for the purchase of any past service credit related to service prior to January 1, 1990.
8. The Applicant was a member on December 31, 1989 and was, therefore, eligible to exercise the time-limited option to purchase past service credit related to service prior to January 1, 1990.
9. The Administrator used various means of informing Plan members as of December 31, 1989, of the deadline of December 31, 1991. The Administrator published items in the Government of Ontario newsletter, *Topical*, provided a pamphlet for payroll distribution, issued a new member’s booklet titled “Your Pension Plan,” hosted information sessions and issued “Fact sheets” and “Administration Guidelines Manual” to advise Plan members of the December 31, 1991 deadline.
10. The Applicant did not complete and submit a written application to purchase past service credits for his past service within 24 months after December 31, 1989, the deadline imposed by section 11(6) of Schedule I of the New Act.