
Citation: *Fredericton Police Association v. New Brunswick (Superintendent of Pensions)*, 2019 NBFCST 11

PROVINCE OF NEW BRUNSWICK
FINANCIAL AND CONSUMER SERVICES TRIBUNAL
IN THE MATTER OF THE *PENSION BENEFITS ACT*, S.N.B. 1987, c P-5.1 w

Date: 2019-09-16
Docket: PE-001-2018

BETWEEN:

Fredericton Police Association, Local 911 United Brotherhood of Carpenters and Joiners of America and Applicant 2, Fredericton Fire Fighters Association, International Association of Fire Fighters, Local 1053 and Applicant 4,

Applicants,

-and-

Superintendent of Pensions and The City of Fredericton,

Respondents.

ORDER

WHEREAS:

1. After indications from counsel for the Superintendent of Pensions that the Superintendent might testify at the hearing of the appeal in this matter, the Tribunal served the parties with a *Notice of Hearing of Motion* requesting that they address the following legal issues in the context of a pre-hearing motion:
 - a) Does section 75 of the *Pension Benefits Act* allow the Superintendent of Pensions to introduce evidence, including oral testimony, at the hearing of the appeal of her own decision?

- b) Are there any constraints on the type of legal arguments that may be made by the Superintendent of Pensions on an appeal of her own decision?
2. After consultation with the parties to determine their availability, the motion was scheduled for September 26, 2019;
3. On September 6, 2019, the Superintendent of Pensions filed a motion requesting the adjournment of the motion raised by the Tribunal claiming that it was premature until:
 - a) The Appellant Unions' additional documents upon which they intend to rely, received 29 August 2019, are reviewed;
 - b) The Appellants' expert witness report and supporting documents, received 3 September 2019, are reviewed;
 - c) The Respondent City of Fredericton has provided their additional documents upon which they intend to rely, their expert witness report and supporting documents (ordered to be produced on or before 30 September 2019), and these documents are reviewed; and
 - d) The Superintendent of Pensions has provided a summary of witness' testimony including a list of all witnesses the Superintendent intends to call, together with a description of the anticipated testimony of each witness, ordered to be produced by the Tribunal on or before 31 October 2019;
4. The City of Fredericton consents to the Superintendent of Pensions' motion;
5. The Appellants consent to the Superintendent of Pensions' motion on the condition that if the Superintendent intends to play any role in the appeal, including the calling of evidence and making submissions, that the motion raised by the Tribunal be heard between mid-November and early December so that the issue can be determined in a timely fashion before the appeal dates in January;
6. The purpose of the motion raised by the Tribunal is not to determine the admissibility of evidence in advance of the hearing on the merits but rather to consider the scope of the Superintendent of Pensions' participatory rights on the appeal in light of section 75 of the *Pension Benefits Act*;
7. The preliminary issue of the Superintendent's participatory rights must be dealt with in a timely manner to ensure the parties may prepare for the hearing of the appeal and to ensure this matter proceeds as expeditiously as possible;
8. Administrative tribunals are the masters of their own procedures and are entitled to devise flexible procedures adapted to their needs in order to "achieve a certain balance between the need for fairness, efficiency and predictability of outcome": *Knight v. Indian Head School Division No. 19*, [1990] 1 S.C.R. 653 at 685. See also *Prasad v. Canada (Minister of Employment and Immigration)*, [1989] 1 S.C.R. 560;
9. The Tribunal is unavailable to hear the motion in relation to the scope of the Superintendent of Pensions' participation in either November or December 2019;
10. The hearing of the appeal in this matter has already been rescheduled once and is currently scheduled for January 27 to 31, 2020;

THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Superintendent of Pensions' motion seeking an adjournment of the September 26, 2019 motion is denied.

DATED this 16th day of September, 2019.

Judith Keating

Judith Keating, Q.C.
Tribunal Chair