

August 23, 2019



Dear :

Re: Your request for access to information under Part II of the *Access to Information and Protection of Privacy Act* [Our File #: SNL-098-2019]

On August 12, 2019, Service NL received your request for access to the following records:

July 2019 Information Note - Wabush Mines Pension Plans.

I am pleased to inform you that a decision has been made by the Deputy Minister for Service NL to provide access to the requested information.

In accordance with your request for a copy of the records, the appropriate copies have been enclosed.

The *Access to Information and Protection of Privacy Act* (the Act) requires us to provide an advisory response within 10 days of receiving the request. As this request has been completed prior to day 10, this letter also serves as our Advisory Response.

Please be advised that you may ask the Information and Privacy Commissioner to review the processing of your access request, as set out in section 42 of the Act. A request to the Commissioner must be made in writing within 15 business days of the date of this letter or within a longer period that may be allowed by the Commissioner.

The address and contact information of the Information and Privacy Commissioner is as follows:

Office of the Information and Privacy Commissioner
2 Canada Drive
P. O. Box 13004, Stn. A
St. John's, NL. A1B 3V8
Telephone: (709) 729-6309
Toll-Free: 1-877-729-6309
Facsimile: (709) 729-6500

You may also appeal directly to the Supreme Court Trial Division within 15 business days after you receive the decision of the public body, pursuant to section 52 of the Act.

Please be advised that responsive records will be published following a 72 hour period after the response is sent electronically to you or five business days in the case where records are mailed to you. It is the goal to have the responsive records posted to the Completed Access to Information Requests website within one business day following the applicable period of time. Please note that requests for personal information will not be posted online.

If you have any further questions, please feel free to contact me by telephone at 709-729-0071 or by e-mail at FrankWalsh@gov.nl.ca.

Sincerely,

A handwritten signature in blue ink that reads "Frank Walsh". The signature is written in a cursive, slightly slanted style.

FRANK WALSH
ATIPP Coordinator
Service NL

Access or correction complaint

42. (1) A person who makes a request under this Act for access to a record or for correction of personal information may file a complaint with the commissioner respecting a decision, act or failure to act of the head of the public body that relates to the request.

(2) A complaint under subsection (1) shall be filed in writing not later than 15 business days

(a) after the applicant is notified of the decision of the head of the public body, or the date of the act or failure to act; or

(b) after the date the head of the public body is considered to have refused the request under subsection 16(2).

(3) A third party informed under section 19 of a decision of the head of a public body to grant access to a record or part of a record in response to a request may file a complaint with the commissioner respecting that decision.

(4) A complaint under subsection (3) shall be filed in writing not later than 15 business days after the third party is informed of the decision of the head of the public body.

(5) The commissioner may allow a longer time period for the filing of a complaint under this section.

(6) A person or third party who has appealed directly to the Trial Division under subsection 52(1) or 53(1) shall not file a complaint with the commissioner.

(7) The commissioner shall refuse to investigate a complaint where an appeal has been commenced in the Trial Division.

(8) A complaint shall not be filed under this section with respect to

(a) a request that is disregarded under section 21;

(b) a decision respecting an extension of time under section 23;

(c) a variation of a procedure under section 24; or

(d) an estimate of costs or a decision not to waive a cost under section 26.

(9) The commissioner shall provide a copy of the complaint to the head of the public body concerned.

Direct appeal to Trial Division by an applicant

52. (1) Where an applicant has made a request to a public body for access to a record or correction of personal information and has not filed a complaint with the commissioner under section 42, the applicant may appeal the decision, act or failure to act of the head of the public body that relates to the request directly to the Trial Division.

(2) An appeal shall be commenced under subsection (1) not later than 15 business days

(a) after the applicant is notified of the decision of the head of the public body, or the date of the act or failure to act; or

(b) after the date the head of the public body is considered to have refused the request under subsection 16(2).

(3) Where an applicant has filed a complaint with the commissioner under section 42 and the commissioner has refused to investigate the complaint, the applicant may commence an appeal in the Trial Division of the decision, act or failure to act of the head of the public body that relates to the request for access to a record or for correction of personal information.

(4) An appeal shall be commenced under subsection (3) not later than 15 business days after the applicant is notified of the commissioner's refusal under subsection 45(2).

**Information Note
Service NL**

Title: Wabush Mines Pension Plans

Issue: Correction to final pension amounts under the Wabush Mines Bargaining Unit Pension Plan.

Background and Current Status:

- Wabush Mines has two separate pension plans registered under the *Pension Benefits Act, 1997* (PBA); one for bargaining unit employees (Union Plan) and one for salaried employees (Non-Union Plan).
- On May 20, 2015, Cliffs Natural Resources filed an extension to existing proceedings with the Quebec Superior Court for bankruptcy protection under the federal *Companies' Creditors Arrangement Act* (CCAA) for the Wabush Mines Joint Venture.
- On December 16, 2015, the Superintendent of Pensions (Superintendent) terminated both pension plans and, due to deficits that existed in the plans, approved an interim reduction to pensions-in-pay to 79 per cent for the Union Plan and 75 per cent for the Non-Union Plan. The reductions took effect March 1, 2016 and were done to reduce the likelihood of future reductions and ensure fair treatment of all members.
- In order to uphold the best interests of the plan members, on March 30, 2016, the Superintendent appointed a specialized third-party firm, Morneau Shepell (Morneau), to act as replacement administrator for the pension plans.
- The final termination report for the Union Plan was filed by Morneau on December 20, 2017 and was approved by the Superintendent on March 7, 2018.
- One of the final stages of the termination process took place in early 2019 whereby Morneau received quotes from insurance companies to provide immediate pensions to the retirees and deferred pensions to those former workers not yet eligible to start their pension. Some other former workers elected to receive a lump sum commuted value of their entitlement in lieu of a pension from an insurance company.
- This quotation process allowed Morneau to assess the final funded percentage of the pension plans which, for Newfoundland and Labrador members, was 93.80 per cent for the Union Plan and 92.85 per cent for the Salaried Plan.
- Funds were transferred from the pension plans to the insurance company and retirees started to receive their pension from the insurance company in May 2019. A retroactive lump sum was also paid (in April 2019) to compensate retirees for any underpayments between March 2016 and April 2019 as pension were paid at a lower percentage during that time (79 per cent as noted above for the Union Plan instead of 93.80 per cent over the 38-month period).
- On June 21, 2019, representatives from Morneau advised the Superintendent of an error they identified when they determined the final funded percentage for the Union Plan. In a subsequent email, dated July 16, 2019, Morneau identified that the funded ratio of the Union

Plan was overstated as 93.80 per cent whereas it should have been 92.93 per cent (i.e. 0.87 per cent lower).

- This impacts the amount of pension retirees will receive from the insurance company but also impacts the amount paid as lump sum commuted values.
- For retirees, Morneau is proposing to reduce pensions by 0.87% starting in September 1, 2019. Morneau has advised there are 481 retirees receiving a pension and 187 deferred members not yet eligible to start their pension who will receive correspondence from Morneau explaining the correction to their pension.
- Due to the administrative cost, Morneau is not planning to recover the overpayments of commuted values already paid from the Union Plan in lieu of a pension, which resulted in total overpayments of \$78,800 to 290 NL members, or an average overpayment of \$272 per person.
- Morneau also identified that the amount of the retroactive lump sums paid in April 2019 will need to be corrected. In this case, retirees were underpaid and should have received a higher retroactive lump sum amount. This correction amount varies by retiree and for most retirees (i.e., the 481 retirees referenced above) results in a positive top-up. The same letter to these 481 retirees will also include details on the additional retroactive lump sum they will receive in August 2019.
- However, Morneau indicated there is a small group of 33 retirees who were overpaid their retroactive lump sum. Rather than request a repayment, their pension will be reduced by more than 0.87 per cent starting in September 2019. The amount of reduction will vary for these individuals but in the actual example provided to the Superintendent the retiree's pension will be reduced by 4.5 per cent at that time. Separate correspondence is being sent to this group to explain the correction being made to their pension starting in September.
- Morneau has clearly stated to the Superintendent that the costs for making these corrections will not be charged to the Union Plan. This statement will also be made to the plan members in the personalized communication explaining the correction.
- Morneau will begin processing these letters on July 24, 2019 and will be providing details of the corrections to the legal counsel for the Union Plan on the same date.

Analysis:

- In Newfoundland and Labrador, registered pension plans must comply with the requirements of the PBA, administered by Service NL.
- It is the responsibility of the pension plan administrator to ensure that the settlement of the pension plan assets is compliant with the PBA and the termination report.
- Members of both of the Wabush Mines pension plans have been vocal with concerns about Government's involvement with the pension plans and the company's CCAA filing. It is expected that this correction will result in further dissatisfaction being expressed. However, as noted above, in many cases (for the 481 retirees) the 0.87 per cent reduction to the pension starting in September is preceded by an additional retroactive cheque in August.

Action Being Taken:

- As plan administrator, Morneau Shepell is required to correct the pensions under the Union Plan to ensure there are sufficient pension funds to provide all former members with a fair and equitable pension benefit.
- The reduction for the Union Plan will be applied effective September 1, 2019 but will be preceded by an additional retroactive pension cheque for many retirees.
- There is no correction required for the Salaried Plan.
- Morneau Shepell will advise all affected members by a mail-out, to be sent around July 24, 2019, and will address all questions or concerns from plan members.
- The pension plan administrator has clearly stated that the costs for making these corrections will not be charged to the Union Plan.
- Any questions or issues related to this reduction should be directed to Morneau Shepell, at WabushBargaining@morneaushepell.com, or their toll-free number 1-855-649-8648.
- Service NL continues to work very closely with the replacement administrator to ensure that the pension plan terminations are completed in accordance with provincial pension legislation.
- Key messages will be prepared to address any enquiries to Government from plan members or the media.

Prepared/Approved by: M. Delaney/S. Dutton
Ministerial Approval:

July 22, 2019

