

BOUCHER V. ONTARIO (SUPERINTENDENT OF FINANCIAL SERVICES) – CONFIRMATION OF LIMITS ON ENTITLEMENT TO COMMUTED PENSION VALUE

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The Ontario Financial Services Tribunal's recent decision in [Boucher v. Ontario \(Superintendent Financial Services\)](#) (2017 ONFST 5) provides a helpful reminder and explanation of the limits placed by section 42 of the *Pension Benefits Act* ("Act") on an employee's entitlements upon retirement and withdrawal from a pension plan. *Boucher* is also more broadly instructive on the question of whether the Tribunal has jurisdiction to order relief not permitted by the *Act* or governing pension plan.

In *Boucher*, the Applicant was an Ontario Lottery and Gaming Corporation employee and, as such, was a member of the Public Service Pension Plan ("Plan"). Boucher retired almost immediately after his 55th birthday, thereby terminating his membership in the Plan, under the belief that doing so would entitle him to take portion of his pension benefit as an immediate cash payment transfer the rest to a locked-in RRSP. The Tribunal noted that Boucher wanted access to the full value of his pension (especially the requested partial cash transfer) more quickly than he otherwise could have under the three options provided to him by OLG upon retirement.

Under the Plan, former members who had not attained the age of 55 could require the commuted value of their pension to be paid out, subject to section 42 of the *Act*. While section 42 of the *Act* does permit the immediate transfer of a deferred pension into a retirement savings arrangement, section 42(3) of the *Act* restricts that right to circumstances where the member is not entitled to an immediate payment under the Plan or *Act*, unless the Plan provides such an entitlement. In Boucher's case, the Plan only permitted the payment of a member's full commuted value if the member had not attained age 55. While Boucher could have received immediate payment under the Plan, he would have been required to accept payment at a reduced overall value. Since Boucher was over 55 when he retired (even by a few days), he was not entitled to have the full commuted value of his pension paid out as he requested. In a nutshell, Boucher was entitled to payment upon retirement, just not in the form he wanted.

Despite Boucher's request, the Tribunal concluded that it does not have the jurisdiction to order the transfer of

a commuted value of a member's pension where not permitted under the Act to do so. More broadly, the Tribunal added that it "does not have the power to award any other remedy that is not provided for under the Act, including damages."

Boucher is a reminder of the importance of carefully considering both the language of the Act and how the Act interacts with the language of the applicable pension plan when determining a member's entitlements or restrictions. Unfortunately for the Applicant in *Boucher*, he appears to have acted on improper information to obtain a result simply not permitted by the Act and his pension plan.

by Kyle Lambert

A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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