

IN CONTEMPLATION OF LITIGATION/PRIVILEGED

Recommendation to the Joint Pension Board

Motion: That the Joint Pension Board approve spending \$ **12,301.11**¹ for the purchase of an annuity providing a former member of The University of Western Ontario Staff Annuity Retirement Plan, Professor Noel Roy, with a monthly annuity in the amount \$81.20 with payment to start effective January 1, 2009.

Background

A former Western employee and pension plan member, Professor Noel Roy, has contacted UWOFA and the pension and benefits group making a claim for payment of an annuity payable from London Life. He first contacted HR communications by email February 9th, 2008. In support of his claim he provided copies of his UWO pension statements from 1971, 1972, 1973 and 1974 that show his entitlement to a London Life Annuity in the amount of \$81.20 payable at age 65. He also provided a copy of a letter dated August 10, 1979 from the University confirming that changes in the UWO retirement plans did not affect his old London Life annuity. Professor Roy advised that in 1979 he transferred all his pension money out from The University of Western Ontario Pension Plan for Members of the Academic Staff but that he did not and could not transfer out any of the London Life annuity monies.

Professor Roy has advised that he received no further information about his London Life deferred annuity other than what he provided to us.

Given that the matter arises from a claim relating to the 1970's, the University is not in a position to conclusively show that all pension entitlements were paid out to the member. Listings of contributions from 1979 show Professor Roy as having \$6,626.31 in July 1979. His name disappears on the listing in December 1979. The implication is that these monies were transferred out later in 1979; however, there are no records for Professor Roy to confirm the transfer or to reconcile whether this amount included contributions and entitlements for the London Life annuity.

Other than this listing the only relevant records located in regard to Professor Roy are a termination notice, a copy of the 1974 Pension Plan statement and a copy the 1976 UWO pension listing showing his annuity entitlement and noting a certificate number of 4717. We have no documentation on the withdrawal of any of his pension monies and no record of a letter from London Life confirming a refund of monies attributable to the London Life annuity for Professor Roy.

¹ The quoted price as of December 31, 2008 for a single life annuity with 60 payment guaranteed.

We have reviewed the London Life Group Annuity contract GA-269-01 and its subsequent amendments. London Life currently maintains a list former members who have deferred annuities payable under this contract and Professor Roy is not on the list. London Life, at our request has looked at its historical records and advises that it does not show this individual on any UWO annuity list in the 1970s, 1980's or on any of its current data bases. The searches have been done in the course of many months but no clear documentation confirming any pension fund transfer or refund of contributions in regard to the London Life annuity is available.

Constraints/ Risks

In the event that Professor Roy tried to pursue his claim in the courts we could argue that the limitation period for his claim had expired but there is a good chance that he could rely on the discovery principle to argue that the time for him to start a legal claim should start only when he found out that the annuity was not in place.

Since we cannot prove he was paid out for the London Life portion of his pension entitlements it is unlikely we would be successful in denying a claim should he choose to pursue the matter. If unsuccessful in litigation, we would be exposed to pay our legal costs, the assessed legal costs of Professor Roy and the cost of purchasing the annuity. It is likely that the court would put the onus on the administrator of the retirement plans to prove on the balance of probabilities that the refund of Professor Roy's contributions included his annuity monies. In light of the documents provided by Professor Roy, we are not in a position to do this for the London Life annuity which is the subject of Professor Roy's claim.

At this time we have no evidence of providing his contributions to London Life. We have one list from 1976 that shows a London Life certificate annuity number for Professor Roy from 1976 but no other documents. The list in question is an internal UWO list and is not generated from London Life. Given this, it is unlikely that we would have a successful claim against London Life.

The amount in question is relatively small in comparison to the cost of litigation. Given our low chance of success and the high cost of litigation it is prudent and reasonable to proceed to purchase this annuity – we would recommend that a full and final release be requested from Professor Roy in exchange for the purchase of the annuity by way of settlement in this matter.

Rationale

In proceeding this way the issue is being dealt with in a manner that is consistent with the principles of the Joint Pension Board. In particular, it is cost effective because there is a good prospect that this individual would pursue his claim. Given the amount involved and the relatively low chance of litigation success the pension plan risks incurring costs that are greater than the cost of purchasing the annuity at this time.

Proceeding this way would also be prudent because the payment of the annuity would be contingent on obtaining a release from Professor Roy in regards to any or all claims he might advance in regards to this issue.

Problems/Issues

It is expected that payment of the annuity would resolve the matter. Professor Roy first contacted the University in the February of 2008 and it would be advisable to resolve this matter quickly before it escalates.

I am advised by Louise Koza that there is precedent for this course of action as she is aware of another situation, similar to this case, where a discretionary payment was made for a former member. It is important that Professor Roy signs a statement in the release agreeing not to share the details of the settlement as it could none the less set a precedent for others former members to try to make similar claims that are not legitimate.

Implementation

In the event that motion is approved we would proceed to contact Professor Roy and advise him we have been unable to confirm his entitlements to a London Life annuity but in light of the records he provided that we can offer to purchase a suitable annuity on a discretionary basis in exchange for his signing a release of his claim.

Conclusion:

Given the documentation provided by Professor Roy, the inability to conclusively prove that all relevant London life annuity pension entitlements were refunded to the member and the fact that we are advised by London Life that no records for Professor Roy exist with London Life, it is recommended to proceed with purchasing an annuity for this former plan member on a discretionary basis.