

IN THE MATTER OF *THE PENSION BENEFITS ACT, 1992* (the Act)

AND IN THE MATTER OF a reconsideration of a decision of the Deputy Superintendent of Pensions pursuant to section 22 of the Act regarding the termination of the Pension Plan for the Employees of Python Manufacturing Ltd. (the Plan), plan registration number 1316371.

Hearing held: December 18, 2023

Before: Leah Fichter, Deputy Superintendent of Pensions

Appearances: Craig Savoie, Associate, Miller Thomson LLP, counsel for Python Manufacturing Ltd. (Python)

Date of decision: March 20, 2024

INTRODUCTION

- [1] This is a reconsideration decision arising from a notice of objection, pursuant to section 22 of the Act, filed by Ben [Kyungtae] Kang (hereafter referred to as Ben Kang), as representative for Python with respect to a decision I made on July 10, 2023 to terminate the Plan effective July 10, 2023.
- [2] The Plan, which has an effective date of November 17, 2017, was registered under the Act on March 18, 2018. The Plan is a defined contribution plan pursuant to clause 2(1)(j) of the Act.
- [3] The Plan requires members to contribute to the Plan by payroll deduction an amount equal to three per cent of the member's earnings during each full or partial year of membership in the Plan.
- [4] The Plan requires the employer to contribute to the Plan an amount equal to the member's required contributions for each member for each full or partial year of membership in the Plan.
- [5] Python was the employer of the Plan members, pursuant to clause 2(1)(n) of the Act.
- [6] Python is the administrator of the Plan pursuant to clause 2(1)(b) of the Act.
- [7] The fund holder of the Plan pursuant to section 41 of the Act is The Canada Life Assurance Company (Canada Life).

- [8] Section 3 of the Act provides that the minister may appoint a superintendent of pensions and one or more deputy superintendents to carry out the duties and exercise the powers of the superintendent pursuant to the Act. I was appointed Deputy Superintendent of Pensions by the minister pursuant to a Minister's Order dated July 10, 2012.
- [9] On July 10, 2023, I issued a decision to terminate the Plan effective July 10, 2023. The decision was sent via a letter to Kyung Won Yun, CEO, Python, c/o Glen LeKach, Power of Attorney, Miller Thompon LLP. The letter explains the reasons why I decided to terminate the plan, and provided that Kyung Won Yun had 60 days after receipt of the letter to deliver a notice of objection to me. The letter was copied to Ben Kang.
- [10] On August 1, 2023, I sent a letter to Plan members, as well as former Plan members who are directly affected by the decision to terminate the Plan. That letter notifies that I decided to terminate the Plan and explains the reasons why. A copy of the July 10, 2023 letter to Kyung Won Yun was enclosed with the August 1, 2023 letter. The addressees of that letter were given until September 30, 2023 to deliver a notice of objection to me. The letters were copied to Ben Kang and Kyung Won Yun.
- [11] By email of August 4, 2023 from Ben Kang to Kahlil Ahmed, Financial and Consumer Affairs Authority, my office was advised of an objection to my decision to terminate the Plan. The email stated:

“First of all, thank you for taking your time to oversee our pension program. Unfortunately, due to financial difficulties we couldn't fulfill what FCAA has asked for.

However, we have found investors and are currently in the stage of a final negotiation. If the deal falls through, we will be able to submit the missing contribution to continue to give the pension benefit to our employees. It would be the best interest for both FCAA and our employees to maintain the pension program which was delivered to us and our employees the day before yesterday.

Daniel (Hongsik) Yun, son of the CEO, has a reference document which is a binding MOU signed by the investors and would like to present that reference document and also show our commitment to fulfill the obligation. Please allow him to visit your office anytime at your convenience and explain our current situation and potential for the future.

Please let us know when he can meet you at your office which is 4th floor 2365 Albert St. Regina, S4P 4K1.

Looking forward to hearing from you soon.”

- [12] Daniel [Hongsik] Yun (hereafter referred to as Daniel Yun), is Chief Operating Officer for Python.
- [13] The purpose of the Hearing on December 18, 2023 was to provide an opportunity for Python to make representations to me in support of the objection to my decision.
- [14] At the hearing, Python was represented by Craig Savoie. Daniel Yun provided testimony under oath for Python.
- [15] As Daniel Yun does not have a good mastery of the English language, during the hearing Craig Savoie often summarized what Daniel Yun said and then asked Daniel Yun to confirm that the summary was correct. Craig Savoie explained to Daniel Yun that it is Daniel Yun who is providing testimony under oath. Daniel Yun agreed to this process.
- [16] At the hearing, a number of documents were introduced as evidence and marked as exhibits. Among the exhibits are letters from Canada Life advising of late contributions and letters I wrote to Ben Kang and Kyung Won Yun expressing my concerns and providing deadlines to bring the Plan into compliance with the Act.

EVIDENCE

- [17] The documentary records indicate as follows:

Canada Life sent ten letters to Ben Kang between June 1, 2022 and April 3, 2023 advising him of overdue contributions with respect to the Plan. My office was copied on these letters. Our office emailed Ben Kang or Daniel Yun four times in that period advising them to take immediate action to remit the overdue contributions. The emails were sent by Khalil Ahmed from my office on June 8, 2022, June 13, 2022, August 24, 2022, and October 4, 2022.

- [18] Neither member nor employer contributions were remitted during the period for which overdue contribution notices were issued. They still have not been remitted for that period. They also were not remitted up until the termination date of the plan, which is July 10, 2023.
- [19] I wrote to Ben Kang on March 8, 2023 to explain what my concerns are, why they are concerns, explain the plan administrator's obligations under the Act to make contributions, and to provide deadlines by which the plan had to be brought into compliance. I provided a deadline of March 31, 2023 to provide us with a spreadsheet listing the amount of the contributions that should have been remitted but were not. I gave a deadline of April 30, 2023 to remit the outstanding contributions for active members and allowed longer to compensate the former members.

[20] The concerns I raised in the March 8, 2023 letter are that when contributions are not made to a plan:

- I am worried that there are operational business pressures causing the late contributions.
- I am concerned that the employer is having trouble paying its suppliers and employees and could be using the pension contributions to keep the business operating.
- If the company goes bankrupt, it is unlikely that members will receive the contributions in arrears.
- The missing contributions could affect members' retirement plans.
- Members may not be able to make alternate contributions to a registered product as Canada Revenue Agency was probably advised that the contributions were made to the pension plan.

[21] On March 31, 2023 Ben Kang emailed my office to ask for a two-week extension to the deadline of April 30, 2023 to remit the outstanding contributions for active members.

[22] On March 31, 2023, Khalil Ahmed from my office sent an email to Ben Kang to advise that the extension that Ben Kang asked for was approved. The new deadline for making contributions for active members was May 15, 2023.

[23] On April 24, 2023, at the request of my office, I met virtually with Ben Kang. At that meeting, I explained the non-compliance issues and the provisions in the Act. I asked about the steps the employer is taking to resolve the issues. Ben Kang advised me that:

- The company was facing serious operational and financial issues for the past year;
- Employees were not being paid on time.
- I shouldn't expect the contributions to be remitted soon because there is no money.

[24] On May 15, 2023, the deadline for making the contributions for active members, Ben Kang sent us an email. He said he was told that Kyung Won Yun would likely be able to remit the contributions that week. He said that there were no sales the prior year (in 2022), the employer had a loss of \$1 million the prior year, they are a month behind on employee payroll, but there is potential because sales inquiries are coming in and there are potential investors. Ben Kang asked for a few more days to make the contributions.

[25] In an email dated May 16, 2023, Ben Kang provided us with a detailed spreadsheet to quantify the amount of missing contributions, which was determined by him to be around \$55,000 at the time. This includes member and employer contributions owing for both active and former members. It does not include interest owing on the contributions.

[26] In another email dated May 16, 2023 to my office, Ben Kang advised us that Python had been two months behind in paying employees. The employees' pay had been caught up, but Ben Kang is a subcontractor, and he hadn't been paid for two and one-half months.

[27] I wrote to Kyung Won Yun on May 29, 2023. Ben Kang was copied on that letter. In that letter:

- I provided extended deadlines to bring the plan into compliance because the contributions were not remitted by the previous deadline I provided. The deadline to remit contributions for active members was extended to June 15, 2023.
- I reiterated my concerns about the plan and explained that all employee contributions are trust funds when they are received by the employer and all employer contributions are trust funds when they are required to be paid into the plan.
- I advised that the Act prohibits an employer from appropriating or converting those funds for the employer's own use.

[28] In an email dated June 14, 2023 to my office, Ben Kang advised us that:

- Python is unable to make the contributions because they are still struggling to pay the employees.
- The only source of funds the company has is a personal loan from Kyung Won Yun. Kyung Won Yun's money came from a loan from a financial institution.
- Ben Kang hadn't been paid for almost three months.
- Kyung Won Yun is negotiating with investors to raise working capital.

[29] In a letter from me dated July 10, 2023, Kyung Won Yun was informed that I had decided to terminate the Plan effective July 10, 2023. The letter provides the following information:

- Between May 31, 2022 and April 3, 2023, Canada Life advised us ten times that Python was in arrears on remitting employer and employee contributions to the Plan. Section 42 of the Act and section 37 of *The Pension Benefits Regulations, 1993* ("the Regulations") require that plan member contributions be remitted within thirty days after the end of the month in which the contributions were deducted from the members' remuneration and that employer contributions be remitted thirty days after the end of the month for which those contributions are payable. Contributions have not been remitted to the Plan since June 2022.
- On March 8, 2023, I wrote to Ben Kang expressing my concerns with the contribution arrears accumulating since June of 2022. In that letter, a copy of which was enclosed, I set out several deadlines for providing information and remitting contributions. I informed Mr. Kang that outstanding pension contributions with respect to current members were to be made by April 30, 2023. On March 31, 2023 an extension, requested by Ben Kang, of that due date was granted to May 15, 2023. The deadline for providing additional information was extended to May 15, 2023 as well. The contributions were not made to the Plan by May 15, 2023. Some requested information was provided to me on May 16, 2023.

- On May 29, 2023, I wrote to Kyung Won Yun to express my concerns with Python's arrears in remitting employer and employee contributions to the Plan. I provided Kyung Won Yun with an extension of the May 15, 2023 deadline until June 15, 2023 to remit the outstanding contributions to the Plan. I also extended the deadline to June 15, 2023 to provide me with information as to how former members will be compensated for their contributions in arrears and for the provision of a complete spreadsheet indicating the contributions in arrears, with interest, for each plan member and former plan member. As of July 10, 2023, I had not been provided with the requested information and had not received a completed spreadsheet including the requested interest calculations for each plan member and former plan member. As of July 10, 2023, the outstanding contributions had not been remitted to the Plan.
- On June 14, 2023, Ben Kang emailed me to say that Python will not be able to remit the outstanding contributions by the deadline of June 15, 2023. He indicated that Python is struggling to compensate its employees.
- A staff member at the FCAA emailed Ben Kang on multiple occasions from June 2022 to July 10, 2023. On April 24, 2023, I had a virtual meeting with Ben Kang to explain our concerns and how they needed to be rectified. Ben Kang advised that Python has been facing serious financial and operational issues that have prevented the outstanding contributions along with interest from being remitted to the Plan. Ben Kang also informed me that employee salaries had been paid late due to a lack of funds.
- In February and March 2023, our office received complaints from a plan member and a former plan member indicating that Python has been deducting contributions from employees' remuneration but not remitting them to the Plan and not remitting employer contributions.
- Canada Life had confirmed that no contributions have been remitted to the Plan since June 2022.
- Subsection 54(1) of the Act provides that all amounts owing to the plan must be remitted to the plan within 30 days after the termination date of the Plan. As such, Python was required to remit all outstanding employer contributions, with interest, to the Plan by August 9, 2023.
- Any employee contributions that had been deducted from employees' remuneration, but not remitted to the Plan, must also be remitted to the Plan by August 9, 2023. Interest on those contributions must also be remitted. Further, I advised that Python must also compensate former plan members for any employer contributions they were entitled to, but which were not remitted to the fundholder during their period of employment. If any employee contributions were deducted from their remuneration,

but not remitted to the Plan, they must also be compensated for those amounts. Any interest owing must also be paid to them.

- As the plan administrator under the Act, Kyung Won Yun has the right to object to my decision to terminate the Plan. If Kyung Won Yun wanted to object, he had 60 days after receipt of the July 10, 2023 letter to do so.

[30] On August 1, 2023, I wrote to the members and former members (who had missing contributions) and explained their right to object. The letter dated July 10, 2023 that was sent to Kyung Won Yun was attached to the August 1, 2023 letter. The deadline given for these parties to object was September 30, 2023.

[31] On August 4, 2023, my office received an objection to my decision by email from Ben Kang. Daniel Yun, among others, was copied on the email. In that email, Ben Kang stated that investors had been found and final negotiations are taking place. He said that Daniel Yun, who is the son of Kyung Won Yun, has a reference document which is a binding MOU signed by the investors, and Daniel Yun would like to present that reference document to me.

[32] On October 27, 2023, a notice of hearing was sent by email to Daniel Yun and Ben Kang. The hearing date was set for November 14, 2023.

[33] On November 8, 2023, Glen Lekach, Partner, Miller Thomson LLP emailed me to advise that his firm had been retained to advise Python in this matter. Glen Lekach asked for an adjournment of the hearing.

[34] I replied to Glen Lekach on November 9, 2023, advising him I consent to the adjournment, and will advise of a new date. A hearing date for December 18, 2023 was set, and exhibits were sent to Glen Lekach.

[35] On December 6, 2023, Craig Savoie, Associate, Miller Thomson, emailed me to ask questions about how former members could be compensated, and about the possibility of a payment plan for contribution arrears. Craig Savoie said that Python had advised Miller Thomson LLP that it has investors lined up and funding should start to be received by Python in December 2023 and January 2024.

[36] At the hearing, Daniel Yun testified as follows:

- The struggles that occurred during the pandemic led to a series of unfortunate events. As a result of the pandemic, companies that Python had contracted with were unable to continue those contracts with Python.
- Python anticipates they will receive funding on or before December 30, 2023.
- Python operates in Canada mainly through Python SuperiorRoads.
- Python SuperiorRoads is headquartered in Regina.

- The history of Python's flagship products can be traced back to Sweeprite Mfg. In 2012, Sweeprite transformed into Python, and later rebranded into Superior Roads Solutions in 2014.
- In 2017, Smart Air Chamber acquired Python's pothole patcher line, and now Python is in the business of producing innovative, high-quality products with the goal of making roads safer.
- The marquis product that Python produces is a machine which assists in filling in potholes.
- Python's primary financial backer is YOU & I ENC Co. LTD. (YOU & I). Python is a subsidiary of YOU & I.
- YOU & I was having financial difficulties during the pandemic. Therefore, it was unable to assist Python during the pandemic. This led to Python being unable to pay employees' wages, being unable to meet their pension obligations, as well as other financial problems.
- Miller Thomson LLP is assisting Python with respect to pension matters, employment wages, patents and other items.
- During the pandemic, Python did not fire or lay off any staff. However, some employees resigned, which led to further difficulties as there were fewer people working on the production line.
- Python recently moved to a new location in Regina. It continues to operate, but there are currently no employees.
- The CEO cannot borrow money in Canada because he is not a permanent resident. Therefore, he has to acquire the money in Korea and send it to Canada. However, if a product is sold in the United States, the money can come directly to Canada.
- Miller Thomson LLP is working with Canada Life to determine the amount of interest owing on the outstanding pension contributions. They are also looking into the tax implications of making the payments to former employees and working on a communication plan with former employees.

[37] At the hearing, Daniel Yun submitted the following two documents:

1. A letter of intent (LOI) made on December 15, 2022 by and between Woo, Jong Hak, a representative of YOU & I ENC Co. LTD. (YOU & I) (a company duly incorporated and existing under the laws of the Republic of Korea) and Yun, Kyung Won, a representative director of Smart Air Chamber Co. Ltd. (Smart Air) (a company duly incorporated and existing under the laws of the Republic of Korea). The LOI contemplates a total investment of fifty billion Korean won by YOU & I. The first five billion Korean won would take the form of borrowing for operating funds of Smart Air. This transaction would occur by August 30, 2023. The remaining forty-five billion won would be paid by December 30, 2023, whereby YOU & I would acquire new shares.

I was advised that a minimum of half of the investment of fifty billion Korean won is expected to go directly to Python. Fifty billion would be transferred to the parent company, which would then transfer at least half of that amount to Python.

I was advised that the first five billion Korean won was transferred to the parent company, but the parent company did not transfer it (or a portion of it) to Python.

However, that five billion (or a portion of it) will be transferred to Python on December 30, 2023.

2. A sealed bid for one new & unused Python 5000 Pothole Patcher or equivalent. The purchasing agent is Nicole Kramer or the Department of Revenue and Finance, Purchasing Division, City of Atlantic City, New Jersey. The sealed bids are to be received by the purchasing agent on January 9, 2024.

I was advised that the Pothole Patcher could bring in about \$500,000 to Python by January 2024. However, Danie Yun said that the amount depends on “the 30 percent or 50 percent that they get.”

I was advised that the Pothole Patcher is not yet built. Money would be needed to buy some of the parts necessary to build it.

[38] At the hearing, Daniel Yun asked for leave to provide further documents subsequent to the hearing. I granted the leave with a deadline of January 3, 2024. This deadline was later extended at the request of Python. The further documents to be provided were as follows:

1. CONTRACT/EVIDENCE OF INVESTOR MONEY
 - A. At the hearing, I asked if there is a contract that puts into place the LOI between YOU & I ENC Co., Ltd. and Smart Air Chamber Co., Ltd. In the hearing, Daniel Yun said that there is a contract, and he will submit it. The LOI speaks to a total investment of fifty billion Korean won (approximately \$CDN 51 million). Of that, five billion won (approximately \$CDN 5 million) was to be “pre-injected for operating funds of Smart Air Chamber” by August 20, 2023.
 - B. I asked for evidence that the money was received on or before December 30, 2023 as contemplated in the LOI. The LOI indicates that forty-five billion won would be paid by December 30, 2023.
2. SALES PLANS FOR 2025
 - A. At the hearing, Daniel Yun showed me something on his phone. I could not make out what it was. He said it was something about a long-term sales plan involving the parent company and a company in Seoul beginning in 2025. Daniel Yun said he will get the document translated into English and submit it.
 - B. I was advised that the sales plan is with respect to 14 units to be produced by Python. Each unit would yield approximately \$600,000. Therefore, the potential revenue from the sales would be approximately \$8.4 million.
3. CONFIRMATION REGARDING WHAT HAPPENDED WITH MEMBER CONTRIBUTIONS
 - A. At the hearing, I asked Daniel if member contributions were deducted from members’ pay after June 2022. First, Daniel said yes. He indicated that he could check his own pay notice on his phone. However, Craig Savoie asked for an

adjournment. After the adjournment, Daniel Yun was unable to confirm that contributions were in fact deducted from his pay. I asked Daniel Yun to provide me with information which would clarify for me whether member contributions were deducted from members' pay during the period when no contributions were remitted to Canada Life.

4. CONTACT INFORMATION FOR DANIEL

A. I asked for the mailing address and email address for Daniel Yun.

[39] Subsequent to the hearing, Craig Savoie provided further documentation with respect to the following items: Sales plans for 2025, confirmation regarding what happened with member contributions, and contact information for Daniel Yun. Although I did receive an amendment to the LOI between YOU & I ENC Co., Ltd. and Smart Air Chamber Co., Ltd., I did not receive further documentation with respect to a contract that puts into place the LOI between YOU & I ENC Co., Ltd. and Smart Air Chamber Co., Ltd. or evidence of investor money having been received. The details of the documentation I received after the hearing are as follows:

In an email dated January 3, 2024, Craig Savoie provided me with Daniel's Yun's new work address and email address. He also attached the sales plan that I mentioned earlier which Daniel Yun had presented to me on his phone in the hearing. The sales plan appears to be a screen shot where Daniel Yun had translated some of the text from Korean to English. In the email, Craig Savoie explained that the attachment is regarding a project that has been discussed with the Seoul Government. The attachment contains the following information in English:

“ Automatic road damage repair system

(Promotion goal) Completion of maintenance within 12 hours (24 hours of rain) in case of road damage

(Repair system) All-in-one road damage (material transportation, cleaning, spraying, compaction) New equipment is purchased and one person quickly carries out the entire repair process.

Process 50-100 per day with one professional maintenance equipment *30 per day with manpower (4 people)

(Project cost) Total 600 million won (1 unit in 2023)

(Proeject [sic] plan) Equipment introduction and improvement (2023), completion of system construction (14 units by 2025)

Expand all businesses after developing equipment/repair materials in accordance with the situation in downtown Seoul”

In an email dated January 4, 2024, Craig Savoie provided a screenshot of an employee's pay slip, which he received from Daniel Yun. That screenshot indicates that member contributions were deducted from that employee's pay for a pay period in January 2023. Craig Savoie indicated that it appears that pension contributions were deducted from the wages of Python employees' during the period when contributions were not remitted to Canada Life.

With respect to information regarding a contract that puts into place the LOI between YOU & I ENC Co., Ltd. and Smart Air Chamber Co., Ltd. or evidence of investor money having been received, Craig Savoie emailed me on several occasions indicating that relevant documents would soon be submitted. The emails from Craig Savoie were dated January 3, 2024, January 4, 2024 and January 6, 2024. On January 15, 2024, I emailed Craig Savoie to advise that if the documents were not received by February 5, 2024, I would be proceeding with my decision. The documents were not received by February 5, 2024. Although I did not receive documentation regarding either the contract or evidence of investor money, on March 11, 2024, Craig Savoie sent by email an amended LOI between YOU & I ENC Co., Ltd. and Smart Air Chamber Co., Ltd. Craig Savoie explained in the email that the amended LOI:

- Appears to have the corporate seal of both parties affixed to it;
- Appears to have been executed on or around January 22, 2024;
- Indicates that Python's parent company will be in receipt of five billion Korean won on or before June 30, 2024 and that this date was amended from the original LOI, in which the date was August 30, 2023.

In the email of March 11, 2024, Craig Savoie indicated that Python intends that the injection of capital on or before June 30, 2024 will be used to remedy all deficiencies with respect to the Plan and Python will be in a position to remain compliant with the Act going forward.

[40] In the email dated January 15, 2024, I also advised Craig Savoie that on January 10, 2024, my office asked Canada Life for information regarding the account balances of the individuals who have assets in the pension fund, as well as their date of commencement of employment, date of enrolment in the Plan and date of termination of employment. I further advised that Canada Life provided the requested information to my office on January 11, 2024.

[41] On January 11, 2024, Canada Life advised my office that there were twenty-four individuals who have assets in the Plan, including Daniel Yun. The value of all of the assets in the Plan at that time was \$213,421.06. That amount would continue to accrue investment earnings until the assets are transferred out of the Plan.

SUBMISSIONS

- [42] At the hearing, Daniel Yun asked for more time to make the outstanding contributions to the Plan. He did not dispute that that the contributions were not made to the Plan as required under the Act.
- [43] Daniel Yun argued that the Plan should not be terminated because there is the potential for an infusion of money from investors. He opined that it is important to be able to offer a pension plan to employees.
- [44] There were no legal arguments made to refute my decision. No arguments were raised regarding my authority to make the decision to terminate the Plan, or my application of the law. None of the evidence was controversial or disputed.

ISSUE

- [45] The decision before me is whether to rescind, vary or confirm my decision to terminate the Plan effective July 10, 2023 pursuant to subsection 22(4) of the Act.

RELEVANT SECTIONS OF THE ACT AND *THE PENSION BENEFITS REGULATIONS, 1993* (the Regulations)

- [46] The following section of the Act provides the superintendent with the authority to make decisions under the Act.

3 The minister may appoint a superintendent of pensions and one or more deputy superintendents to carry out the duties and exercise the powers of the superintendent pursuant to this Act.

- [47] Clause 2(1)(gg) of the Act defines superintendent.

(gg) “superintendent” means the superintendent of pensions appointed pursuant to section 3 and includes any deputy superintendent of pensions appointed pursuant to that section;

- [48] Clause 2(1)(b) of the Act defines administrator. In the case of Python, the administrator is the employer.

(b) “administrator” means:

(i) in the case of a specified multi-employer plan, a board of individuals who are trustees of the plan, at least half of whom are representatives of the members,

chosen directly or indirectly by the members in accordance with the provisions of the plan;

(ii) in the case of a plan that is not a specified multi-employer plan, either:

(A) the employer; or

(B) where it is specified in the plan that the employer is not to be the administrator, a board of trustees or a similar body constituted in accordance with the terms of the plan; or

(iii) a person who has been appointed administrator of a plan by the superintendent pursuant to section 58;

[49] Clause 2(1)(n) of the Act defines employer.

(n) “employer” means the person or the organization, whether incorporated or not, from whom an employee receives remuneration, and includes any or all of the employers that are required to contribute to a specified multi-employer plan in whose employment that employee has been;

[50] Section 41 of the Act establishes which entities can hold a pension fund for a pension plan.

41 (1) *In this section, “significant shareholder” means, in relation to an employer that is a corporation, an individual who, alone or in combination with his or her parent, brother, sister, spouse or child, owns or has a beneficial interest, directly or indirectly, in shares that represent 10% or more of the shares of the employer.*

(2) *The pension fund of a pension plan must be held by:*

(a) an insurance company pursuant to a contract for insurance;

(b) a trust governed by a written trust agreement pursuant to which the trustees are:

(i) a trust corporation, as defined in The Trust and Loan Corporations Act, 1999, that is licensed to carry on business in Canada; or

(ii) three or more individuals at least three of whom reside in Canada and at least one of whom is not a significant shareholder, partner or employee of the employer or a proprietor of the business of the employer;

(c) a society established pursuant to the Pension Fund Societies Act (Canada);

(d) a body corporate that is permitted to act as a fund holder pursuant to the Income Tax Act (Canada); or

(e) a combination of the persons or entities mentioned in two or more of clauses (a) to (d).

[51] Clause 2(1)(j) defines defined contribution plan.

(j) “defined contribution plan” means a plan that consists of defined contribution provisions and, except to the extent that it relates to benefits accrued with respect to employment before the effective date of the plan, does not contain any defined benefit provisions;

[52] Subsections 42(1) and (2) of the Act require an employer to remit employer and member contributions due to a plan to the fund holder within the prescribed period. Subsection 42(3) of the Act provides that, if the employer fails to remit contributions before the expiration of 30 days after the end the prescribed period, the fund holder shall notify the superintendent of the failure.

42 (1) *An employer shall, within the prescribed period, remit employer and member contributions due to the plan:*

- (a) in the case of a specified multi-employer plan, to the administrator; and*
- (b) in the case of any other plan, to the fund holder.*

(2) Where the administrator of a specified multi-employer plan is not the fund holder, the administrator shall, immediately on receipt of the contributions, remit them to the fund holder.

(3) Where an employer has failed to remit any contributions required by subsection (1) before the expiration of 30 days after the end of the prescribed period mentioned in that subsection, the administrator or the fund holder who should have received them shall immediately notify the superintendent in writing of the failure.

[53] Section 37 of the Regulations establishes the prescribed periods for remitting contributions.

37 (1) *The period within which contributions must be remitted pursuant to subsection 42(1) of the Act is:*

- (a) in the case of member contributions, 30 days after the end of the month in which the contributions were received by the employer from a member or were deducted from the member’s remuneration;*
- (b) in the case of employer contributions determined in accordance with a formula relating to a defined contribution provision:
 - (i) that relates to profits of the employer, 90 days after the end of the fiscal year;*
 - (ii) that does not relate to profits of the employer, 30 days after the end of the month for which those contributions are payable; or**
- (c) in the case of employer contributions with respect to defined benefit provisions, 30 days after the end of each month with respect to which they are payable.*

[54] Section 43 of the Act sets out the statutory trust provisions with respect to member and employer contributions.

43 (1) *Notwithstanding any other Act, any sum received by an employer from an employee pursuant to an arrangement for the payment of the sum by the employer into a plan as the employee’s contribution to the plan is deemed to be held by the employer in*

trust to be paid into the plan as the employee's contribution, and the employer shall not appropriate or convert any part of it to the employer's own use or to any use not authorized by the terms of the plan.

- (2) For the purposes of subsection (1), any sum withheld by an employer, whether by payroll deduction or otherwise, from moneys payable to an employee is deemed to be received by the employer.*
- (3) Notwithstanding any other Act, any sum required to be paid into a plan by an employer as the employer's contribution to the plan is, when due pursuant to the plan, deemed to be held by the employer in trust to be paid into the plan in accordance with the plan, this Act and the regulations as the employer's contribution, and the employer shall not appropriate or convert any part of it to the employer's own use or to any use not authorized by the terms of the plan.*

[55] Clause 2(1)(t) of the Act defines member.

(t) "member" means, in relation to a plan that has not been terminated, an employee or, in the case of a specified multi-employer plan, an employee or a former employee, who:
(i) has made contributions to the plan or on whose behalf an employer was required by the plan to make contributions to it; and (ii) has not terminated his or her membership or commenced his or her pension;

[56] Clause 2(1)(m) of the Act defines employee.

(m) "employee" means an individual employed to do work or to provide a service in Saskatchewan or in a designated province who is in receipt of or entitled to remuneration for the work or service;

[57] Subsection 51(3) of the Act provides the superintendent with the authority to terminate a pension plan where an employer fails to make contributions to the plan. Subsection 51(7) of the Act provides that a termination pursuant to subsection 51(3) of the Act takes effect when the remedies pursuant to sections 22 and 23 of the Act have been exhausted.

51 (1) Where the superintendent refuses to register a plan or cancels the registration of a plan, the plan is terminated.

(2) Where an employer fails to make contributions to a plan with respect to a specific and identifiable class or group of members, the superintendent may terminate that part of the plan that is applicable to that class or group.

(3) In any case other than that described in subsection (2), where an employer fails to make contributions to a plan, the superintendent may terminate the whole plan.

(4) Subsections (2) and (3) do not apply to the extent that surplus assets are used to provide employer contributions, if:

(a) the plan permits that use;

(b) the intention of the employer to do so is disclosed to the members and former members in the prescribed manner; and

(c) the superintendent has approved that use.

(5) Subject to subsection (6), the failure of an employer to make contributions pursuant to a specified multi-employer plan does not terminate the plan unless the plan provides that it does so.

(6) On the registration of a plan that includes an identifiable class or group of the members of another plan:

(a) years of continuous employment pursuant to the other plan count as years of continuous employment pursuant to the plan; and

(b) the other plan or the part of the other plan that affects the class or group is not to be terminated unless the superintendent determines that the plan should be terminated.

(7) A termination pursuant to subsection (1), (2), (3) or (6) takes effect when the remedies pursuant to sections 22 and 23 have been exhausted.

[58] Clause 2(1)(p) of the Act defines former member.

(p) "former member" means a person whose membership in a plan has terminated and who retains a present or future entitlement to a benefit pursuant to the plan;

[59] Section 54 of the Act establishes the employer's requirement to make contributions to a plan once it is terminated.

54 (1) *Within 30 days after the termination of a plan, the employer:*

(a) shall pay into the plan all amounts whose payment is required by the terms of the plan or this Act; and

(b) without limiting the generality of clause (a), shall make all payments that, by the terms of the plan or this Act:

(i) are due from the employer to the plan but have not been made at the date of the termination; or

(ii) have accrued to that date but are not yet due.

(2) Notwithstanding any provision of the plan, where a plan is terminated, no part of the assets of the plan shall revert to the benefit of the employer until provision has been made for the funding or purchase of all pensions and other benefits pursuant to the plan.

[60] Subsection 22(4) of the Act provides that, if a notice of objection is received, the superintendent shall:

- Reconsider the cancellation;

- Provide the administrator with an opportunity to make representations, if the administrator has requested the opportunity to do so;
- Rescind, vary or confirm the previous decision; and
- Give a notice in writing to the administrator that states the decision and the reasons for the decision.

22 (1) *If the superintendent refuses to register a plan or a plan amendment, cancels a registration pursuant to subsection 21(1) or directs an administrator to amend an actuarial valuation report or cost certificate pursuant to sub-section 11(5), the superintendent shall give the administrator notice in writing of that fact and set out the reasons for the decision in the notice.*

(2) *In the case of a cancellation of registration, the superintendent shall specify the effective date of cancellation in the notice.*

(3) *Within 60 days after receiving a notice pursuant to subsection (1), the administrator may deliver to the superintendent a notice of objection setting out the reasons for the objection and all relevant facts.*

(4) *On receipt of a notice of objection, the superintendent shall:*

(a) *reconsider the refusal, cancellation or direction to amend;*

(b) *provide the administrator with an opportunity to make representations, if the administrator has requested the opportunity to do so;*

(c) *rescind, vary or confirm the previous decision; and*

(d) *give a notice in writing to the administrator that states the decision and the reasons for the decision.*

(5) *Where an administrator delivers a notice of objection pursuant to sub-section (3), the administrator may, notwithstanding the decision of the superintendent mentioned in subsection (1), administer the plan in a manner that reflects the amendment or report or cost certificate until the matter is dealt with pursuant to subsection (4).*

[61] Subsection 23 of the Act establishes an administrator's right to appeal to court if the superintendent confirms a decision pursuant to subsection 22(4) of the Act.

23 (1) *Where the superintendent has confirmed a decision pursuant to subsection 22(4), the administrator may appeal to the court by notice of motion for an order requiring the superintendent to register the plan or amendment, reinstate the registration or rescind the direction to amend, as the case may require.*

(2) *A copy of the notice of motion must be filed with a local registrar of the court and served on the superintendent within 30 days after delivery of the notice pursuant to subsection 22(4) or any longer period that the court allows.*

(3) *Where an administrator serves a notice of motion pursuant to subsection (2), the administrator may, notwithstanding the superintendent's decision, administer the plan in a manner that reflects the amendment, actuarial valuation report or cost certificate until the court disposes of the matter.*

[62] Section 56 of the Act establishes the requirements of a termination report.

56 (1) *Within 60 days after the termination of a plan or any further period that the superintendent may allow, the administrator shall file with the superintendent a report prepared by a Fellow of the Canadian Institute of Actuaries or a member of any other prescribed group or category of persons, setting out:*

- (a) the nature of the benefits to be provided;*
- (b) the assets and liabilities of the plan;*
- (c) the allocation and distribution of the assets of the plan and the priorities for determining the benefits of persons entitled to them;*
- (d) the prescribed information; and*
- (e) any other information that the superintendent may require.*

(2) Subject to subsection (3), no assets of a plan that has been terminated may be used to provide any pensions or other benefits until the superintendent has approved in writing the report required by subsection (1).

(3) Where the allocation and distribution does not commence within 60 days after the approval of the report by the superintendent, the administrator shall file an updated report.

(4) Subsections (1) and (2) apply, with any necessary modification, to the updated report required by subsection (3).

(5) The administrator may pay any benefits to persons entitled to them as those benefits become due.

[63] Section 40 of the Regulations provides that a termination report for a defined contribution plan can be prepared by a representative of the fund holder.

40 *A report filed pursuant to subsection 56(1) of the Act:*

- (a) with respect to an insured plan may be prepared by any person so authorized by the insurance company; and*
- (b) with respect to a plan that consists solely of defined contribution provisions may be prepared by a representative of the fund holder who is so authorized by that fund holder or by the administrator.*

ANALYSIS

[64] The Act sets out rules regarding the timing of contributions to pension plans. The rules require contributions to be made by the employer in an orderly and consistent manner. The Act does not allow an employer to remit contributions based on a schedule of the employer's choosing which may better align with business operations or receipt of money from investors.

- [65] The contribution rules in the Act exist to protect plan members' entitlement to the contributions as set out in the plan text. If there is compliance with the rules, plan members have certainty regarding the amounts that are set aside from their employment to be held in trust for their retirement.
- [66] Contributions to the Plan were due to be remitted to Canada Life on a monthly basis right up to the date of termination of the Plan, July 10, 2023. However, Python has not remitted any contributions to the Plan since June 2022. No contributions were made for an entire year, and still have not been made for the year. Former members who terminated membership between June 2022 and July 2023 for whom contributions are owing have also not been compensated for the missing contributions.
- [67] The Act provides me with the authority to terminate a pension plan when the employer fails to make contributions to the plan. I exercise that authority taking into account the facts and the interests of plan members and former plan members. The decision to terminate the Plan was made as the employer had not complied with the contribution rules of the Act, and I felt it was in the best interest of the members and former members that the Plan be terminated.
- [68] Python has shown that it continues to be unable to comply with the rules in the Plan text and the Act. It does not have the steady cash flow required to make the contributions. I was advised on several occasions by Ben Kang that Python is in financial difficulty, it had no sales, and was operating in a loss. Also, I was advised that employees and contractors were not being paid on time. Daniel Yun provided testimony regarding Python's financial troubles and inability to sell their product. Daniel Yun advised that Python no longer has any employees.
- [69] Prior to the hearing, I was informed several times that negotiations are underway with investors to raise working capital. On August 4, 2023, I was advised that Python was in the final stages of negotiation. On December 6, 2023, I was advised that investors were lined up and Python should start to receive funding in December 2023 and January 2024. However, I have not been advised that any money has been received by Python.
- [70] The statutory evidence which paints a picture of a company which is in financial difficulty and has been unable to meet its statutory requirements to make contributions to the Plan was not contested. There were no submissions made to me which raised arguments related to my authority to terminate the plan or my application of the Act. I have not been provided with any documentation or evidence which have led me to believe that contributions can be made to the Plan in accordance with the requirements of the Act going forward.
- [71] At the hearing, Daniel Yun asked for leave to provide me with documentation that would show with certainty that Python will soon be in receipt of money, or that they have received money subsequent to the date of the hearing. I granted leave until January 3, 2024 to provide this

documentation. This date was extended to January 5, 2024, and then again to February 5, 2024. However, the documentation was not submitted.

[72] On March 11, 2024, Craig Savoie submitted an amended LOI between YOU & I ENC Co., Ltd. and Smart Air Chamber Co., Ltd. The amendment extends the time by which Python's parent company will receive five billion won from August 30, 2023 to June 30, 2024. This amended LOI does not provide me with certainty that Python will receive money. The termination of the Plan and distribution of assets should not be held up based on a potential infusion of money. Even if the money were eventually received, I have no reason to believe that Python would be able to make orderly and consistent contributions in the future should employees be hired. Furthermore, Python currently has no employees and there is no benefit to former plan members with assets in the Plan if I were to rescind my decision to terminate the Plan.

DECISION

[73] I have decided to confirm my decision to terminate the Plan.

[74] Subsection 51(3) of the Act provides me with the authority to terminate a pension plan where an employer fails to make contributions to the plan. In exercising that authority, I must carefully consider the facts and render a decision that will best protect the interests of plan members. At the time I decided to terminate the Plan, I felt that that decision was in the best interest of plan members. After taking into consideration the evidence and submissions provided at the hearing and subsequent to the hearing, termination of the Plan continues to be the best course of action for those who have assets in the Plan.

[75] Once any recourse through appeal has been concluded, Canada Life will be able to file the termination report in accordance with section 56 of the Act and clause 40(b) of the Regulations. Once that termination report is approved by me, individuals with assets in the Plan will be able to transfer their assets out of the plan into a retirement vehicle as allowed under the Act.

[76] In coming to my decision, in addition to considering what is in the best interest of Plan members, I also considered the responsibility conferred upon me by the minister in appointing me as a statutory decision maker under the Act. One of the primary purposes of the Act is to set out rules which are intended to protect the pension entitlements and benefits of plan members. The requirement that contributions be made to a plan within prescribed time periods exists precisely so that entitlements and benefits are protected. When contributions due to the Plan are not remitted, accrued benefits are at risk. My role is to enforce the Act so that accrued benefits are not at risk of loss. By terminating the Plan, there will be no benefits accrued after the date of termination.

[77] In my opinion, this decision is in the best interest of the former employees of Python, who have had no certainty to date that their accrued benefits are protected. I feel compelled to exercise my

authority under the Act when an employer has demonstrated that it does not have the financial resources to contribute to the pension plan as required under the Act. I was not provided with any documentation or evidence that convinces me that future contributions will be made on time if employees are hired in the future.

[78] Section 23 of the Act provides Python with a right of appeal to court:

23 (1) *Where the superintendent has confirmed a decision pursuant to subsection 22(4), the administrator may appeal to the court by notice of motion for an order requiring the superintendent to register the plan or amendment, reinstate the registration or rescind the direction to amend, as the case may require.*

(2) *A copy of the notice of motion must be filed with a local registrar of the court and served on the superintendent within 30 days after delivery of the notice pursuant to subsection 22(4) or any longer period that the court allows.*

(3) *Where an administrator serves a notice of motion pursuant to subsection (2), the administrator may, notwithstanding the superintendent's decision, administer the plan in a manner that reflects the amendment, actuarial valuation report or cost certificate until the court disposes of the matter.*

[79] Clause 2(1)(g) of the Act defines court:

2(1)(g) “court” means the Court of King’s Bench;

Dated at Regina, Saskatchewan this 20th day of March, 2024.

“Leah Fichter”

Leah Fichter

Deputy Superintendent of Pensions
Financial and Consumer Affairs Authority
of Saskatchewan