

**FST File No. P0100-2000  
Decision No. P0100-2000-2**

**FINANCIAL SERVICES TRIBUNAL**

**IN THE MATTER OF** the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28 (the "Act");

**AND IN THE MATTER OF** a Proposal by the Superintendent of Financial Services to make an order under Section 69 of the Act respecting London Life Insurance Company Staff Pension Plan, Registration No. 0343368 (the "Plan");

**AND IN THE MATTER OF** a Hearing in Accordance with subsection 89(8) of the Act.

**BETWEEN:**

**LONDON LIFE INSURANCE COMPANY**

Applicant

-and -

**SUPERINTENDENT OF FINANCIAL SERVICES AND THE EXECUTIVE  
MEMBERS OF THE LONDON LIFE MEMBERS' COMMITTEE, ALEX  
MURPHY, DON MATHEWSON AND BARBARA MCGEE**

Respondents

**BEFORE:** Mr. Colin H.H. McNairn, Vice Chair of the Tribunal  
and Chair of the Panel

Mr. Louis Erlichman, Member of the Tribunal

Mr. C.S. (Kit) Moore, Member of the Tribunal

**APPEARANCES:** For the Executive Members of the London Life Members'  
Committee:  
Ms. Dona L. Campbell

For the Superintendent of Financial Services:  
Ms. Deborah McPhail

For London Life Insurance Company:  
Mr. Jeffrey W. Galway

**HEARING** August 29, 2000  
**DATE:** Toronto, Ontario

## REASONS FOR ORDER

### The Background

On August 29, 2000 the Tribunal held an oral hearing on a preliminary motion, made by the Executive Members of the London Life Members' Committee (the "Executive Members"), for an order directing London Life Insurance Company ("London Life") to disclose certain information in connection with this proceeding. At the conclusion of the hearing, after receiving submissions from all the parties, the Tribunal made the order set out in Appendix A (the "Order") and undertook to provide written reasons for that Order.

The proceeding to which the Order relates is a request for a hearing filed by London Life pursuant to subsection 89(8) of the *Pension Benefits Act*, as amended (the "Act"). That request concerns a Notice of Proposal by the Superintendent of Financial Services (the "Superintendent") to order the London Life Insurance Company Staff Pension Plan, Registration Number 0343368 (the "Plan") to be wound up in part in relation to those members and former members of the Plan who were employed by London Life and who ceased to be so employed effective between January 1, 1996 and December 31, 1996 (or the date the last Plan member ceased such employment) as a result of the reorganization of the business of London Life or the discontinuance of the business carried on by it at one or more specific locations.

At a pre-hearing conference held on July 11, 2000, the parties agreed that the issues to be determined in the proceeding include the following:

- (a) Did a significant number of members of the Plan cease to be employed by London Life as a result of a reorganization or a discontinuance of all or part of London Life's business at any time between January 1, 1996 and December 31, 1996, pursuant to clause 69(1)(d) of the Act?
- (a.1) Did those who "voluntarily" left employment with London Life through resignation, early retirement, or otherwise, cease to be employed by London Life within the meaning of clause 69(1)(d) of the Act as a result of a reorganization or discontinuance of all or part of London Life's business?
- (b) Was all or a significant portion of the business carried on by London Life at one or more specific locations discontinued at any time between January 1, 1996 and December 31, 1996, pursuant to clause 69(1)(e) of the Act?

- (c) If the answer to (a), (a.1), or (b) is yes, should the Tribunal, under subsection 89(9) of the Act, direct the Superintendent to order a partial wind-up of the Plan?
- (d) If the answer to (a) is yes, what are the appropriate commencement and end dates for the partial wind-up order concerning the Plan?

### **Disposition of the Motion**

London Life resisted disclosing certain information sought by the Executive Committee on this motion on the basis that it constitutes personal information of Plan members who served as administrative staff during the period 1995-1997, specifically their names and addresses, termination dates and reasons for termination, if they were terminated during the period, and payroll information relating to such members. London Life pointed to payroll information as being particularly sensitive.

We set out a three-part test for determining whether pre-hearing disclosure of information should be made in our reasons for orders, dated June 21, 1999, in *Monsanto* (FST File No. P0013). The first two parts of that test have been clearly met in respect of the personal information in this case. In particular, the information is,

- arguably relevant to one or more of the issues in the proceeding and those issues are not frivolous (the issues having been agreed among the parties at the pre-hearing conference, as noted above), and
- sufficiently particularized that the party from whom the information is requested should be able to respond efficiently and with a reasonable degree of precision.

The information sought is arguably relevant for the purpose of deciding which Plan members might qualify to be counted for determining whether a partial wind-up should be ordered and for determining who should be properly included in any partial wind-up group. These determinations appear to be required in order to resolve the issues raised in this proceeding.

The final part of the test is satisfied if the information is not privileged. Privilege will arise if the information consists of communications where,

- the communications originate in a confidence that they will not be disclosed,
- that confidence is essential to the full and satisfactory maintenance of the relationship between the parties to the communications,
- the relationship is one that in the opinion of the community ought to be "sedulously fostered", and

- the injury to the relationship that would result from disclosure of the communications must be greater than the benefit thereby gained for the correct disposal of the proceedings.

(See *Slavutych v. Baker* (1975), 55 D.L.R. (3d) 224, at p. 228 (Supreme Court of Canada))

Most of the personal information at issue on this motion - the termination dates of employees, the reasons for their termination, and payroll information - did not originate in communications from the affected employees but was generated by London Life and, therefore, cannot have the benefit of privilege. With respect to the balance of the personal information - the addresses of those who were employees during the relevant period, in association with their names - we are of the opinion that any injury to the employer-employee relationship that could result from disclosure would not be greater than the benefit gained for the correct disposal of these proceedings if such disclosure were made. Therefore, the last element of the test for privileged communications is not satisfied. We express no opinion as to whether the other elements of that test are satisfied in the circumstances of this case.

London Life also argued that it was under an obligation of confidentiality in respect of the personal information at issue here that ought to be taken into account by the Tribunal. Specifically, it referred to its privacy guidelines which indicate, among other things, that London Life does not disclose personal information, including that received from employees, without consent except in three situations, one of which is where disclosure is "required by law". Even if we are entitled to have regard to these guidelines, in deciding whether to order disclosure of personal information sought in this case, the guidelines purport to apply only to personal information about employees when it was received from employees. As noted above, most of the personal information with which we are concerned on this motion was not provided by employees. In any event, the guidelines qualify the non-disclosure commitment by providing an exception when disclosure is required by law. Any order of disclosure that we make on this motion will have the effect of requiring disclosure by law, with the result that London Life's compliance with that order will not be at variance with the self-imposed restrictions under its privacy guidelines.

Finally, London Life suggested, as an alternative to the order requested by the Executive Committee, an order directing the disclosure of the personal information in question only to the Superintendent, who could then make the appropriate contact with any additional Plan members who might qualify to be counted in determining whether a partial wind-up should be ordered and for determining who should be included in any partial wind-up group. We are reluctant to make any order that affords any of the parties the benefit of more disclosure than another party receives.

Although requested to do so by the Executive Committee, we make no order with respect to disclosure of the costing of Plan amendments or Plan benefits during the applicable period or with respect to the discovery of an official of London Life who has knowledge of the termination and hiring practices of London Life from 1995-1997. We expect that the relevant information that might be elicited in those ways can be agreed upon and dealt with by the parties. If any issues remain that cannot be resolved, they can, of course, be brought to this panel of the Tribunal as it will remain seized of disclosure issues that any of the parties may wish to raise in this proceeding.

The Executive Committee and London Life both requested costs on this motion, but agreed at the end of the hearing on the motion to postpone argument on those requests.

DATED the 18th day of September, 2000 at the City of Toronto, Province of Ontario.

“Colin H. H. McNairn”  
Colin H. H. McNairn,  
Chair

“Louis Erlichman”  
Louis Erlichman,  
Member

“C.S. (Kit) Moore”  
C.S. (Kit) Moore  
Member

## Appendix A

### Order

London Life Insurance Company is hereby ordered to disclose to the Executive Members of the London Life Members' Committee and to the Superintendent of Financial Services the following, within three weeks of the date of this order:

1. The names, addresses, termination dates and reasons for termination of former administrative staff members of the London Life Insurance Company Staff Pension Plan, Registration No. 1343368 (the "Plan") for the period 1995-1997; and
2. Payroll records relating to administrative staff members of the Plan for the period 1995-1997.

Dated this 29<sup>th</sup> day of August, 2000.