

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 the London Life Insurance Company Staff Pension Plan, Registration No. 0343368;

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 COMMITTEE OF THE LONDON LIFE
MEMBERS’ COMMITTEE, ALEX MURPHY,
DON MATHEWSON and BARBARA McGEE**

Respondents

DECISION ON REQUEST FOR COSTS

In a decision dated February 7, 2001, the Tribunal directed the Superintendent to carry out the proposal, contained in her Notice of Proposal dated February 17, 2000, to partially wind up the London Life Insurance Company Staff Pension Plan (the “Plan”) in relation to those members and former members of the Plan who ceased to be employed by the Employer effective between January 1, 1996 and December 31, 1996 as the result of the reorganization of the business of the employer. We made no order as to costs at that time, but invited the parties to make written representations on that matter.

The Executive Committee of the London Life Members’ Committee (the “Members’ Committee”) has asked for an award of costs against London Life, for its participation incurred in and related to the proceedings requested by London Life regarding partial wind-up of the Plan, including all legal costs and disbursements.

Sub-sections 24(1) and (3) of the *Financial Services Commission of Ontario Act, 1997* give the Tribunal authority to order payment of the costs of a party to a proceeding by another party.

The Tribunal's Practice Direction on Cost Awards notes that costs will not be awarded as a matter of course, and lays out some criteria for a Tribunal's decision on the award of costs.

The Members' Committee raises two general arguments in support of the award of costs. First, London Life's failure to provide full and accurate information, initially to the Superintendent, and subsequently to the Members' Committee, hampered the other parties to this proceeding and raised the cost of effective participation, particularly to the Members' Committee.

Second, the Members' Committee argued that London Life put forward a number of "frivolous, vexatious or unreasonable" positions, which prolonged and complicated proceedings, further increasing costs to the other parties.

To deal with the second of these arguments first, the Tribunal does not consider that the fact that a party puts forward arguments which are ultimately unsuccessful is of itself evidence that such arguments are unreasonable. While there can be situations in which a party raises irrelevant issues or puts forward unreasonable positions which are clearly designed to disrupt or prolong hearings, parties have to be given latitude to present arguments, adapt or drop arguments in the light of proceedings and evidence brought forward, without being automatically penalized if their arguments are unsuccessful.

In this case, while London Life's was ultimately unsuccessful in its challenge to the Superintendent's Notice of Proposal, we do not feel that the arguments put forward by London Life were clearly unreasonable or designed to unduly delay or prolong the process.

On the question of the provision of information by London Life, this is a very serious issue for the Tribunal. Typically, it is the plan sponsor or employer who has access to the relevant information on a pension plan, and if the sponsor or employer is not forthcoming with necessary information, it is difficult for the Superintendent or other parties to operate effectively.

Frankly, London Life was in this case slow to provide all of the relevant information, first to the Superintendent and then to the other party. Even recognizing that London Life was undergoing a major corporate reorganization, and that London Life received initial mixed signals from the Superintendent on the declaration of a partial wind-up, London Life has a responsibility to provide information on its pension plan on a complete and timely basis.

The Members' Committee, supported by the Superintendent, argues that the Tribunal should censure London Life for this failure through the award of costs, as a form of exemplary punishment to encourage future compliance by other employers.

Most of the complaints with respect to London Life's failure to provide information relate to its inadequate responses to the Superintendent's requests for information before the Superintendent's Notice of Proposal and the beginning of the Tribunal process. If the Superintendent believes that London Life's misconduct merits a financial penalty, section 110 of the *Pension Benefits Act* lays down significant penalties for failure to comply in a timely manner with the Superintendent's requests for information under section 98 of the Act.

The Tribunal does not award costs as a matter of course. In fact, the Practice Direction suggests that the Tribunal will generally award costs only in exceptional circumstances, particularly involving misconduct on the part of a party, so that parties will not be inappropriately discouraged from appearing before the Tribunal by the threat of additional costs.

In this light, we are not persuaded that London Life's shortcomings in providing information created problems or increased costs for the Members' Committee on a scale to justify the award of costs. In addition, as noted earlier, we do not feel that the positions put forward by London Life were patently unreasonable.

We therefore deny the order for costs against London Life requested by the Members' Committee.

DATED at Toronto, this 6th day of June, 2001.

"Colin H.H. McNairn"
Colin H.H. McNairn, Vice Chair of the
Tribunal and Chair of the Panel

"Louis Erlichman"
Louis Erlichman, Member of the
Tribunal and the Panel

"William M. Forbes"
William M. Forbes, Member of the
Tribunal and of the Panel