

FINANCIAL SERVICES TRIBUNAL

IN THE MATTER OF THE *Pension Benefits Act*, R.S.O. 1990, c. P.8,
as amended (the “Act”);

AND IN THE MATTER OF partial wind up reports submitted by
Imperial Oil Limited to the Superintendent of Financial Services
respecting the Imperial Oil Limited Retirement Plan (1988), Registration
Number 347054 (the “IOL Plan”) and the Imperial Oil Limited Retirement
Plan for Former Employees of McColl-Frontenac, Registration Number
344002 (the “MFI Plan”);

AND IN THE MATTER OF a Hearing in accordance with subsection
89(8) of the Act;

BETWEEN

IMPERIAL OIL LIMITED

Applicant

-and-

SUPERINTENDENT OF FINANCIAL SERVICES

Respondent

BEFORE:

Mr. Colin H.H. McNairn
Vice Chair of the Tribunal and Chair of the Panel

Mr. Louis Erlichman
Member of the Tribunal and of the Panel

Mr. William M. Forbes
Member of the Tribunal and of the Panel

APPEARANCES:

For Imperial Oil Limited:
Ms. Lindsay P. Hill

For the Superintendent of Financial Services:
Ms. Deborah McPhail

HEARING DATE:

July 24, 2002

REASONS FOR ORDER

The Background

This proceeding was initiated by the Applicant, Imperial Oil Limited, by filing a Notice of Request for Hearing with the Tribunal. The Request calls into question a Notice of Proposal by the Superintendent of Financial Services (the "Superintendent"), dated October 3, 2000, to refuse to approve partial wind up reports (the "Partial Wind Up Reports" or the "Reports") filed by the Applicant in connection with the partial wind up of two of its pension plans, namely its IOL Plan and its MFI Plan (the "Plans"). The partial wind ups had been ordered by the Superintendent because of a reorganization of the Applicant and the discontinuance of one of its businesses brought about by the closure of a refinery. The Plans were to be wound up in relation to those members and former members who ceased to be employed by the Applicant, as a result of the reorganization or discontinuance, during the period beginning February 4, 1992 and ending on the later of June 30, 1995 and the date the last member employed at the refinery ceased employment (the "Partial Wind Up Period"). We refer to this group of members and former members as the "Partial Wind Up Group".

The stated grounds for the Superintendent's proposal in the Notice of Proposal include the failure of the Reports to reflect the liabilities associated with all those who were part of the Partial Wind Up Group. Specifically, the Notice of Proposal states that the Reports do not reflect the liabilities associated with 2311 members of the Plans (2213 members of the IOL Plan and 98 members of the MFI Plan).

By a notice of motion dated June 5, 2002, the Superintendent moved for an order of the Tribunal directing the Applicant to answer certain of the interrogatories that it had served on the Applicant on October 11, 2001. The Applicant has responded to some but not all of the original interrogatories

The Issues in the Proceeding

For the purposes of this motion, the parties agreed that the issues in this proceeding that are relevant to the motion should be framed as follows (the “statement of issues”):

Did any members or former members of the Plans who ceased to be employed by the Applicant during the Partial Wind Up Period as set out in the Notice of Proposal cease to be employed as a result of the reorganization or discontinuance of all or part of the Applicant’s business, if their circumstances fell within one of the following;

- (i) employees whose fixed term contract of employment was complete by its terms (e.g. summer students, co-op students, and employees hired on a contract basis for a specified period of time);
- (ii) employees who became disabled and received disability benefits;
- (iii) employees who allegedly voluntarily resigned;
- (iv) employees who were transferred to an affiliated company that did not participate in the Plans;
- (v) employees who retired under the terms of the Plans at normal retirement age;
- (vi) employees who retired under the disability retirement provisions of the Plans;
- (vii) employees whose employment was terminated as a result of death; and
- (viii) employees whose employment was allegedly terminated for cause.

There are other issues that will have to be addressed at the main hearing in this proceeding, but none of the interrogatories to which this motion relates concern those other issues.

The Interrogatories

The interrogatories to which the Superintendent insists on responses can be summarized as follows;

- (a) did the positions filled by any members of the either of the Plans whose contracts of employment expired during the Partial Wind Up Period cease to exist as a result of the reorganization or discontinuance of the Applicant's business?
- (b) was any member of either of the Plans terminated for cause during the Partial Wind Up Period (if so, provide the name and last-known address of the member, the date and reason for termination and any supporting documentation)?
- (c) in the case of any member of either of the Plans who, during the Partial Wind Up Period,
 - (i) was on leave or other interruption of employment due to disability,
 - (ii) retired under a disability retirement under the terms of either of the Plans,

- (iii) voluntarily terminated his or her employment,
 - (iv) retired at early retirement under the terms of either of the Plans, or
 - (v) terminated for cause,
- was that member's job function or title eliminated during the reorganization or discontinuance of the Applicant's business?
- (d) did the Applicant ever re-hire, to permanent or contract positions, students who had worked with the Applicant on a co-op or summer placement; if so, how many were hired in the five year period prior to the wind up and how many of these assumed newly-created or entry-level positions; were any of the latter positions eliminated as a result of the reorganization or discontinuance of the Applicant's business; and in all of these situations what were the details?

The Purpose

The Superintendent maintained that the purpose of the outstanding interrogatories was to elicit information that would be responsive to any argument of the Applicant that specific members or generic groups of members should be excluded from the Partial Wind Up Group, for the purposes of calculating the liabilities to members in the Partial Wind Up Reports, and to simplify and narrow the issues in this proceeding. The Superintendent indicated that his position at the main hearing in this proceeding would be that all those members of the Plans who ceased to be employed by the Applicant during the Partial Wind Up Period should be included in the Partial Wind Up Group unless the Applicant can show cogent reasons why they should not be included.

Analysis

The test that this Tribunal has consistently applied for deciding whether pre-hearing disclosure should be ordered is set out in *Monsanto Canada Inc, v, Superintendent of Financial Services* (see the Pension Bulletin, vol. 8, issue 2 (Sept., 1999), at pp. 77-82). In that case, the Tribunal said (at p. 79):

We believe that the Tribunal should, generally, be prepared to make a disclosure order against a party to a proceeding before it, requiring the production of documents or answers to interrogatories, in the following circumstances (if not in other circumstances):

- the information sought is arguably relevant to an issue in the proceeding and that issue is not a frivolous one;
- the information sought is sufficiently particularized that the party from whom the information is requested should be able to respond efficiently and with a reasonable degree of precision; and
- the information is not privileged.

For the purpose of applying the first limb of this test, relevance to an issue in the proceeding means relevance to an issue in the proceeding before the Tribunal, not the larger proceeding that includes the process that takes place before the Superintendent,

acting through one or other of the branches of the Financial Services Commission of Ontario.

Rule 19.01 of the Interim Rules of Practice and Procedure for Proceedings before the Financial Services Tribunal describes the purpose of interrogatories as follows;

19.01 The Tribunal may issue procedural directions providing for interrogatories that are necessary to:

- (a) clarify evidence filed by a party;
- (b) simplify the issues;
- (c) permit a full and satisfactory understanding of the matters to be considered; or
- (d) expedite the proceeding.

Once again, the proceeding means the proceeding before the Tribunal

The statement of issues that the parties have agreed to for the purposes of this motion presupposes that categorical answers can be provided as to whether all employees whose circumstances fall within any of categories (i) to (viii) can be said to have ceased to be employed as a result of the reorganization or discontinuance of all or part of the Applicant's business. But that may not be the case. For instance, this Tribunal might be inclined to the view that while the employees whose circumstances fall within a particular category should be excluded from the Partial Wind Up Group, there is a sub-category or sub-categories of those employees that should be included. One such sub-category might be employees whose positions, job titles or functions were eliminated during the reorganization or discontinuance of the Applicant's business. The answers to many of the Superintendent's interrogatories might inform the case for recognizing such a sub-category, or the case for not recognizing such a sub-category, as they would reveal the dimensions of the potential sub-category.

All of this is not to suggest that the Superintendent has conceded that those employees whose circumstances fall within any of categories (i) to (viii) should, generally, be excluded from the Partial Wind Up Group, subject only to inclusion if their positions, job titles or functions were eliminated during the reorganization or discontinuance of the Applicant's business. In fact, there has been no such concession. Nonetheless, we think that the answers to the interrogatories are arguably relevant to the issues in this proceeding, although we think that it is sufficient if the Applicant were to respond by providing general or statistical, rather than employee-specific, information about the positions, job titles or functions of employees whose circumstances fall within each of categories (i) to (viii). That information would contribute to permitting a full and satisfactory understanding of the matters that may be considered in this proceeding and it could expedite the proceeding by avoiding the need for obtaining supplementary information at a later stage in the proceeding. The promotion of that understanding and the expedition of the proceeding are among the purposes of interrogatories set out in Rule 19.01 of the Interim Rules of Practice and Procedure for Proceedings before the Financial Services Tribunal.

We now address the particular interrogatories posed by the Superintendent in light of the approach set out above. We deal with interrogatory (a) in our discussion of interrogatory (c) below. Interrogatory (b) asks, among other things, whether any member of either of the Plans was terminated for cause during the Partial Wind Up Period. The Applicant has already answered “yes” to this question, in a letter dated February 28, 2002 to counsel for the Superintendent, and has provided some particulars about the situations where members of the Plans were terminated for cause during the Partial Wind Up Period. We decline to order the Applicant to provide any further particulars of this kind as that information is member-specific and is not, in our view, arguably relevant to the issues in this proceeding.

Interrogatory (c) would seem to call for information relating to each and every member falling within any of categories (i) to (v) whose job function or title was eliminated during the reorganization or discontinuance of the Applicant’s business. The disclosure of such member-specific information is not, in our view, relevant to the issues in this proceeding. However, we would order the Applicant to respond to more general questions, by way of a revised interrogatory in place of interrogatories (a) and (c), as follows;

- how many of the 2311 members of the Plans who ceased to be employed by IOL during the Partial Wind Up Period but were excluded from the Partial Wind Up Group were in the circumstances described in each of the following categories:
 - (i) on fixed term contracts of employment that were complete by their terms (e.g. summer students, co-op students, and employees hired on a contract basis for a specified period of time);
 - (ii) on leave or other interruption of employment due to disability;
 - (iii) retired under a disability retirement under the terms of either of the Plans;
 - (iv) voluntarily terminated employment;
 - (v) retired at early retirement under the terms of either of the Plans; or
 - (vi) terminated for cause?
- what proportion of the members in category (i) had their positions eliminated at or following the cessation of their employment with the Applicant but during the reorganization or discontinuance of the Applicant’s business and what proportion of the members in each of categories (ii) to (vi) had their job titles or functions eliminated at or following the cessation of their employment with the Applicant but during the reorganization or discontinuance of the Applicant’s business?

We recognize that the Superintendent may already have been advised, in respect of some or all of categories (i) to (vi), of the number of members whose circumstances fall within a particular category.

Interrogatory (d) asks, among other things, whether the Applicant ever re-hired, to permanent or contract positions, students who had worked with the Applicant on a co-op or summer placement. The Applicant has already answered “yes” to this question, in a letter dated February 28, 2002 to counsel for the Superintendent. We decline to order the Applicant to provide a response to the balance of interrogatory (d) as it does not seem to us to be arguably relevant to the issues in this proceeding.

Disposition

Therefore, we make the order against the Applicant set out in Appendix A, directing it to respond to the Superintendent in respect of the interrogatories posed in that Appendix. The Superintendent requested that the time for the Applicant’s response to the interrogatories be thirty days from the date of our order. However, we have set a time limit of six weeks from that date for response. This coincides with the time limit that we have imposed on the Superintendent, by order dated September 11, 2002, for responses to outstanding interrogatories of the Applicant in this same proceeding.

Dated at Toronto, Ontario this 20th day of September, 2002.

“Colin H.H. McNaim”
Colin H.H. McNaim, Vice Chair of the
Tribunal and Chair of the Panel

“Louis Erlichman”
Louis Erlichman, Member of the
Tribunal and of the Panel

“Bill Forbes”
William M. Forbes, Member of the
Tribunal and of the Panel

Appendix A

Imperial Oil Limited (the “Applicant”) is hereby ordered to provide answers to the Superintendent of Financial Services in respect of the interrogatories set out below within six weeks of the date of this order;

- how many of the 2311 members of the Plans who ceased to be employed by IOL during the Partial Wind Up Period but were excluded from the Partial Wind Up Group were in the circumstances described in each of the following categories:
 - (i) on fixed term contracts of employment that were complete by their terms (e.g. summer students, co-op students, and employees hired on a contract basis for a specified period of time);
 - (ii) on leave or other interruption of employment due to disability;
 - (iii) retired under a disability retirement under the terms of either of the Plans;
 - (iv) voluntarily terminated employment;
 - (v) retired at early retirement under the terms of either of the Plans; or
 - (vi) terminated for cause?
- what proportion of the members in category (i) had their positions eliminated at or following the cessation of their employment with the Applicant but during the reorganization or discontinuance of the Applicant’s business and what proportion of the members in each of categories (ii) to (vi) had their job titles or functions eliminated at or following the cessation of their employment with the Applicant but during the reorganization or discontinuance of the Applicant’s business?

The capitalized terms in this order have the same meaning as those terms as used in the Reasons for Order of the Financial Services Tribunal that accompany, and provide the basis for, this order

Dated this 20th day of September, 2002.