

**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** a proposal of the Superintendent of Financial Services to order that Kerry (Canada) Inc. reimburse the pension fund of the Pension Plan for the Employees of Kerry (Canada) Inc. (the “Plan”) for certain expenses paid from the Plan since January 1, 1985, together with income thereon, and to order that Kerry (Canada) Inc. amend certain expense provisions of the current Plan documents for consistency with the original Plan documents as specified in the proposed order;

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

**AMONG:**

**KERRY (CANADA) INC.**

**Applicant**

**-and-**

**SUPERINTENDENT OF FINANCIAL SERVICES**

**Respondent**

**-and-**

**ELAINE NOLAN, GEORGE PHILLIPS, ELISABETH RUCCIA,  
KENNETH R. FULLER, PAUL CARTER, R.A. VARNEY and BILL FITZ,  
being members of the DCA EMPLOYEES PENSION COMMITTEE  
representing certain of the members and former members of the Pension  
Plan for the employees of Kerry (Canada) Inc.**

**Respondents**

**DISPOSITION OF REQUEST FOR COSTS**

The Applicant, Kerry (Canada) Inc., made a request to the Tribunal for an order of costs, in this proceeding, against the DCA Employees Pension Committee (the "Committee"), which request was supported by written submissions. The Committee did not file a response.

We have considered the submissions of the Applicant in light of Rule 48.01 of the Interim Rules of Practice and Procedure of the Tribunal, which sets out criteria for the

award of costs to parties, and in light of the Tribunal's Practice Direction on Cost Awards, keeping in mind the general discretion of the Tribunal to award costs under section 24 of the *Financial Services Commission of Ontario Act, 1997*, as read with section 17.1 of the *Statutory Powers Procedure Act*.

We are not persuaded that the case has been made out for the requested order for costs in the circumstances of this proceeding. In assessing the Committee's conduct in the course of the proceeding - one of the main factors to which the Applicant has directed our attention - we have given some weight to the fact that the Committee was not represented by counsel and that its representative, a Committee member, was not familiar with all of the procedural niceties of participation in a proceeding of this kind. This is not to suggest that a party to a proceeding before the Tribunal will necessarily avoid the possibility of an order of costs against it simply by choosing not to retain legal counsel.

In all of the circumstances, we decline to make the requested order for costs.

DATED at Toronto, Ontario this 28th day of April, 2004.

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

“S. Bharmal”  
Shiraz Y.M. Bharmal, Member of  
Tribunal and of the Panel

”David A. Short”  
David A. Short, Member of the  
Tribunal and of the Panel