

**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 Refuse to Make an Order regarding the partial wind up of the Hydro One Pension Plan, Registration No. 1059104 under section 69 of the Act;

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

**B E T W E E N:**

**CHRISTINA MARINO and KAREN JONES on their own behalf and as  
Representatives of Certain Other Former Management Members of the  
Hydro One Pension Plan**

**Applicants**

- and -

**SUPERINTENDENT OF FINANCIAL SERVICES, HYDRO ONE INC.,  
POWER WORKERS’ UNION and SOCIETY OF ENERGY PROFESSIONALS**

**Respondents**

**BEFORE:**

Mr. Ralph Scane  
Member of the Tribunal and Chair of the Panel

Ms Heather Gavin  
Member of the Tribunal and of the Panel

Mr. Shiraz Bharmal  
Member of the Tribunal and of the Panel

**APPEARANCES:**

(By Written Submission)

For the Society of Energy Professionals (Applicant on the Motion to Correct):  
Mr. John Stout

For the Superintendent of Financial Services:  
Ms Deborah McPhail

For Hydro One Inc.:  
Ms Lisa Mills

For the Applicants Christina Marino and Karen Jones obo The Hydro One Members'  
Committee:  
Mr. Howard Goldblatt

### **DECISION ON MOTION**

This is a motion brought by the Society of Energy Professionals (the Society), pursuant to Rule 12.03 of the *Rules of Practice and Procedure for Proceedings before the Financial Services Tribunal*, to correct an alleged misstatement contained in the Tribunal's reasons for decision in this matter, dated August 1, 2007, being Decision No. P0257-2005-3. The Society subsequently enlarged this motion, by letter to the Registrar dated September 17, 2007, to add a request pursuant to Rule 48.01 for a review of that decision, should relief be granted on the motion under Rule 12.03. The request for review under Rule 48.01 was filed beyond the time specified in Rule 49.01, but the Society has explained the delay to the satisfaction of the Panel, and the Panel will consider the application if it becomes necessary to do so.

The alleged misstatement is found on Page 27 of the Tribunal's decision in the first full paragraph on that page. The Society alleges that the following sentence within that paragraph misstates its counsel's position in argument.

*More particularly, the Society, as the union whose members were affected by this reorganization, did not seek to include its affected members within any relief which we might afford if, contrary to the submissions of the Respondents, we felt that the passages in question in London Life could lead to relief based solely upon the reorganization following upon the merger.*

The Tribunal understood counsel for the Society, who indeed was arguing that there was no basis for differentiating between the Society members and the MCP members who terminated employment under the reorganization following upon the merger of Networks and Network Services, to be directing that argument against any comparison of the number of terminated employees against a subset of the active members of the Pension Plan in order to determine whether the number terminated was "significant". It did not understand counsel to be arguing that, if the Tribunal was prepared to compare the number of terminated employees to a subset of the active members of the Plan, namely the number of active MCP members at the time of the reorganization, and to direct a partial wind up with respect to those MCP members, Society members terminated under the same reorganization should have the same wind up benefits as the terminated MCP

members. The Tribunal may have misunderstood counsel's position because of his strong basic argument that the Tribunal should not make an order which interfered with rights and obligations which had been explicitly collectively bargained, an argument to which the Tribunal afforded considerable weight in the said decision.

There is some corroboration of the Society's position in the submissions from the Superintendent of Financial Services and Hydro One Inc. However, even apart from these submissions, we accept the statement of counsel for the Society that he was misunderstood in the position we attributed to him, and will correct our decision accordingly.

However, following this correction, we see no reason to alter the balance of the Tribunal's decision of August 1, 2007.

Independently of the matters raised in this motion, it has been drawn to the Tribunal's attention by the Registrar that there appears to be a slip in the last sentence of the second paragraph on Page 15 of the said decision. As written, the sentence reads, "However, an answer to an interlocutory cannot be used as evidence .....". The word "interlocutory" is an obvious slip for the intended word "interrogatory", and the Tribunal will take the opportunity afforded by this order to direct a correction under Rule 12.03.

**Order:**

(1) The paragraph in the Tribunal's decision, dated August 1, 2007, found on Page 27, thereof, which reads

If we are in error in our conclusion immediately above that the Society-represented members who terminated following upon the merger must be considered separately from the MCP members who terminated, we also conclude that in the exercise of our discretion, they should be excluded from a partial wind up. At the more general level, we believe that the arguments adduced by the respondent unions and by Hydro One as to the dangers of regulators interfering with collective agreements apply strongly in this case, to the extent that they are applied to the interests of members covered by those agreements. More particularly, the Society, as the union whose members were affected by this reorganization, did not seek to include its affected members within any relief which we might afford if, contrary to the submissions of the Respondents, we felt that the passages in question in *London Life* could lead to relief based solely upon the reorganization following upon the merger. All counsel were well aware, from interchanges during the evidentiary and argument portions of this hearing, that we felt that the passages in *London Life* to which we referred above merited consideration as to their applicability to the facts in this case. In those circumstances, we consider that we should defer to the opinion of the union representing the employees who were terminated as to what bargain was in the best interest of those employees, viewed as of

the time the bargain was made, and exercise our discretion as to the terms of the partial wind up so as to leave that bargain inviolate.

shall be deleted from the said decision.

(2) In the place and stead of the said paragraph so deleted, the following paragraph shall be inserted into the said decision:

If we are in error in our conclusion immediately above that the Society-represented members who terminated following upon the merger must be considered separately from the MCP members who terminated, we also conclude that in the exercise of our discretion, the members represented by the Society should be excluded from the partial wind up. The arguments adduced by the respondent unions and by Hydro One as to the dangers of regulators interfering with collective agreements apply strongly in this case, to the extent that they are applied to the interests of members covered by those agreements. We consider that we should defer to the opinion of the union representing the employees who were terminated as to what bargain was in the best interest of those employees, viewed as of the time the bargain was made, and exercise our discretion as to the terms of the partial wind up so as to leave that bargain inviolate.

(3) In the final sentence of the second paragraph on page 15 of the said decision, which sentence begins, “However, an answer to an interlocutory cannot be used as evidence....”, the word “interlocutory” shall be replaced by the word “interrogatory”.

(4) Except as directed above in this order, the decision of the Tribunal, dated August 1, 2007, in this matter is confirmed.

**Dated** at Toronto this 25th day of October, 2007.

“R. Scane”  
Ralph Scane  
Member of the Tribunal and Chair of the Panel

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

“Heather Gavin”  
Heather Gavin  
Member of the Tribunal and of the Panel