

FINANCIAL SERVICES TRIBUNAL

IN THE MATTER OF THE *PENSION BENEFITS STANDARDS ACT*

APPEAL PURSUANT TO SECTION 21 OF THE
PENSION BENEFITS STANDARDS ACT

BETWEEN:

THE BOARD OF TRUSTEES OF THE INTERIOR
LUMBERMEN'S PENSION PLAN (the "Trustees")

APPELLANT

AND:

THE SUPERINTENDENT OF PENSIONS
(the "Superintendent")

RESPONDENT

INTERIM ORDER

Chair: Dale R. Doan LLB, Member, Financial Services Tribunal

Ron A. Skolrood, Lawson Lundell LLP, Counsel for the Trustees
Sandra Wilkinson, Ministry of the Attorney General, Counsel for the Superintendent of Pensions

Interim Order Date: December 14, 2007

INTRODUCTION

This is an application on behalf of the Appellant for leave to introduce new evidence on the appeal (the "Appeal") to the Financial Services Tribunal (the "FST") pursuant to section 242.2(8) of the *Financial Institutions Act* (the "Act").

The subject matter of the Appeal is the Reconsideration Decision of the Respondent, Superintendent of Pensions, dated June 13, 2007 (the "Decision") which deals in substance with

certain provisions of the Interior Lumbermen's Pension Plan (the "Plan"). The Plan is governed by the *Pension Benefits Standards Act* (the "PBSA").

In this application, counsel for the Trustees raises a number of questions concerning the completeness of the Record. As counsel for the Superintendent does not raise objection to the further production of certain documents related to these matters, I will address them first.

A request is made for confirmation from the Superintendent as to whether there are any additional notes reflecting further discussions between Mr. Hambrook and Mr. Martin that he had reference to in making the Decision. The Superintendent has produced what are referred to as ".....copies of the relevant notes in his log book.....". Submissions by the Superintendent on this point state that Mr. Hambrook took bare notes of some telephone conversations in his log book. These copies were not part of the Record and are now produced. They now do, in fact, form part of the Record. I note that there are number of blackened sections in the produced notes. As the transmittal letter forwarding these documents indicates that these notes were taken from Mr. Hambrook's log book, I am assuming that the blackened sections relate to other files and do not relate to the Interior Lumbermen's Pension Plan.

The second request made on behalf of the Trustees is for confirmation from the Superintendent as to whether there were any additional documents or materials that he had reference to concerning the matter of the timely filing of the Plan with the Superintendent pursuant to the PBSA. Again, submissions on behalf of the Superintendent confirm that ".....most of the trust agreement – related documents were indeed filed in a timely manner." I agree with the submissions made by counsel for the Trustees that this submission is important for the purposes of this Appeal so as to correct a potential negative inference respecting the due filing of the Plan pursuant to the PBSA. The Record is duly noted.

The final request of the Trustees in relation to the existing Record is: "to the extent that there are additional notes or documents that were created or relied upon by the Superintendent's staff in preparing the Staff Submission, the Trustees request that the Tribunal order production of such documents pursuant to section 242.2(10)(b)(ii) of the *Financial Institutions Act* (the "Act")."

In light of the fact that Mr. Hambrook had in his possession relevant notes related to the Record which are now produced with the consent of the Superintendent, I believe this request on the part of the Trustees is reasonable in the circumstances.

I therefore order production of the such further documents that are material to or relevant to the matters under consideration in this Appeal in compliance with section 242.2(10)(b)(ii) of the Act or confirmation by or on behalf of the Superintendent that no further such documents exist, on or before January 15, 2008.

NEW EVIDENCE

The first series of items related to the application on behalf of the Trustees to admit new evidence is the series of documents establishing the timely registration of the Plan. These documents will be admitted but not as "new evidence" given the fact that these documents

existed at the time of the Decision or could have been discovered through the exercise of reasonable diligence. Rather, the same will be added as additional items to the Record. This is, in my view, justified given the fact that submissions to date in this matter do comment on the lack of filing of the Plan with the Superintendent. Again, for the purposes of the Appeal, no negative inference will be attributed to any lack of filing of the Plan in accordance with the PBSA as the due filing has been admitted by the Superintendent and is clearly established through the filing of these additional items as part of the Record.

The second portion of the new evidence application relates to “evidence concerning the practice and understanding of Atco Lumber Ltd. (“Atco”) of the calculation of required contributions to the Plan and of benefits payable under the Plan.”

The most compelling arguments in favour of admission of this additional evidence are:

1. The evidence of Mr. Babcock would have been adduced had the Trustees been provided with copies of the Staff Submission (and presumably Mr. Louwe’s letter) and been giving an opportunity to respond, and
2. The understanding and practice of the Trustees and the employer are relevant to the question of whether to Trustees’ interpretation of the Plan in so far as the issues involved in this Appeal are concerned is reasonable.

However, the arguments opposing the introduction of this new evidence prevail in my view. First, Mr. Babcock, together with the evidence that he could provide regarding interpretation of the Plan and policy matters such as the employer’s intention in terms of the administration of the Plan, were available throughout the review and reconsideration process at the Superintendent’s office. Second, no new issues are evident following the reconsideration process that would necessarily call for new evidence that wasn’t already relevant or material during the consideration and reconsideration process before the Superintendent. I am not persuaded that the presentation of the Staff Submission would be the only basis upon which the Trustees would determine that intention and Plan interpretation processes would be relevant factors for consideration by the Superintendent. Finally, the issues are based upon the Superintendent’s interpretation of the Plan documents in the context of the legislative scheme set forth in PBSA. To the extent that either are unclear or ambiguous, the parties presenting submissions to the Superintendent would have been expected to present evidence at that time. For these reasons, and particularly due to the inability on the part of the Trustees to establish that the two central tests for the admission of new evidence set out in section 242.2(8)(b) of the Act may be met with respect to this evidence, the same will not be admitted as new evidence in the Appeal.

CONCLUSION

As significant portions of the request of the Trustees have been determined in favour of the Appellant, no costs will be awarded with respect to this interim application. The time limits for providing submissions on the merits of the Appeal will commence in accordance with instructions to be provided by the Deputy Registrar of the Financial Services Tribunal when the Superintendent has either produced the further documents ordered above or has confirmed that no further such documents exist.

Respectfully submitted this 14th day of December, 2007



Dale R. Doan LLB
Member Financial Services Tribunal