

IN THE MATTER OF AN ARBITRATION
(Under the *Labour Relations Act*, 1995)

BETWEEN:

ONTARIO POWER GENERATION INC.

(“OPG”)

-AND-

THE SOCIETY OF UNITED PROFESSIONALS

(“Society”)

AND IN THE MATTER OF an arbitration of a Society challenge to the exclusion of the Manager, Supplier Credit Risk job classification pursuant to Appendix XVI (“Shime Process”) in the collective agreement between the parties.

BEFORE: G. T. SURDYKOWSKI – Sole Arbitrator

APPEARANCES:

For OPG: Tom Moutsatsos, Counsel.

For the Society: Sonia Pylyshyn.

ZOOM HEARING HELD ON DECEMBER 1, 2020.

PRODUCTION AWARD

1. The Society challenges OPG’s job rating and consequent exclusion from the Society’s bargaining unit of the Manager, Supplier Credit Risk position or classification (Occupation Code 513890).
2. The Plan A Job Evaluation Plan (“Plan A”) included in the parties’ collective agreement excludes all positions rated at or higher than 335 points from the bargaining unit. OPG has rated the Manager, Supplier Credit Risk position at 342 points. The Society claims that this job rating is incorrect, and that 331 points is the proper rating for the position.
3. More specifically, the Society challenges OPG’s rating for the position of the Plan A factor “Responsibility for Accuracy – Effect of Errors”, which OPG has rated at Degree 4 for 40 points. The Society claims that this factor is properly rated at Degree 3 for 29 points.
4. Plan A s. 8.10 describes Degrees 3 and 4 for the “Responsibility for Accuracy – Effect of Errors” factor as follows (underlined emphasis added):

Degree Level 3	Degree 4
Probable errors might be difficult to detect, and could result in considerable confusion, interruption or loss of time to other employees, and might be felt to a considerable extent by a number of work groups or other departments. Considerable effort and expenditure for correction, or <u>considerable financial loss</u> could result. Errors could have a considerable adverse effect on public or labour (employee) relations.	Judgements and decisions are required in which errors would be difficult to detect and would result in <u>great financial loss</u> . The effect would likely be widely felt. Errors would have serious and long lasting effect on public or labour (employee) relations.

5. While exploring the differences between Degree 3 “considerable financial loss” in and Degree 4 “great financial loss” in cross-examination of OPG witness Jonathan Sos (the incumbent in the Manager, Supplier Credit Risk position in issue) at the Zoom hearing on December 1, 2020, the Society sought production of certain documents relating to the “Lambton Demolition Project” referenced in paragraph 39 of OPG’s written submissions brief as an example of a factor that makes the “decision-making and the potential impact of errors” in the position more challenging. The Society sought production of the bid documentation submitted for the project by JMX [Contracting Inc.] and Delsan-Aim, and Delsan-Aim’s contract for the project when it took over for JMX, all of which Sos referred to in his testimony.

6. OPG objected to production substantially on the basis that the documentation was not relevant and probably included confidential proprietary or other information which could not be disclosed.

7. I was satisfied that the documentation requested was arguably relevant to the issue of the distinction between the Plan A Degree ratings for the Manager, Supplier Credit Risk position, that any contractual confidentiality provision was likely subject to disclosure required by law (such as an order by a tribunal of competent jurisdiction), and could in any event be protected by appropriate limitations on the disclosure and use of information in the documentation.

8. Accordingly and over OPG's objection, I made and hereby confirm the following Orders:

(a) **I ORDER OPG** to forthwith produce the documentation requested by the Society (i.e. the bid documentation submitted for the "Lambton Demolition Project" by JMX [Contracting Inc.] and Delsan-Aim, and Delsan-Aim's contract for the project when it took over for JMX to Mr. Moutsatsos, its counsel in this proceeding.

(b) **I ORDER Mr. Moutsatsos** to provide the produced documentation to Ms. Pylysyn, the Society's counsel in this proceeding, and to review the documentation with her with a view to determining the extent to which documentation or the information in the documentation is necessary and can be produced for the purposes of this proceeding.

(c) **I ORDER THAT** the documentation produced or any information in the documentation not be disclosed to anyone else, or used for any purpose unrelated to this proceeding, without my leave.

(d) In the event that counsel cannot agree on the appropriate disposition of the production issue by December 18, 2020, I will convene an in camera telephone or video-conference hearing with counsel to deal with the production issue by no later than January 13, 2021 (14 days prior to the next scheduled hearing date). Contractual bid documents tend to be lengthy, so in the event that I am required to deal with the issue, **I ORDER THAT** the portions relevant to the dispute regarding production for use in this proceeding be provided to me for my sole review and use in the scheduled in camera telephone or video-conference hearing in advance thereof.

DATED AT TORONTO THIS 2nd DAY OF DECEMBER 2020.

George T. Surdykowski
George T. Surdykowski – Sole Arbitrator