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## **Ex-hydro boss pursuing \$33K 'monthly' pension**

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Former Hydro head goes to court for \$33,000 a month pension

Eight years after being ousted as head of Hydro One Inc., Eleanor Clitheroe is immersed in a new life as an Anglican priest.

But it doesn't require a vow of poverty.

The Ontario government believes she is entitled to a monthly pension of \$25,637.08.

But Clitheroe, who earned \$2.2 million in 2001, her last full year as the utility's chief executive officer, argues she should receive considerably more -- \$33,644.21 a month.

In a case to be heard by the Ontario Court of Appeal on June 15, Clitheroe argues her Charter rights to liberty and security of the person were violated by Bill 80, passed by the Legislature in June 2002.

It was the province's attempt to clean house at the publicly owned utility and abolish what was seen as excessive compensation for senior officers.

But a trial judge who dismissed her claim last year found Clitheroe's pension entitlements were purely economic interests which aren't protected by the Charter.

Lawyers for Hydro One say the legislation stripped away special pension arrangements Clitheroe negotiated when she joined what was then called Ontario Hydro in 1993. They included two and, in some cases, three years of credited service for every year actually worked.

But even with those special arrangements gone, Clitheroe, 56, is doing better than most people, lawyers Benjamin Zarnett and Peter Kolla argue in material filed with the court.

"The restriction on Clitheroe's supplementary pension entitlement is limited to an amount well in excess of the pension income of the average Canadian or even the average Hydro One employee," they say.

The average pension income of Canadians in 2005 was \$14,800, the court was told. Meanwhile, Hydro One pensioners receive, on average, \$33,122 a year.

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Clitheroe, who is an ordained Anglican minister serving in Smithville, near Hamilton, argues the trial judge, Justice Ruth Mesbur, failed to appreciate the significance of a person's decision to give up a high-paying private sector job and join the government, mainly because of the security of the pension.

That's a "fundamental personal choice," she says, and reducing a promised government pension seriously interferes with that decision.

Clitheroe joined the Ontario government in 1989, in part because she was interested in public policy, but also because the government offered a good pension. She was a deputy minister of finance and joined Hydro in 1993 as its chief financial officer.

The special pension arrangements in her contracts provided:

\* In addition to payments Hydro employees receive through their registered pension plan, and in addition to supplementary "top up" payments, Clitheroe would be credited with two years of service for every year worked. This, she argues, was the same deal she was given as deputy minister of finance -- and the same benefit every deputy minister receives by virtue of a special order-in-council.

\* No reduced pension if she retired before 65.

\* Under terms of a contract negotiated in 2001, she would receive three years credit for one year of service.

\* Performance bonuses would be counted as income when her pension was calculated.

Mesbur, the trial judge, said there is no doubt governments have the power to pass such laws. But they can only divest people of vested rights, including pension rights, if it is done in "clear, unequivocal and unambiguous" terms and they don't infringe a person's Charter rights in doing so.

In Clitheroe's case, the government failed on both counts, argues her lawyer, Alan Lenczner.

The legislation says Hydro pensions are not to exceed what would be paid to employees under a registered and supplementary pension plan.

Since it doesn't actually include any phrases such as "two years of credited service for each year worked," Clitheroe and her lawyer believe there is hope.

Anglican clergy make in the range of \$50,000 to \$60,000 a year on average.

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