

Retirees Allowed their Day in Court

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In a recent decision of the Ontario Superior Court of Justice, *Kranjcec v. Her Majesty the Queen in Right of Ontario*, Justice Cullity gave approximately 51,000 retirees and their family members the green light to proceed with a suit against the Ontario government. The retirees, who are former employees of the Ontario government, claimed that the government unlawfully reduced their retirement health and dental benefits. In certifying one of the first and largest class actions against the Ontario government, Justice Cullity agreed with the retirees that a resolution of the issues common to the class members would substantially advance the litigation. The decision allows retirees, who are typically without union representation and in many cases have insufficient means to pursue claims on an individual basis, a legal avenue to commence actions against their former employers. As we increasingly see employers modifying their benefit plans to contain costs, the decision means that retirees will not be left without legal redress.

Facts

The action was brought on behalf of the retirees by Barbara Kranjcec, who worked for the Ministry of Health for 27 years prior to her retirement in 1993. The class was made up of former members of the Ontario Public Service Employees Union (“OPSEU”) as well as a number of other unions, in addition to former non-unionized employees of the Ontario government. The retirees claimed that they had been receiving health and dental benefits from the government since 1974 and that the government had made a binding promise to them to continue providing the benefits. They said the benefits vested at the date of retirement and could not subsequently be reduced or eliminated. From 1974 until 2002, the benefits had been enhanced or augmented from time to time, but had never been reduced.

The benefits were provided pursuant to various Orders in Council and were communicated to the retirees by means of “Guide to Benefits” booklets which were distributed from time to time. In 2002, for the first time, the government distributed a memorandum to retirees stating that effective June 1, 2002, their benefits would be modified. The Crown claimed that it was entitled to modify the benefits to match the recent benefits negotiated by OPSEU for its members. The memorandum stated that the benefits had been improved in some areas, but that controls had been implemented in other areas to manage projected health and dental care cost increases. The government disputed that the changes amounted to a reduction, claiming that while some benefits had decreased, others had been enhanced, and that some retirees would be better off. The

retirees argued that the changes were intended as a cost containment measure and that they had suffered a net reduction in coverage.

In addition to their claim for breach of binding promise, the retirees claimed that in modifying their benefits, the Crown breached a fiduciary duty owed to them and breached their s. 15 Charter rights.

Retirees' Standing

The first step of the certification test was whether the retirees' pleading disclosed a cause of action. The government's principal challenge on this issue was to say that no valid contract for benefits could exist between the Crown and "almost all" of the members of the proposed class, including Ms. Kranjcec, as they were represented by OPSEU as their exclusive bargaining agent. The Crown claimed that where an exclusive bargaining agency was in place, there could be no collateral or subsisting contract, such as the vested promise to provide retiree benefits, touching upon any subject matter of the employment relationship.

Justice Cullity rejected this argument, finding that it went to the merits of the retirees' claim and could not be decided on the pleadings, as required at the cause of action stage. He also noted that, according to the cases, individual bargaining by unionized employees is permitted when the terms fall outside the scope of the collective agreement. In addition, it had been held that retirees were outside the bargaining process and that a union could not insist that an employer negotiate benefits for current retirees. In the end, Justice Cullity found there was sufficient uncertainty with respect to the rights of retirees to enforce their benefits that the retirees' case constituted a viable cause of action.

Justice Cullity did consider that the existence of collective agreements affecting some members of the class raised a question of standing to bring the action – that is, whether former unionized employees had standing to raise their issues without union representation and in court. However, Justice Cullity decided that this was a question to be further explored on the merits and therefore could be dealt with at a common issues trial; the retirees were not denied standing to proceed at this early stage.

Other Issues

The Crown raised an additional defence to the existence of a cause of action. The defence, unique to the Crown as employer, claimed that the benefits provided pursuant to the Orders in Council were exercises of the Crown prerogative and, as such, not actionable apart from the Charter claim. Justice Cullity rejected this defence on the ground that the Crown should be held to contracts with its employees, regardless of whether the contracts were made pursuant to an exercise of the Crown prerogative. He adopted from *Wells v.*

Newfoundland, [1999] 3 S.C.R. 199, the statement that “in a nation governed by rule of law, we assume the government will honour its obligations unless it explicitly exercises its power not to.”

With respect to the claimed breach of fiduciary duty, Justice Cullity found that the retirees had disclosed a cause of action. While he accepted that the relationship between employer and employee does not inherently give rise to a fiduciary duty, such a duty may arise in the circumstance of a particular relationship. He found that in this case, the claim for breach of fiduciary duty was sufficiently pleaded and the terms of the Orders in Council did not necessarily negate such a duty.

With respect to the claimed discrimination against retirees on the basis of age contrary to section 15 of the Charter, Justice Cullity again found that the pleadings were adequate and disclosed a cause of action. He accepted that the retirees had properly claimed adverse effect discrimination and stated that questions such as whether human dignity had been materially infringed and whether any violation was justified under s. 1 of the Charter were not matters to be dealt with solely on the pleadings.

Avenue for Redress

In granting the retirees the opportunity to proceed to a common issues trial, Justice Cullity refused to deny the retirees standing at the certification stage. Had the Crown’s arguments regarding the exclusivity of bargaining agents and collective agreements been successful, most of the retirees would very likely have been foreclosed from any further legal redress. That is, they would have been barred from proceeding in court, but at the same time, they no longer had union representation to proceed by way of grievance. In the *Kranjcec* decision, Justice Cullity allowed the action to move at least to a fuller consideration of these issues at trial. The decision should bring some comfort to retirees receiving benefits as employers struggle with increasingly expensive benefit costs.