

## Post-retirement benefits update

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**By Adam Beatty**

Two recent decisions in British Columbia have addressed the issue of entitlement to post-retirement health benefits, one in a unionized setting, the other not. Both cases highlight the importance to employers and employees of clearly documenting intended commitments regarding post-retirement benefits, whether in a collectively bargained situation or otherwise.

### ***Communication, Energy and Paperworkers Union, Local 76 and Catalyst Paper (Powell River Division)***

In *Communication, Energy and Paperworkers Union, Local 76 and Catalyst Paper (Powell River Division) (Retirement Benefits)* (December 17, 2010) Unreported (Dorsey), at issue was the entitlement to health benefits for a group of employees who had retired from the Powell River mill prior to 1998 (“the **Retirees**”).

MacMillan Bloedel had, on behalf of the Retirees, historically paid the premiums for the provincial Medical Services Plan (“**MSP**”) and a group extended healthcare plan for the life of the retiree and his or her spouse. However, these benefits were never included in a collective agreement. In 2009, Weyerhaeuser Company Limited, which had previously purchased MacMillan Bloedel, announced it would freeze the amount it paid for the MSP and other healthcare premiums on behalf of the Retirees, among others. The Union grieved.

The Powell River mill was the subject of a number of corporate transactions:

- January 1997: purchase and sale agreement between MacMillan Bloedel and MB Paper. MB Paper was a wholly owned subsidiary of MacMillan. As part of the sale agreement, MB Paper assumed all of the obligations in respect of the group non pension benefit plans for the Retirees.
- June 1998: Pacifica Papers acquired the Powell River mill from MB Papers. The retiree liabilities remained with MB Papers.
- 1999: Weyerhaeuser Company Limited purchased MacMillan Bloedel.
- 2001: NorskeCanada purchased Pacifica Papers.
- 2005: NorskeCanada changed its name to Catalyst Paper.
- October 2009: Weyerhaeuser announced that it would freeze the amount it paid for the MSP and extended health premiums for retirees, including the Retirees, who had formerly worked for MacMillan Bloedel.

The Union grieved Weyerhaeuser’s decision on the basis of a supplementary agreement negotiated in 2002 with NorskeCanada which provided for full premium payments for health benefits for “all employees who have retired from active service with the Local”. The Union argued that this created an entitlement for retirees, including those who had retired when the mill was still owned by MacMillan Bloedel, to full payment of health premiums.

Arbitrator Dorsey’s decision must be understood in the context of the complicated corporate transactions involving the Powell River mill.

In denying the grievance, Arbitrator Dorsey found that MacMillan Bloedel’s past practices did not create obligations under the collective agreement. As such, there was no retirement benefit obligation enforceable against Catalyst Paper as a successor.

Dorsey found that the employees referred to in the 2002 agreement were those employees who had retired after the business was sold to Pacifica Papers and who, in 2002, were covered by an extended health care benefit plan and other benefits provided by NorskeCanada. As such the Retirees could not claim under that agreement.

### ***Gustavson v. TimberWest Forest Corp.***

In *Gustavson v. TimberWest Forest Corp.*, [2011] B.C.J. No. 1943 (B.C.P.C.), the B.C. Provincial Court was also required to determine the rights of a retiree to claim non-pension post-retirement benefits from a successor employer.

The Claimant, Mr. Gustavson, accepted an offer of early retirement from Fletcher Challenge Canada Limited (“**FCCL**”) in 1992. As part of that offer, FCCL guaranteed that, as a retiree, Mr. Gustavson would be entitled to a number of health benefits. The Company reserved the right to amend or discontinue any benefit plan or program so long as it did not result in a level of benefits which was “substantially less than those outlined” in the offer. In 1993, TimberWest Forest Corp. purchased the operation where Mr. Gustavson had been employed.

At the time of Mr. Gustavson’s retirement, the extended health plan included out-of-province emergency medical coverage. In September 2008, TimberWest notified those retirees who had retired after 1989, including Mr. Gustavson, that it was eliminating out-of-province emergency medical coverage. Mr. Gustavson, who spent several months a year in Arizona, sought damages which resulted from the discontinuation of the out-of-province emergency medical coverage.

McCarthy J. held that, by virtue of his acceptance of the retirement offer, Mr. Gustavson’s individualized rights, including the right to out-of-province emergency medical coverage, had vested and that, because the elimination of out-of-province emergency medical coverage resulted in a coverage that was “substantially less” than that which were in the retirement offer, he was entitled to damages. Mr. Gustavson’s situation was distinguished from the general body of retirees who did not have individual early retirement offers and whose rights had therefore not vested in the same way.

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Originally Posted: [http://www.cba.org/cba/newsletters-sections/2012/2012-01\\_pensions.aspx#article4](http://www.cba.org/cba/newsletters-sections/2012/2012-01_pensions.aspx#article4)