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Pensions Law

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Kerry Case Considers Key Pension Issues

Defined Benefit to Defined Contribution Conversion

Has your pension plan changed from a defined benefit to a defined contribution formula? If so, a recent Ontario case may be of considerable interest to you with respect to your funding practices.

In the Kerry decision, the Ontario Superior Court of Justice examined an employer's funding practices for a previously converted pension plan. The defined benefit portion of the plan was in a surplus position, and the employer used this surplus to fund its contribution obligations for the defined contributions.

The Ontario Court held that this was not permissible on the basis that the converted plan was, in effect, two pension plans (a DB and DC plan), each with its own pension fund and members.

Payment of Pension Plan Expenses from the Pension Fund

Did you know that you may not be entitled to pay administration expenses from the pension fund of your plan? The Kerry case confirmed that the lawful payment of plan expenses from a pension fund cannot be made unless the historical terms of the pension plan and funding agreement permit it.

In the Kerry decision, the Ontario Superior Court of Justice applied trust law principles to the payment of routine plan expenses. Specifically, if a pension plan has been created on the basis that the related trust fund must be used for the exclusive benefit of plan members and if there is no express

power to change that trust, any subsequent amendment stating that funds can be used for other pension plan purposes, such as the payment of plan expenses, is improper.

The clauses analyzed by the court in the Kerry case are not unusual in pension trust agreements. If your pension plan contains similar provisions, you may need to revisit the issue of whether plan expenses can legally be paid from your pension fund. To make such a determination will require a "due diligence" review of all historical plan documents, from the inception of the plan, and will include all funding agreements.

If you would like further information on this case or any other pension matter, please contact any member of our Pensions, Benefits and Compensation Group.

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