

# Goodmans<sup>LLP</sup> Update

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## Pensions Law

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### Employee Communications – No Duty to Disclose Pension Plan Changes that are under consideration, but not finalized

A plan administrator must ensure that all communications, of any nature, made to plan members regarding the pension plan are accurate, up-to-date and clear. However, recent case law makes it clear that there is no duty to warn members of potential plan changes that are under consideration.

The Supreme Court of Canada recently dismissed an application for leave to appeal in the *Hembruff v. Ontario Municipal Employees Retirement Board* case. This represents a welcome confirmation of the decision made earlier by the Ontario Court of Appeal. In *Hembruff*, a number of members elected to take early retirement and receive the commuted value of their pensions during the time that their plan's administrator was considering options for using its surplus. After the members left the plan, the plan was amended and surplus was used to provide benefit enhancements. The members claimed that they had been deprived of the benefit of these enhancements, and essentially made the argument that the administrator had a duty to warn them of the potential plan changes.

The Ontario Court of Appeal held that although the administrator had a duty to disclose "highly relevant information", potential changes to a pension plan were not highly relevant, as potential changes were not a matter of ascertainable fact. The Court further found that there is no duty to disclose pension plan changes that are under consideration, but not finalized.

Although *Hembruff* confirms that there is no duty to disclose potential pension plan changes that are in the discussion phase, it also makes it clear that plan members rely on the communications made by plan administrators. Plan communications with plan members should be accurate, up-to-date and clear. An employer may be legally bound by representations made in employee handbooks, brochures, pension estimates and oral statements.

Our pensions and benefits specialists have significant experience in all aspects of pensions and benefits administration, communications, governance and compliance. Please contact any of the members of the Goodmans LLP Pensions, Benefits and Compensation Group if you would like further information.

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