

Update

Pensions Law

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Applicability of Trust Law Principles to Pension Plans

A recent Supreme Court of Canada case has determined that not all trust law principles should be applied to modern day pension plans that are funded through a trust. The old common law rule in *Saunders v. Vautier* will not normally apply to pension trusts.

In *Buschau v. Rogers Communications Inc.*, the Supreme Court of Canada considered whether the participants of a pension plan subject to a trust could invoke the rule in *Saunders v. Vautier* and terminate the trust under the plan. The rule in *Saunders v. Vautier* provides that if all the beneficiaries of a trust are legally capable of managing their own affairs and agree, they may terminate the trust regardless of the express wishes of the person who established the trust.

The Buschau plan was frozen in 1984 and was subsequently merged with three other plans to form a continuing plan. The plan had a substantial surplus, which the members sought to access by terminating the pension plan. The argument raised was that because the plan membership had been frozen in 1984, its members and their named beneficiaries were the only persons with an interest in the pension trust fund.

The problem they faced, however, is that the merged plan was a continuing plan and therefore any rights to surplus would not crystallize until the merged plan was wound up. Under the terms of the federal pension legislation, which applied to the plan, only two people can voluntarily wind up a plan – the employer or the Superintendent (in certain circumstances). There is no direct mechanism permitting plan members to trigger a plan wind up. Further, neither the plan nor the trust allowed the members to terminate the plan. So the members sought to do indirectly what they could not do

directly; they sought to terminate the plan under the rule in *Saunders v. Vautier* and provincial trust legislation.

The Supreme Court of Canada found that the rule in *Saunders v. Vautier* is not easily incorporated into the context of employment pension plans. The members of a pension plan only have a contingent interest in the trust surplus, but the rule in *Saunders v. Vautier* requires that all beneficiaries have a vested interest in the body of the trust. Further, it held that as the federal pension legislation provides clear rules on terminating plans, that legislation displaces the common law rule.

The Supreme Court of Canada also addressed alternatives for recourse for the members in the closed plan. Under the federal statute, the Superintendent has the power to order that a pension plan be terminated when employer contributions have ceased. The Court noted that in such circumstances, the Superintendent almost has a duty to act when employees request him to do so. It will be interesting to see how the regulators respond to this case if employees begin requesting terminations of frozen plans.

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 on this case or any other matter.

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