



THE VERDICT IS IN

Several landmark cases have had a profound impact on the administration of pension and benefits plans. Here, BENEFITS CANADA's law columnists review the most significant cases over the past 25 years.

COLLINS VS. ONTARIO (PENSION COMMISSION), 1986: Known as the Dominion Stores case, this ruling was "a watershed for pension surplus that sparked major legislative reforms across Canada," says Paul Litner, a partner with Osler, Hoskin & Harcourt LLP in Toronto. Members challenged the employer's withdrawal of surplus and the court upheld their challenge.

DAYCO CANADA LTD. VS. NATIONAL AUTOMOBILE, AEROSPACE & AGRICULTURAL WORKERS UNION OF CANADA, 1986-1993: "This was a hugely significant case for the Canadian benefits industry," says Hugh O'Reilly, partner with Cavalluzzo, Hayes, Shilton, McIntyre and Cornish in Toronto. The Supreme Court of Canada ruled on a company's closure and subsequent decision to deny employees health benefits. The court ruled that these benefits are vested entitlements that cannot be taken away from an employee."

STELCO INC. VS. ONTARIO (SUPERINTENDENT OF PENSIONS), 1993-1996: A series of administrative tribunal and court rulings on partial plan windups. "It represents the first significant judicial rulings on what constitutes grounds for a partial plan windup order by the Superintendent," says Litner. The Superintendent ordered the partial windup as a result of Stelco's downsizing, which represented less than 20% of the steelmakers' workforce. The court ruled in the Superintendent's favour.

BELL CANADA GROUP REGISTERED RETIREMENT SAVINGS PLAN

CLAIM, 1996: This case arose out of the collapse of Confederation Life. One of Bell's two retirement plan options was guaranteed income certificates (GICs) held with the defunct insurer. "Retirees launched a claim against Bell as the value of their GICs was up in the air with the collapse of Confederation

Life," says Murray Gold, a partner with Koskie Minsky in Toronto. The case was settled when Bell guaranteed the investments. "This was the first significant challenge against a defined contribution plan sponsor," he says.

SURPLUS REVERSION MORATORIUM, QUEBEC, 1988: "This was the first real attempt by government to come up with a legislative framework to deal with surplus," says Michel Benoit, co-chair of the pension and benefits department with Osler in Montreal. Quebec lifted the moratorium in 1993 when it put a mechanism in place that called for employers and employees to share surplus or arbitrate an agreement. Quebec is the only province to have such a process in place.

FUNDING OF ONTARIO PUBLIC SECTOR PENSION PLANS IN ONTARIO, 1990: A legislative development that led to the creation of "enormous institutions such as the Ontario Teachers' Pension Plan Board and spread throughout Canada," says Gold.

JOINT TRUSTEESHIP OF THE ONTARIO TEACHERS' PENSION PLAN, 1992: Marks the first joint trusteeship of a major public sector plan and an important legislative development in governance. "This precedent-setting move marked a decade-long trend of shifting governance from government-appointed boards to independent boards," says Gold.

SCHMIDT VS. AIR PRODUCTS, 1990-1994: This Alberta case over surplus ownership and contribution holidays marks the only time that the Supreme Court of Canada has commented directly on these two issues, says Litner. The court said traditional trust laws apply to surplus ownership unless there is no trust agreement in place, in which case contractual laws apply. If a trust agreement exists,

employers could only withdraw surplus if they were a beneficiary of the original trust or retained an express right to revoke the original trust. "In terms of contribution holidays, the court stated that holidays are not an encroachment upon the trust," says Litner.

M. VS. H., ROSENBERG VS. CANADA AND SCHACHTER VS. CANADA, 1992-2000: These cases led to the extension of employer benefits to same-sex partners. "Couples were no longer discriminated against on the basis of gender. Revenue Canada was forced to change its interpretation of a spouse as someone of the opposite sex," says O'Reilly.

EATONS' SURPLUS WITHDRAWAL AGREEMENTS, 1997: Three separate applications involving approximately \$445 million in pension plan surplus were approved by members, the company and the Pension Commission of Ontario. "It was the most significant surplus-sharing deal in Canada and remarkable because of the time frame in which it was done given the complexity of the transaction," says Litner.

ST. MARY'S PAPER INC., 1994-1996: A significant Ontario case in the area of bankruptcy/insolvency law that was appealed to the Supreme Court of Canada. A trustee in bankruptcy continued to make current service contributions to a pension plan on behalf of employees. Litner says the courts ruled that by making such contributions, the trustee became the employer under the *Pension Benefits Act* (PBA) of Ontario.

MONSANTO CANADA INC. SURPLUS STRUGGLE, 1997 TO PRESENT: This case has had pension and legal experts debating the distribution of surplus upon a partial windup for five years. It now sits with the Ontario Court of Appeal. "It has created a real policy dilemma under the PBA," says O'Reilly. He adds the outcome may encourage employers to terminate less senior employees who are entitled to less surplus in a downsizing that leads to a partial plan windup.