

Case In Point

Supreme Court of Canada Denies Leave to Appeal in Reduction of Retiree Benefits Case

Date: November 21, 2013

Today, the Supreme Court of Canada (“SCC”) denied leave to appeal from a decision of the British Columbia Court of Appeal (“BCCA”) in *Lacey v. Weyerhaeuser Company Limited*.

The case concerned changes to certain post-retirement benefits for retired salaried employees (“Retirees”) of Weyerhaeuser Company Limited (“Weyerhaeuser”), and a predecessor company. At issue were fully-funded post-retirement health benefits, including extended health insurance and the British Columbia Medical Services Plan (“Retiree Benefits”).

The Retiree Benefits were voluntarily instituted, and had been communicated to employees in various written documents (including benefit handbooks, human resources committee documents, insurance policies and internal memoranda), and also verbally discussed with employees (both in one-on-one meetings and in human resources group seminars).

In 2009, Weyerhaeuser advised Retirees that its contribution to the Retiree Benefit premiums would be frozen at 50% of the then-current levels, and that Retirees would be solely responsible for any future premium increases. In response, the Retirees brought an action against Weyerhaeuser for breach of contract, claiming that their entitlement to the fully-funded Retiree Benefits vested during the course of, and as a term of, their employment. As such, according to the Retirees, Weyerhaeuser was precluded from instituting the premium changes following their retirement.

At trial, the Supreme Court of British Columbia (“Trial Court”) considered the various written and verbal communications, and held that Weyerhaeuser was contractually required to continue the fully-funded Retiree Benefits.

According to the Trial Court, the Retiree Benefits were intended as a form of deferred compensation, not as a gratuitous and discretionary perk. Also, although the Retiree Benefits were originally offered voluntarily, they became enforceable as a unilateral contract, the acceptance of which was confirmed by employees through their continued work.

A key aspect to the Trial Court’s decision was the finding that the Retiree Benefits vested at retirement, and that Weyerhaeuser did not reserve the right to terminate the vested retiree benefits in benefit-related documents and employee communications. According to the Trial Court, these documents and communications contained language that promised to provide the Retiree Benefits

through retirement. This language included terms such as “the company will pay” or “the company will also provide” in relation to the Retiree Benefits.

Significantly, one benefit booklet stated that Weyerhaeuser was permitted to “make changes from time to time.” However, the Trial Court did not accept that this language authorized Weyerhaeuser to make the changes at issue, noting that much stronger language would be required to give Weyerhaeuser the right to make the changes following an employee’s retirement.

Weyerhaeuser appealed the Trial Court’s decision. In the appeal, the BCCA agreed with the Trial Court’s conclusion and found that Weyerhaeuser was contractually bound to continue the Retiree Benefits for Retirees for the full duration of their retirement.

The BCCA specifically noted that the various written commitments had been reinforced verbally during seminars and meetings with employees. The BCCA also found that these commitments had been made to the Retiree Benefits as an incentive to remain in employment with the company, finding that employees’ compensation would presumably have been greater if the promise had not been made.

Significantly, the BCCA concluded that Weyerhaeuser could have made changes to the Retiree Benefits during employment, but that it could not change those terms after an employee retired, when “the retired employee no longer had the option to seek more attractive employment within the salaried-labour market.” Rather, once the employee retired, the unilateral change to the Retiree Benefits amounted to a breach of contract.

The decision of the BCCA stands as an important reminder that clear language reserving the right to make changes to retiree benefits following retirement will be critical if such changes are to withstand challenge.

[*Lacey v. Weyerhaeuser Company Limited*, 2013 BCCA 252 \(CanLII\)](#)