

Case In Point

SCC authorizes Québec class action regarding reduction of retiree benefits

Date: January 31, 2014

The Supreme Court of Canada (“SCC”) recently released a unanimous decision authorizing a class action on behalf of retirees against their former employer, relating to announced changes to their supplemental health insurance plan (“Plan”). The case, [*Vivendi Canada Inc. v. Dell’Aniello*](#), was decided under the specific wording of the Québec class proceedings statute.

In 2009, the employer, Vivendi Canada Inc. (“Vivendi”), unilaterally amended the Plan to reduce certain benefits promised to the Plan’s beneficiaries (who, at the time, were all retirees and surviving spouses).

In response, Mr. Dell’Aniello, an affected retiree, sought to institute a class action against Vivendi on behalf of the Plan beneficiaries in the Québec Superior Court. The Québec *Code of Civil Procedure* (“CCP”) requires four criteria to be met to institute a class proceeding. At trial, the judge found that the proceeding did not qualify as a class action on the basis that the class did not raise “identical, similar or related questions of law or fact.”

Mr. Dell’Aniello asserted that the “identical, similar or related” issues raised included whether retirees’ rights under the Plan vested or crystallized upon retirement, whether those rights could be “diminished” without the Plan members’ consent, and whether Vivendi had the authority to unilaterally amend the Plan in the manner that it did.

The Québec Court of Appeal, and now the SCC, authorized the claim as a class proceeding, finding that the “commonality of issues” requirement of the CCP does not mean that an identical answer is necessary for all the members of the class, or even that the answer must benefit each of the members to the same extent. Rather, it is enough that the answer to the question does not give rise to “conflicting interests” among the class members.

The SCC found that the main question raised in the class action was whether Vivendi’s unilateral changes made to the Plan in 2009 were valid or lawful. According to the SCC, the answer to this overarching question could serve to advance the resolution of all class action members’ claims in a manner that resolves a not insignificant portion of the dispute. Thus, there was an “identical, similar or related questions of law or fact,” as required under the Québec CCP.

This decision turned on the specific wording of the Québec CCP, including the flexible and

expansive approach to authorizing class actions taken by Québec courts. The SCC’s discussion of the general principles applicable to the “commonality of issues” requirement of the Québec legislation may be of interest to employers in approaching the certification of similar class proceedings in Ontario.

This procedural decision authorized the retirees’ claim to proceed as a class action; it does not provide any decision on Vivendi’s ability to unilaterally reduce the retirees’ benefits under the Plan. We will continue to monitor this case for any decision that relates to the merits of the claim itself.