



Court of appeal decision highlights importance of clear pension communications

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Julius Melnitzer

A recent Saskatchewan Court of Appeal decision illustrates the importance of clear communications from pension administrators seeking to avoid liability from lawsuits by claimants alleging they're entitled to a plan member's death benefits.

“What it comes down to is that employers and pension plans that want to avoid lawsuits from plan members claiming to be beneficiaries or that want to defend these suits successfully must outline clearly to plan members what their options are,” says Mitch Frazer, a pensions and employment law partner at Torys LLP. “Otherwise, the plan will be liable for any losses incurred.”

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The decision, *Boreen v. Mosaic Esterhazy Holdings ULC*, also confirms several important principles upon which administrators have relied, but which haven’t been clearly confirmed by higher courts.

“*Boreen* affirms that a member’s beneficiary designation is not an indication of who is entitled but merely of whom the member has designated,” says Andrea Boctor, a partner in the pensions and benefits group at Osler, Hoskin & Harcourt LLP. “It also confirms that a non-member cannot found a claim for negligent misrepresentation against a plan on a statement by the member that the plan did not provide to the non-member.”

The case arose because Saskatchewan law differs from that of most Canadian provinces in the way it treats separated spouses’ rights to pension benefits. In most provinces, legally married spouses lose the automatic right to members’ death benefits after a period of separation. In Saskatchewan, separated spouses not only maintain their rights but take precedence over the rights of subsequent common-law partners.

Colleen Boreen was the common-law spouse of Lloyd Holmes when he died in 2014. He had been separated from Glenda Holmes, to whom he had been legally married for 21 years. But the couple never executed a separation agreement, nor did they divorce.

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Lloyd learned he was terminally ill in 2013. He contacted the pension plan administrator at Mosaic, where he’d been working since 1974, with the intention of changing his designated beneficiary to include Boreen. Lloyd subsequently signed a declaration of spousal status naming her as his beneficiary.

The declaration falsely stated he had a former spouse who was “not entitled to receive any portion of [his benefits] under the terms of a court order or interspousal agreement.” The administrator advised Lloyd to seek legal advice, telling him that Glenda, notwithstanding the new designation, would be entitled to the benefits if they were still legally married when he died.

Lloyd did nothing about it, although his will purported to split the pension between Glenda, Boreen and his children. In January 2014, the plan sent Lloyd a pension statement that listed Boreen as the beneficiary. When Lloyd died later that year, Glenda successfully claimed the death benefits, citing Saskatchewan law that gave her, as the legally married spouse, precedence over any named beneficiary.

Boreen sued Mosaic for negligent misrepresentation. To succeed, she had to prove that Mosaic had made a misrepresentation to her and that she'd reasonably relied on the information to her detriment. The trial judge ruled that the administrator had acted properly. Indeed, it was Lloyd's failure to act on the administrator's advice that resulted in Glenda obtaining the benefits. Boreen appealed but was unsuccessful.

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“The designation [in the pension statement] was merely a reiteration of Mr. Holmes' choice of beneficiary and not an original representation by [the administrator] or Mosaic of who would be entitled to the pension when he died,” the court of appeal wrote. Otherwise, the court of appeal agreed that Boreen's claim also failed because the representation in the pension statement that Boreen had been designated as beneficiary was addressed to Lloyd and not to her.

As Frazer sees it, the decision puts pension plan administrators on notice to stay aware that members marital status may change, either before or after they leave the company. “So it might be a good idea for administrators to add a Q&A about marital status when they communicate with members. And it might be a good idea to do so more than once a year.”