

## THE RÉGIE AND THE TAQ REJECT ADVERSE AMENDMENTS MADE TO A PENSION PLAN

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ON JULY 28, 2010, THE TRIBUNAL ADMINISTRATIF DU QUÉBEC ("TAQ") CONFIRMED A DECISION OF THE RÉGIE DES RENTES DU QUÉBEC (THE "RÉGIE") WHICH HAD REFUSED TO REGISTER ADVERSE AMENDMENTS<sup>1</sup> MADE TO A PENSION PLAN DESPITE THE CONSENT GIVEN TO THE AMENDMENTS BY THE SOLE MEMBER OF THE PLAN.<sup>2</sup>

The purpose of the amendments was, on the one hand, to replace the 2% pension benefit formula with a 1.53% formula for all the member's years of credited service and, on the other hand, to remove the guarantee of 180 payments applicable upon the member's death (the "Amendments").

The Régie had refused to register and authorize these Amendments on the ground that they substantially and retroactively reduced vested benefits in such a way as to eliminate any deficit under the pension plan. In the opinion of the Régie, the Amendments contravened the objectives of the *Supplemental Pension Plans Act* (the "SPPA") relating to the protection of the pension plan members' rights.

The Employer challenged this decision of the Régie before the TAQ.

The TAQ first reviewed section 20 of the SPPA, which sets out the rules governing adverse amendments, as well as section 28 of the same Act, which states that the Régie may refuse to register an amendment that does not comply in its view with the SPPA. The TAQ then ruled that the Régie has, by virtue of these two sections, a discretionary power to refuse the registration of an amendment where it finds that it does not comply with the spirit and purpose of the SPPA, even if the members affected by such amendment gave their consent to it. The TAQ added that, in the case under review, the Régie validly exercised this discretionary power by refusing to register the Amendments.

### COMMENTS

Under section 20 of the SPPA, an adverse amendment may have a retroactive effect if the members affected by the amendment consent to it and "*provided the Régie has authorized the amendment*".

In the above-mentioned matter, the sole plan member had consented to the adverse amendments adopted by the employer. Neither the Régie nor the TAQ questioned the validity of this consent or its free and enlightened nature. Nevertheless, the Régie found that the spirit and purpose of the SPPA relating to the protection of the pension plan members' rights required it to refuse the registration of the amendments. For its part, the TAQ decided that the Régie had validly exercised its discretionary power in doing so.

<sup>1</sup> That is, amendments which cancel refunds or pension benefits, limit eligibility therefore or reduce the amount or value of the benefits of members.

<sup>2</sup> *Synertech Moulded Products, A Division of Old Castle Building v. Régie des rentes du Québec*, 2010 QCTAQ 07497.

It is interesting to note that, according to the evidence adduced by the Régie, it is its practice, although there is no specific rule to this effect, to refuse amendments which reduce plan members' rights by more than 5%, which it considers to be a significant reduction.

It therefore appears that the Régie may, at its discretion, refuse a retroactive adverse amendment in order to protect the rights of plan members, notwithstanding that the members affected by such amendment have given their free and enlightened consent thereto. In other words, according to this recent decision, the Régie has the last word on such amendments and may decide to protect the rights of plan members who do not requested such protection, since they have agreed to those amendments.

In light of this decision by the TAQ, and given the practice of the Régie referred to above, an employer who is considering making a retroactive adverse amendment to its pension plan with the consent of the affected plan member(s) would be well-advised to take this practice into account and to contact the Régie before taking any concrete action in this regard.

An application for judicial review of the decision of the TAQ was filed on September 8, 2010. We will provide an update when the Superior Court renders judgment in review.

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