

Synopsis of Facts/Documents

Grant McLean is a Senior Manager with the Government of Alberta. He is the former Mayor of the City of Airdrie and also a former Aide de Camp to the Lieutenant Governor of Alberta. He is an Officer in the Order of Military Merit and in 2005 was awarded the Alberta Centennial medal. Mr. McLean is taking his employer, the Government of Alberta, to court for negligent misrepresentation in a matter relating to his pension that dates back to 1982. The issue has been dragging on through the government bureaucracy ever since.

Background

Attached at Tab 1 is a copy of an article "Negligent Misrepresentation in an Employment Contract" from LawNow Magazine dated October/November 1998 and "Promises Promises. The Queen vs. Cognos" from the December 1997/January 1998 edition of the same magazine. The articles outline a decision by the Supreme Court of Canada five general requirements that must be met in cases of "wrongful hiring" which is also known as "negligent misrepresentation". The requirements are:

- there must be a duty of care based on a special relationship between the parties;
- the misrepresentation must be untrue, inaccurate and misleading;
- the defendant must have acted negligently in making the representation;
- the plaintiff must have relied on the misrepresentations; and
- the plaintiff must have suffered some loss or damage.

A Government of Alberta Pensions Administration Bulletin dated 14 January 1977 was issued to all personnel staff to provide guidance for personnel employees whose responsibility it is to advise prospective employees in matters which include the transfer of pension credits from a former employer. (A copy of this correspondence is attached as Tab 2)

On 7 June 1979, the Alberta Public Service Pension Administration issued an Administrative Instruction "Transfers by Reciprocal Agreements To The Public Service Pension Plan". The instruction advised that when a person was hired to cover a management position with the Alberta government, the prospective employee should be forewarned that a possible deficiency in the transfer of pension funds might occur. (A copy of this directive is attached as Tab 3)

On 12 August 1980, the Government of Alberta's Personnel Administration Office issued a memorandum signed by the Public Service Commissioner of the day. In this correspondence, reference was made to the difficulties being encountered in the transfer of pensionable service from other jurisdictions to the Alberta Public Service Pension Plan. At the third paragraph of this memorandum, direction was given to Departments that were considering hiring candidates with pensionable service from other jurisdictions "to refer to the Pensions sections to the establish an estimate of pension transfer costs." The directive goes on to say that the Pensions Office would "...provide specific information to the

transferee on a one week turnaround basis." Further, "In order to provide proper counseling the Pensions Office will require candidates to make appointments ahead of time for a personal or telephone interview." The directive was to be implemented immediately. A copy of the directive is attached as Tab 4.

The Issue

On February 1982, Mr Grant McLean, an officer with 14 1/2 years of service with the Canadian Armed Forces, was offered employment as a manager with the Alberta Solicitor General. The offer was contained in a letter signed by the Regional Personnel Manager with Alberta Solicitor General. As a personnel or human resources manager in charge of drafting and signing offers of employment on behalf of the Government of Alberta, the Regional Personnel Manager, and others involved in the hiring process in the Government of Alberta, had a duty of care to ensure that the contents of the letter were accurate and correct.

The employment offer letter dated 8 February 1982 (copy at Tab 5) stated "Your Federal Government pension contributions are transferable to the Alberta Government Pension Plan." There was no mention of an estimate of pension costs, that a possible deficiency could occur or of the requirement for counseling by Pensions Office staff as required by the 1980 PAO directive at Tab 4.

Relying on the information in the offer letter at Tab 5 that his 14 1/2 years of pensionable service with the military could be transferred to the Government of Alberta pension plan, Mr McLean resigned from the military.

Some months after resigning from the Armed Forces, and after starting employment with the Alberta government, Mr McLean learned that he was not able to transfer his pension funds to the Alberta Public Service Management Pension Plan. In other words, he had lost 14 1/2 years of pensionable service. One of the letters of reply to his questions is a letter dated 9 May 1983 is attached as Tab 6.

In this letter of reply by an Alberta Government Pensions Counselor he was advised that, contrary to the information contained in his offer letter, there was no agreement for the transfer of his Department of National Defence pension contributions. The Regional Personnel Manager had erred in the offer of employment letter.

Mr McLean continued to raise the pension matter with his employers. A copy of one such letter is attached as Tab 7.

Mr McLean attempted to redress the error by requesting assistance and eventually bringing this matter before the Public Service Pension Board. The Board ruled that it did not have jurisdiction to rule in the matter. (A copy of the letter is attached as Tab 8).

As a last resort, Mr McLean initiated legal action against his employer to resolve the mistake.

Similar Situations in the Government of Alberta

Mr Lloyd Erickson was a peer of Mr McLean's who was hired by the Government of Alberta a few months before. In a letter offering employment to Mr Lloyd Erickson dated 19 October 1981 and also signed by the same Regional Personnel Manager, the wording in relation to the transfer of pension is exactly the same as Mr McLean's. Mr Erickson, who was an employee of the Correctional Service of Canada at the time that he was offered employment with the Province of Alberta, was allowed to transfer his pension contributions. Yet Mr McLean was not. A copy of Mr Erickson's offer letter is at Tab 9.

On 16 August 1985 an offer of employment letter was send by the Alberta Solicitor General, Regional Personnel Office, Southern Region to another employee of the Correctional Service of Canada. In the correspondence this employee is warned "Please note that it is very important to make immediate inquiries with respect to your pension, due to the variable nature and cost of plans in other jurisdictions." In other words, the employee was advised that there was a potential problem with the transfer of his pension as required by the PAO directive of 1980 (Tab 4) a possible shortfall might occur (Tab 2, Page 2 of 2). The employee was therefore in a position to make an informed decision regarding the disposition of his pension contributions. A copy of this letter is attached as Tab 10.

What The Defendant Says

In an Examination for Discovery dated 17 January 2003, the Regional Personnel Manager, who had been in the Solicitor General, Regional Personnel Office, South Office responsible for Mr McLean's hiring, admitted under oath to being new to the job.

The Regional Personnel Manager recalled Mr McLean raising the issue of pensions during his job interview, that she had made due diligence inquiries and that she ultimately signed an offer letter (Tab 13 - Page 36).

As part of the due diligence arising from Mr McLean's pension inquiry, she had made verbal enquiries to the Pension Office as to whether it was permissible for Mr McLean to transfer his pension to the Alberta Government Management Pension Plan. She was told by staff at the Pensions Office that it was (Copy of transcript attached at Tab 11 - Pages 22 and 23).

She then drafted Mr McLean's offer of employment letter using a format or template. She drafted the letter with the mistaken belief that he could transfer his pension to the Alberta Management Pension Plan (Tab 14).

She states at Tab 12 (Page 24) that she was new to her job and did not receive training or even a review on pensions when she commenced employment with Solicitor General in 1981. At Page 25 she went of to state that she had never seen a list of reciprocal pension agreements between the government of Alberta and other provincial governments and organizations as outlined at Tab 2.

At Tab 13 (Pages 32 and 33) and later at Tab 14 (Page 44) she states that although she was an employee of the Personnel Administration Office in 1980 she had never seen the directive issued by the Public Service Commissioner in August 1980. Therefore she was not aware of

her following problem are and her responsibility to follow procedures intended to avoid identified pitfalls:

"The transfer of pensionable service from other jurisdictions into the Alberta Public Service Management Pension Plan appears to be creating some difficulties in its application. The variable nature and costs of plans of other jurisdictions and the frequently greater value of our management Pension Plan often requires either (a) additional employee contributions to make up the shortfall; or (b) reduction in the years of pensionable service credited. These additional costs of the Alberta Public Service Management Pension Plan have not always been consistently and accurately reflected to prospective employees and in some cases, candidates have accepted offers of employment, only to find that substantial additional contributions are required."

"Departments are requested to ensure that final candidates on competitions, who are or could be considering transfer of pensionable contributions of pensionable service from other jurisdictions, are referred to the Pensions Office to establish an estimate of pension transfer costs."

"In order to provide proper counseling the pensions office will require candidates to make appointments ahead of time for a personal or telephone interview. In addition, information should be provided beforehand to the Pension Office on length of service being transferred, previous employer and salary history."

The above are excerpts from Tab 4

At page 33 (Tab 13) she stated that she was not aware of the existence of a Government document stating "Persons recruited for management positions who may be eligible to transfer pension funds be reciprocal agreement should be forewarned of the possible deficiency that could occur." Tab 2 refers.

At page 36 she reaffirms that she made what she believed to be due diligence inquiries and ultimately signed the offer letter.

Conclusion

The Regional Personnel Manager of Alberta Solicitor General had a duty of care to provide Mr McLean with correct pension information by virtue of her position and the question that he had asked her relating to transferability of pensions during his interview. The Regional Personnel Manager, and those advising her on pension matters, ought to have known of the existence of government concerns with problems occurring with the transfer of pension monies from other jurisdictions and procedures that had been put in place to prevent them from occurring. The information contained in her offer of employment was untrue, inaccurate and misleading. In failing to follow the government-wide pension transfer procedures outlined above, the Regional Personnel Manager acted negligently and made an inaccurate and untrue representation of pension transferability in her offer letter to Mr McLean. Relying on this misrepresentation, Mr McLean resigned his position from the

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Department of National Defence. Mr McLean suffered a loss of 14 1/2 years of pensionable service as a result.

It appears that problems with the transfer of pensions persisted despite the direction that had been provided previously. In 1989 the Public Service Commissioner issued a directive on the same topic. It begins with the following introduction "Departmental Staffing Officers are responsible for ensuring that prospective management employees receive consistent and accurate advice regarding the transfer of pensionable service to the Alberta Government Management Pension Plan. Accordingly, individuals responsible for recruitment should not make unauthorized commitments respecting pension benefits." (Tab 15)

So where does this leave Grant McLean? Over the years he has tried unsuccessfully to have his pension problem addressed without taking the Government of Alberta to court. Over five years after initiating legal action, Mr McLean's case has still not made it to court. Is this apparent stalling and stonewalling fair?

What You Can Do to Help

You can do something to rectify this injustice!

Please feel free to contact your Provincial Member of the Legislative Assembly (MLA) and express your feelings about how Mr Grant McLean is being treated in this matter.

You can find contact information for your local MLA at the following link:

http://www.assembly.ab.ca/net/index.aspx?p=mla_home

To offer your support directly to Mr Grant McLean, please contact him at the following email address:

ggmclean@telus.net