



Further amended pursuant to Rule 24(1)(b) of the Rules of Court – Order dated June 6, 2008

Amended pursuant to Rule 15(5)(a)(ii) of the Rules of Court – Order dated May 27, 2005

Original Filed October 6, 2004

Registry No. 04 3706  
Victoria Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

**BETWEEN:**

FREDERICK BENNETT

**PLAINTIFF**

**AND:**

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE  
OF BRITISH COLUMBIA

**DEFENDANT**

**FURTHER AMENDED STATEMENT OF CLAIM**

1. The Plaintiff, Frederick Bennett, is a retired former employee of the Defendant Crown in right of British Columbia, is a current member of the Public Service Pension Plan (the "Pension Plan"), and is the Provincial 1<sup>st</sup> Vice-President of the British Columbia Government Retired Employees' Association ("BCGREA"). The BCGREA was started in about 1947 and was incorporated in about 1950.
2. The Defendant is Her Majesty the Queen in right of British Columbia, who was the administrator of the Pension Plan (including the Retiree Benefits defined in paragraph 18, which are the subject matter of this claim) until April 1, 2000 and the trustee and administrator of its trust funds until April

- 1, 2001. The Defendant was also the employer of the Plaintiff and the majority of the members of the plaintiff class.
3. The plaintiff class is composed of residents of British Columbia who on November 30, 2002:
- (a) were retired members of the Pension Plan and who were presently entitled to receive premium free Medical Services Plan Benefits and Extended Health Care Benefits (the "Retiree Benefits") (the "Retired Members");
  - (b) were surviving spouses or dependents of retired members of the Pension Plan and who were presently entitled to receive premium free Retiree Benefits under the Pension Plan; or
  - (c) were the beneficiaries or estates of a person referred to in paragraphs (a) or (b) above who died prior to the settlement or final judgment of this action.

There were approximately 27,000 Retired Members on November 30, 2002 in the Pension Plan. Some of the Retired Members were formerly employed directly by the Defendant, while others were formerly employed by Crown corporations, Crown agencies and Crown-related bodies, as well as certain other employers permitted by the Defendant to participate in the Pension Plan. Those Retired Members, including the Plaintiff, who were formerly employed directly by the Defendant, together with their surviving spouses, dependents, beneficiaries or estates, constitute a subclass of the plaintiff class (the "Subclass"). are members of the Pension Plan who retired or terminated employment with the right to a deferred pension (collectively the "Retired Members") on or before November 30, 2002.

4. As a young man, the Plaintiff chose a career in the Civil Service of the government of British Columbia. In 1959 he entered the School of Psychiatric Nursing in Essondale and received training provided by the Defendant in a course for psychiatric nursing. He graduated as a registered psychiatric nurse in March 1961.
5. In March of 1961, the Plaintiff began to work for the Defendant as a psychiatric nurse. In 1961, the Plaintiff became a member of the Pension Plan and began making contributions.
6. The Plaintiff continued to work at the Essondale Provincial Mental Hospital as a psychiatric nurse until his retirement on April 30, 1996. In May of 1996, The said hospital was renamed the Riverview Hospital in 1964. The Plaintiff was employed by the Defendant for a sufficient number of years to receive Retiree Benefits upon his retirement.
7. The Plaintiff began as a "Nurse 1" in 1961, was promoted to a "Nurse 2" in 1966, and further promoted to a "Nurse 3" in 1972. In 1973, the Plaintiff took an unpaid leave of absence and attended the B.C.I.T. General Nursing Program. He graduated in 1975 as a Registered Nurse and returned to Riverview Hospital as the Head Nurse, retaining the position for the rest of his career.
8. The Plaintiff also held various positions with the Essondale Branch of the Psychiatric Nurses Association, including 1<sup>st</sup> Vice-President from 1965 - 1966, and President and Provincial Director from 1966 - 1967.
9. Upon retirement in 1996, the Plaintiff voluntarily joined the BCGREA. The main function of the BCGREA is a voluntary organization of the members

of the Pension Plan, to represent the interests of retired employees of the Defendant.

10. In 1996, the Plaintiff was the Branch Director of New Westminster and District Branch. In 1997, he was the 1<sup>st</sup> Vice Chair of the Branch. From 1998 to the present, he has held the position of Branch Chairperson and Director of the Provincial body. From 2002 to the present, the Plaintiff has been the Provincial 1<sup>st</sup> Vice-President of the BCGREA.

11. Both as a government employee and as a holder of positions with the Psychiatric Nurses Association while employed by the Defendant, the Plaintiff was aware that the remuneration of members of the plaintiff class ~~overnment employees~~ was made up of the following components:

- a. Continuity of Employment;
- b. Yearly Salary;
- c. Statutory Holidays;
- d. Annual Vacation;
- e. Sick Leave;
- f. Pension Plan, which came to include medical service plan payments and extended health benefits, and to which the Plaintiff and Retired Members contributed.

12. Working for the ~~G~~overnment was a career, and members of the plaintiff class ~~employees~~ were expected by their ~~E~~mployers to receive much lower pay than was available in the free market, and forgo overtime in exchange for the security and permanency of position.

13. In fact, under a formula established by the Defendant, including by Arthur Richardson, the Chief Personnel Officer for the Provincial Civil Service,

these factors justified government employees receiving substantially lower pay than was available in the free market. Under that formula, the wages and pay scales for a government employee were determined by taking the pay of a similarly situated private sector employee and deducting for all the benefits and security available to government employees.

14. Medical Benefits were first available in 1952, only through membership in the Employees' Association. The Employees' Association obtained a medical plan in order to attract members. It was so successful that the Defendant took over the plan and its obligations sometime in the late 1950's.

15. Throughout his career, the Plaintiff and the other class members received documentation from the Defendant setting out the pension and Retiree Benefits that he would be entitled to receive upon his retirement. The Plaintiff and the other class members provided their services as consideration for a compensation package that included the Retiree Benefits. About the time of his retirement, the Plaintiff received a statement indicating the amount of the pension to which he was entitled. He was advised that he could elect a death benefit at the cost of one dollar per month for his named beneficiary and that the Defendant would provide for medical service plan payments and extended health benefits for both the Plaintiff and his named beneficiary for the rest of their lives.

16. These assurances and promises were consistent with statements of the Defendant provincial government, including by both Arthur Richardson and Dick Higgins, and other identical and similar statements which were communicated to all ~~employees~~ members of the plaintiff class.

**POST-RETIREMENT BENEFITS AND THE DEFENDANT'S BREACH OF CONTRACT**

17. The Pension Plan is a plan that was continued pursuant to Schedule "C" ("Schedule C") of the *Public Sector Pension Plans Act*, S.B.C. 1999, c. 44 (the "Act").

18. In addition to a pension, the Defendant promised the Plaintiff and Retired Members post-retirement benefits, including Extended Health Benefits ("EHB"), and the Medical Services Plan ("MSP") (together the "Retiree Benefits"), on a premium-free basis. The right to the Retiree Benefits vested in the plaintiff class Retired Members upon completion of the prescribed period of pensionable service retirement or termination of employment. The Plaintiff and Retired Members provided their services during their period of active employment as consideration for the Defendant's promise of Retiree Benefits, among other things.

19. The method by which the Defendant funds its obligation is an internal decision that is independent of the promise to provide Retiree Benefits to the Retired Members. One such method of funding is through the Pension Plan, but the Plaintiff and the Retired Members maintain that the promise of Retiree Benefits supersedes-is binding and enforceable regardless of any internal organization decisions with respect to the method and availability of funding.

20. The promises and obligations of the Defendant were reflected prior to 2003 in section 18(4)(f) of Schedule C to the Act and other regulations. ~~This Schedule C~~ provided that the pension plan "must provide" for "post retirement group benefits".

21. From March 30, 1995 to January 12, 2000, section 2(c) 2(1)(b) of the Pensioner Group Benefit Funding Regulation, Reg. 141/95, O.C. 337/95 ("Group Benefit Regulation") provided that ~~if the pensionable service of a Retired Member was 120 or more months,~~ the Defendant would pay 100% of the EHB premium for members receiving a superannuation allowance under the *Pension (Public Service) Act*.

2422. Similarly, from March 30, 1995 to January 12, 2000, §section 2(b1)(a) of the Group Benefit Regulation provided that the Defendant would pay 100% of the MSP premium for the same members. Retired Members with 120 or more months of pensionable service, less \$36 per month for a single member.

23. From January 13, 2000 to December 31, 2002, this premium-free status for MSP and EHB coverage was restricted to members receiving a superannuation allowance on or before December 31, 1998 and members with pensionable service of 120 or more months. This was confirmed by B.C. Reg. 6/2000 made pursuant to the Act.

24. Moreover, since January 1, 2003, all members of the plaintiff class have been required to pay prescribed premiums for MSP coverage and pay EHB deductibles based on criteria determined by the Pension Plan and the Pension Corporation. Members having received a pension or having terminated employment on or before December 31, 1998 and members with pensionable service of 120 or more months are now required to pay 100% of the premiums for MSP coverage, less \$36 a month for single members, \$64 per month for a member and spouse or member and one child, and \$72 a month for a member, spouse and one or more children or a member and 2 or more children. This was confirmed by B.C. Reg. 276/2002 made pursuant to the Act.

22.25. In summary, from the 1950's until late-December 31, 2002, the Defendant was responsible for payment of paid-100% of the monthly premiums for the Retiree Benefits, provided the Retired Member had accumulated sufficient pensionable service. Since January 31, 2003, however, Retired Members have been required to pay a portion of their MSP premiums and EHB premiums by way of deductible, despite the Defendant's written commitments and promises to the contrary prior to their retirement and the Defendant's acceptance of contributions from the Retired Members to provide a Pension Plan that included the Retiree Benefits.

~~23. Notwithstanding the language in the Group Benefit Regulation regarding premiums for MSP benefits, the Defendant paid 100% of the premiums for both the EHB and the MSP benefits up to late 2002.~~

24.27. The promise of premium-free Retiree Benefits was communicated widely and openly from early in its inception. The communications included the standard letters written to all employees-Retired Members, including the Plaintiff, just prior to retirement, information sheets, pamphlets and benefit booklets distributed to employees Plan Members, all of which stated that the Retiree Benefits would be paid for by "the government", and that the coverage would be "premium-free" or "nil". The communications unequivocally promised the Plaintiff and Retired Members that the full payment of EHB and MSP premiums by the Defendant was part of their retirement package and the selection of these options was "irrevocable".

25. 28. The communications did not indicate that the promise to pay benefits was contingent on the internal organizational structure arranged by the Defendant to administer and fund the benefits.

26: 29. Shortly before his retirement, the Plaintiff received correspondence from the Superannuation Commission on behalf of the Defendant, outlining his entitlement to premium-free Retiree Bbenefits upon retirement. Commencing the month after his retirement, the Defendant made monthly payments for the Plaintiff's Retiree Benefits. The Plaintiff's Notice of Retirement And Application For Superannuation Allowance from the Defendant stated:

"4. GROUP APPLICATION FOR MEDICAL PLAN COVERAGE

This form is to be completed and returned to the Superannuation Commission if you will be residing in British Columbia following retirement and elect group medical plan coverage. The government will pay the monthly premium for you and your dependants after retirement. ..."

5. EXTENDED HEALTH CARE PLAN COVERAGE

Complete, sign and return the Extended Health Care Plan card if you will be residing in British Columbia following retirement and elect coverage as described in the enclosed brochure. The Government will pay the monthly premium for you and your dependants after retirement. ..."

27: 30. The Retirement Benefits becamewere: (a) a term of the Plaintiff and Retired Members' employment; and (b) part of the pension and retirement benefits commitments made to them by the British Columbia government as administrator of the Plan. The terms and rights thereunder vested upon completion of the prescribed period of pensionable servicethe termination of their employment contract through retirement.

28: 31. The present vehicle through which the Defendant currently deals with its pension obligations is through a Joint Trusteeship Agreement arranged by the Defendant in December 2000. Pension payments are were made through a Joint Trusteeship comprised of representatives of the

Defendant, as well as the B.C. Government Employees' Union, who are the "partners" in control of the scheme, and some other representatives including a single member of the BCGREA. These pension payments are limited to what funds are made available to it by the Defendant and by whatever arrangements the Defendant makes.

~~29-32.~~ 32. Medical services plan payments and extended health payments are made by the Joint Trustees, who now administer the Pension's Basic Account, from which basic pension payments are made, and the Inflation Adjustment Account, from which, among other things, the medical service plan payments and extended benefits are made. This funding method was created by the Defendant.

~~30-33.~~ 33. In late 2002, the Defendant failed to provide sufficient funds to the Inflation Adjustment Account to provide for medical service plan payments and extended health benefits to the Plaintiff and other pensioners. This was as a result of the funding arrangements and structure implemented by the Defendant. This structure resulted in reducing the funds largely because the Defendant both laid off many government employees, so that there were far fewer payments being made into the Pension Plan, and at the same time the Defendant raised the cost of medical service plan payments a person must make. Since that time, the Plaintiff and members of the plaintiff class ~~contrary to the pension agreement the Plaintiff and Retired Members have with the Defendant, both the Plaintiff and other similarly situated pensioners have been making their own medical services plan payments, paying deductibles for EHB claims and paying a percentage of their EHB claims.~~

~~31-34.~~ 34. The Defendant ~~breached the Pension Agreement by failing either~~ failed to ensure that the Inflation Adjustment Account had sufficient funds to provide medical service plan and extended health benefit payments for

the pensioners Retired Members, or failing to make payments by other means for the pensioners Retired Members to whom it was contractually and otherwise obligated.

### THE DEFENDANT'S BREACH OF FIDUCIARY DUTY

32. 35. Further, or in the alternative, the Defendant, as the administrator of the Pension Plan until April 1, 2000 and the trustee of its trust funds until April 1, 2001, breached its fiduciary duty owed to the Plaintiff, Retired Members and their respective spouses, dependants and estates.

36. In particular, the Defendant was in a fiduciary relationship with the Plaintiff and members of the Pension Plan on account of:

- (a) creating, sponsoring and undertaking to administer and fund a Pension Plan, including the Retiree Benefits that were part of the Pension Plan, in their best interest;
- (b) accepting and collecting contributions from the Plaintiff, members of the plaintiff class, other participating employers and making contributions on behalf of its own employees;
- (c) serving as the trustee of the corpus trust formed from these contributions;
- (d) managing and controlling their property;
- (e) guaranteeing and insuring the funding and provision of their pension and Retiree Benefits; and
- (f) unilaterally exercising the discretion and power to determine the content, terms and conditions, eligibility requirements, premium subsidies and deductibles, as well as the administrative and funding arrangements, of the Pension Plan and Retiree Benefits.

contrary to their best interests and is a breach of the Defendant's fiduciary obligation to the Plaintiff and Retired Members.

### THE UNILATERAL CHANGE IN BENEFITS

36: 42. On or about October 16, 2002, the B.C. Pension Corporation, acting as the Defendant's agent, gave a presentation to the BCGREA at which the Defendant announced through it that it would no longer pay 100% of the premiums for those with sufficient pensionable service. The Plaintiff and other Retired Members was/were in attendance at this meeting.

37: 43. In or about October 2002, the Plaintiff and the other Retired Members received a Pension Bulletin issued by the Public Service Pension Board of Trustees (the "Trustees") entitled, "Changes to Group Benefits for Retired Members" (the "Bulletin"). The Bulletin announced the change of the payment structure for the premiums of the Retiree Benefits, namely, that the Trustees would no longer cover the monthly premiums for the Retiree Benefits.

38: 44. As of the December 2002 pension payment, the Plaintiff and the Retired Members began paying a monthly premium of between \$18 and to \$108 for MSP benefits. Starting in January 2003, the Plaintiff and the Retired Members began making an annual family deductible payment of \$250 for EHB premiums, and have been reimbursed only 70% of the first \$2000 of EHB claims per year.

39: 45. Contrary to its contractual and fiduciary obligations, the Defendant unilaterally ceased to adequately funding the Retiree Benefits, and changed the payment structure for them. The unilateral change

