

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Denluck v. The Board of Trustees for the  
Boilermakers' Lodge 359 Pension Plan*,  
2018 BCSC 1703

Date: 20181004  
Docket: S167212  
Registry: Vancouver

Between:

**Grant Denluck**

Plaintiff

And

**The Board of Trustees for the Boilermakers'  
Lodge 359 Pension Plan**

Defendant

Before: The Honourable Mr. Justice Mayer

## **Supplemental Reasons for Judgment**

Counsel for the Plaintiff:

R. Mogerman  
R. Gage

Counsel for the Defendant:

C. Ferris, Q.C.  
A. Nathanson  
M. Vesely

Date of Written Submissions:

Vancouver, B.C.  
August 17, 2018

Place and Date of Judgment:

Vancouver, B.C.  
October 4, 2018

**Introduction**

[1] In my Reasons for Judgment on the Plaintiff's certification application, released July 4, 2018, I directed the parties to provide additional submissions in writing with respect to the need for subclasses. Both parties provided submissions on August 17, 2018.

[2] In my July 4, 2018 Reasons I also directed the Plaintiff to provide a revised, proposed form of certification order and litigation plan. The Plaintiff provided these additional materials on August 17, 2018 and further to the Court's direction, by memorandum issued September 4, 2018, the Defendants provided submissions in response.

[3] My Supplemental Reasons are on the issues set out below.

**Is there a need for subclasses?**

[4] Section 6(1) of the *Class Proceedings Act*, R.S.B.C. 1996, c. 50 requires that a subclass should be established if there are common issues raised which are not shared by all class members and it is the opinion of the court that it is necessary to protect the interests of the subclass members through the appointment of a separate representative.

[5] I agree with the submission of counsel for the Plaintiff that, in deciding whether a subclass or subclasses are required, the Court should consider and decide whether there is the potential for a conflict of interest to arise between class members and members of a subclass. Even where subclasses are required, it may not be necessary to appoint a separate representative plaintiff unless there is a clear legal conflict of interest (see *Infineon Technologies AG v. Option Consommateurs*, 2013 SCC 59 and *Godfrey v. Sony Corporation*, 2017 BCCA 302).

[6] In this matter, the parties agree that potential subclasses include the following: those who became entitled to receive holdback amounts before March 4, 2013 when payment of holdback amounts was suspended; those who became entitled to such payment between March 4, 2013 and April 1, 2014 when the

Trustees moved to terminate payment of holdback amounts; and those who became entitled to such payment after April 1, 2014.

[7] The Plaintiff contends that the fact that some class members may or may not be found entitled to payment of the amounts held back from the commuted value of their pensions, depending on when their entitlement arose, does not create a conflict or any substantial legal difference in position between class members.

[8] The Defendants have not identified a conflict which may arise between the proposed subclasses. The Defendants take no position with respect to the appointment of an additional representative plaintiff and counsel.

[9] I do not find it necessary to establish subclasses at this time. As stated by the Plaintiff, the Court retains the jurisdiction to refine or revise the common issues, to create subclasses, to appoint a separate representative plaintiff and to amend the litigation plan should the need to do so arise. If, as this matter proceeds, a conflict arises, the issue of subclasses can be revisited.

**Are the Plaintiff's proposed Litigation Plan and Certification Order appropriate?**

[10] The Plaintiff has provided a Litigation Plan setting out its proposal with respect to the form of notice of certification to be issued to class members, the manner in which notice of certification will be distributed, the opt-out and opt-in procedure and litigation steps before, during, and after trial.

[11] The Defendants contend that the following deletions or amendments to the proposed Litigation Plan are appropriate:

- a) The provisions requiring that a person wishing to opt out of the Class Action provide a reason for opting out, be deleted;
- b) the process and timelines for opting in be identical to the process and timeline for opting out;

- c) that the plan be revised to provide that documentary and oral discovery be delayed with document discovery to take place within 30 days of final disposition of an appeal or cross appeal on certification, including an appeal to the Supreme Court of Canada with oral discovery to follow, I presume, within 90 days of production of documents.

[12] The Plaintiff has provided a form of certification order. The Defendants object to the list of common issues set out within the certification order proposed by the Plaintiff and have provided an alternate set of common issues which they contend are logical and coherent, will yield clear answers, and are neutral and therefore fair to both parties.

[13] It is my view that it is not appropriate to make an order with respect to the changes to the litigation plan or list of common issues without receiving further submissions from the parties. The parties are directed to set a case management conference at which I will receive oral submissions from the parties with respect to the proposed litigation plan and list of common issues.

“Mayer J.”