

NEGLIGENT MISREPRESENTATION AND THE EXPOSURE TO LIABILITY WHEN GIVING PENSION ADVICE

Deraps v. Labourer's Pension Fund of Central and Eastern Canada,
Ontario Court of Appeal September 13, 1999, [1999] O.J. No. 3281

Facts

Mr. Deraps was a member of the Labourers International Union. He had been diagnosed with cancer and it was believed that he would not live more than a year. Mr. Deraps and his spouse met with the union pension advisor to discuss disability benefits. The advisor failed to explain that Mr. Deraps could choose to either receive a lower monthly pension, in which case Mrs. Deraps would receive 60 per cent of his benefits after he died, or Mr. Deraps could receive a full pension, and Mrs. Deraps would receive nothing after he died. The Deraps chose the second option, and Mrs. Deraps signed a spousal waiver which did not clearly state its effect. When Mr. Deraps died, his spouse was denied benefits and she brought an action for the benefits. The trial judge held that the waiver was void. The Divisional Court reversed this finding.

Held

The Court of Appeal allowed the appeal. The Court focused on whether the pension advisor breached the duty of care owed to Mr. Deraps' spouse by failing to provide her with specific information. In particular, the pension advisor failed to tell Mrs. Deraps that if she signed the spousal waiver she would not receive benefits when her husband died.

The Court held that the pension advisor was required to explain to Mrs. Deraps the implications of signing the waiver. In failing to explain the waiver's implications, the pension advisor had committed a breach of the duty of care and the tort of negligent misrepresentation. The Court concluded that it was reasonably foreseeable that the couple would rely on the information provided by the pension advisor, and awarded damages in the amount of pension earnings Mrs. Deraps would have received had she not signed the waiver.