

Carl Horn, Nelson

SOME BACKGROUND

My wife Sue and I are immigrants from Canada. Our occupational second tier pensions are being taken by the Ministry of Social Development (the Ministry). We feel as upset about our situation as we expect the other approximately 55,000 expatriates feel.

I was born in Montreal, Quebec, Canada in 1942. I worked in Montreal for approximately 24 years during which time I and my employers contributed to the Quebec Pension Plan.

In 1981 I immigrated to New Zealand with my family, making our home in Christchurch.

I worked there until 2002 when I moved to Nelson where I worked until 2008 when my employer made me redundant, effectively forcing me into retirement. So I had worked for approximately 27 years in New Zealand.

In August 2007 I became aged 65 and qualified for the New Zealand Superannuation (NZS), Canadian Old Age Security (COAS), and Quebec Pension Plan (QPP) pension payments.

I agreed with the COAS that, since I had worked approximately 50% of my working life in Canada, I would receive 50% of the full COAS rate of entitlement.

Because the QPP is a contributory second tier pension scheme, there is no such pro rata reduction of my pension payments from the QPP. I receive the full amount of pension payments which are owed to me based on the contributions which I and my employers had made during the 24 years I worked in Canada.

Soon afterwards, I learned that the full amount of the pension payments which I receive from the COAS and the QPP are directly deducted from the NZS pension payments which I receive from the Ministry. Both Sue and I were appalled. We continue to feel significantly unjustly disadvantaged.

Both of us accept the direct deduction of the statutory first tier COAS pension payments which we receive from the statutory first tier NZS pension payments. We have no objection to directly deducting the amounts of the COAS pension payments. We consider the COAS and the NZS pension schemes to be comparable, that is to say, taxpayer-funded statutory first tier pension schemes.

We understand the moral imperative for the direct deduction. In my case, having worked 24 years in Canada and 27 years in New Zealand, and since I'm living in New Zealand, it is appropriate that Canada pay approximately 50% of my NZS pension and that New Zealand pay the remainder. We believe that no one should feel advantaged or disadvantaged in any way by that process, neither myself nor a New Zealander who has spent their entire working life in this country. We don't.

However, that is not the case with the direct deduction from my statutory first tier NZS pension payments of the amount of my pension payments from the occupational second tier QPP. Those direct deductions are a reduction in my net annual income of approximately \$6000. Considering that my NZS pension payments annually are approximately \$4300 and my COAS pension payments annually are approximately \$3600, for a total of \$7900, the direct deduction of \$6000 cuts by 43% what otherwise would have been my annual income, almost half.

The same mechanism of direct deducting is functioning with Sue's pension payments from the Canada Pension Plan (CPP). She 'loses' the CPP pension payments to her of approximately \$5500

annually. Together, we're 'losing' approximately \$11,500 annually from our joint income because of the direct deductions.

At first, while we were both employed and enjoying reasonable incomes, the direct deductions were an inconvenience and didn't have a direct impact on our lives. But now that both myself and Sue have been made redundant and are unemployed, the direct deductions will be more than an inconvenience. They are forcing us to use our savings to maintain ourselves (we're not sure yet whether we'll be able to afford our mortgage payments when our savings run out, probably not).

THE APPEALS

In November 2008 I appealed the direct deduction of my QPP pension payments to the Ministry. The Ministry completed an internal review of the decision and concluded that the decision to directly deduct was correct. I must admit that I wasn't surprised.

I then appealed to the local Benefits Review Committee (BRC) on the basis that the QPP is a contributory second tier pension, not a statutory first tier pension comparable to the NZ Super. The appeal was heard in April 2009. I was curious that the Ministry's employee who represented them seemed uncomfortable and appeared to wish she was somewhere else. I was encouraged by the local appointee who appeared to be sympathetic to my situation. Needless to say, the BRC upheld the Ministry's decision as correct. But it seemed that they did not make their decision based on the information discussed during the hearing. It seems that they made their decision based on advice from the Ministry's internal legal service. It seems to me now that the BRC hearing was a waste of time and that the appeal to the BRC simply fulfilled a requirement in order to appeal to the Social Security Appeal Authority (SSAA).

I appealed to the SSAA in July 2009 on the basis that the QPP is not "*administered by or on behalf of the Government of the country from which the benefit, pension, or periodical allowance is received*", to quote section 70 of the Social Security Act 1964, the primary source of the Ministry's authority to directly deduct. I appealed to the Authority on the basis that Quebec is not a country, that the Quebec Government is sovereign and not subordinate to the federal Government of Canada, that Quebec's administration of the QPP is therefore not done on behalf of the Government of Canada, and that the Ministry therefore has no authority to directly deduct. Canada is constitutionally a federation with the federal government responsible for some governance matters for the country as a whole, such as foreign affairs, the currency, and the army, while the provincial governments are separately and individually responsible in their jurisdictions for the other governance matters such as health, education, and pensions. I provided excerpts from the Canadian Constitution to establish those statements as fact. Such a federal arrangement is not uncommon. The governance of the United States and Australia are similar. It seems that the NZ authorities do not understand such a governance structure. It seems that they consider the provincial governments to be subordinate to the federal government, which is not the case (one only has to ask a Quebec provincial government employee or a Quebec provincial politician to be told in no uncertain terms of the sovereignty of the Government of Quebec). My change of basis of appeal appeared to catch the Ministry off guard. They had little to say at the hearing which was held in Wellington in November, 2009. They requested and were granted the right to make an additional submission in writing, which I subsequently refuted in writing. Needless to say, the SSAA apparently did not understand the Canadian Constitution, and in March 2010 upheld the Ministry's decision as correct.

I have since appealed to the High Court. The case with its additional submissions from both parties is currently on the desk of the Chairperson of the SSAA, and has been for several months. I continue to wait. Meanwhile, the direct deductions continue to occur.

Carl Horn
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