

## Compte rendu

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*Pension Law*, by Ari N. KAPLAN, Toronto: Irwin Law, 2006, 657 pp., ISBN: 1-55221-088-X and ISBN-13: 978-155221-088-8.

par Frédéric Hanin

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posent problème. Ainsi, les procédures de classification ne sont pas fondées sur les faits concrets mais privilégient des processus politiques. Les institutions publiques tendent d'adapter les statistiques pour rehausser leurs performances qui ne correspondent pas à la réalité (agences publiques de l'emploi, hôpitaux, écoles, etc.) En fait, se demande Whiteside, quels sont les véritables objectifs de la SEE : la réduction de la dépendance de l'État-providence ? Une meilleure performance économique ? La création de justice sociale par la

garantie d'accès équitable ? Il importe dès lors de savoir si la SEE contribue à améliorer la situation des demandeurs d'emploi en termes de chances d'insertion professionnelle et sociale, et si elle favorise la liberté d'expression effective de chacune des parties prenantes. Et, Whiteside de conclure que le rôle de l'État n'est pas celui d'un PDG, il doit assurer la justice sociale et promouvoir l'égalité des chances des citoyens.

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***Pension Law,***

by Ari N. KAPLAN, Toronto: Irwin Law, 2006, 657 pp., ISBN: 1-55221-088-X and ISBN-13: 978-155221-088-8.

*Pension Law* is a highly valuable work which constitutes a sourcebook for those (scholars and practitioners alike) who have to deal with such a complicated matter, pension plan governance being structured by labour relations, public policy, and corporate strategy. Moreover, the federal structure of Canadian pension regulation needed a detailed analysis of the foundation and governance of registered pension plans. The most important achievement of the book is to provide a clear, concise, and rigorous understanding of the "basic concepts of the law and regulation of registered pension plans arising from employment in Canada" (p. xxix). Registered pension plans (mostly defined benefit type of plans) are nowadays subject in Canada, like in many western countries, to scrutiny and critics. Even though 5.6 million Canadian workers participated in 14,777 registered employment-based pension plans between 1990 and 2004, pension coverage declined from 45 to 41 per cent, defined benefit plans losing almost 1 million members. Created in the Keynesian and conglomerate business model era, they are now accused of favouring labour market rigidity and nurturing conflicts during the collective bargaining process. The inner problem

lies in the institution of Trust as a way to secure retirement income for people involved in asymmetric contractual employment relationships and Welfare State retrenchment.

The book is structured as follows. The first chapter analyses the legal nature of the pension and the second one describes its development. Many sources of pension law exist: contract law, equity and trusts, constitutional law, the Canadian charter of rights and freedoms, administrative law, other legislation like the Income Tax Act, and finally policies and guidelines. As usual, historical foundations are particularly useful in understanding contemporary problems that are questioning pension regulation. The decision in 1965 of the Canadian government to create a public welfare pension scheme implied that provincial legislation had only to set minimum standards for voluntary employer pension plans. However private contractual pension has now become the most important source of retirement income for workers, thus creating a burden on pension law.

The third chapter deals with the scope of pension rights and the fourth one with regulation. Sponsorship, application,

registration and statutory floors are presented. Regulation is analyzed mostly from the perspective of the Province of Ontario. It is interesting to notice that the recent trend to centralize regulation institutions have created a side effect of increasing the jurisdictional model at the expense of the regulatory model of regulation, favouring procedural matters and "leaving to the parties to resolve disputes through agreement or litigation based on the application of trust law principles" (p. 78). Courts have even urged governments to adopt new legislation in order to adapt the Law to contemporary matters, surplus distribution being an example.

The fifth chapter deals with minimum standards and the sixth one with administration. Administration encompasses duty and standard of care, agents and advisors, and specific issues in plan administration. Both chapters shed light on contemporary debates about the governance of pension plans. For example, the status of agent and advisor has become a crucial issue in the pension fund growth and "financial twist" environment. Usually, employers and employees do not administer funds directly but require the assistance of agents (asset managers and actuaries for example). In Common law, the term agent is synonymous with a fiduciary relationship whereas in the Pension Benefits Act an agent provides services to the administrator of the plan, which is a much broader definition and leaves possible contractual limitations of responsibility an open issue. Moreover the content of the duty of agents to employees is far from being clearly established.

Chapter seven presents detail about pension plan funding arrangements and chapter eight deals with Amendments. Funding comprises contributions, valuation and investment. Amendments consider plan amendment and business reorganization. Business reorganization in the pension law perspective exhibits

high complexity because there seems to be a trade-off between security of future retirement income and the flexibility of the employer's strategy to face external competition. Defined benefits pension plans often appear less flexible than defined contribution plans in this context. The concept of "successor employer" may be a source of protection for workers' pension benefits, even if the issue is precisely to secure the status of employer in order to enforce corporate social responsibility.

Chapter nine is about wind-ups and chapter ten discusses surpluses. The chapter on wind-ups includes the initiation and rights and duties on pension plan completion. The chapter about surpluses deals with statutory framework and surplus ownership. These two chapters are probably the most critical chapters in the context of American industrial relations. The trend towards conversion of defined benefit pension plans into defined contribution plans involves an extensive knowledge of both matters. In both cases, as in the rest of the book, trust law stands at the centre of jurisdictional controversies. For workers, the classic definition of Trust seems to be a form of protection against employers' interest to wind-up plans in order to get surplus. In the basic structure, the settlor of the trust is not a potential beneficiary of the pension fund because he has alienated its rights to the trustee (p. 601).

Pension Law has become central in the employment relationship because a great deal of its scope and content addresses employment relation-related issues. For example, the pension industry revolves around such things as: collective bargaining, business reorganizations, and shareholder value oriented corporate governance. The older compromise which was supporting defined benefit pension plans is now under increasing strain. Workfare State and individual employment relationship, shareholder governance and

the low-cost business model, private equity funds and mutual funds are producing a social environment which is more favourable to defined contribution pension plans and group registered retirement saving plans. The ideal that “pension law should reflect a balancing of competing interests (...) and protect vulnerable groups such as employees and pensioners” (p. 8) may be harder to secure in this context. Some unions seem to respond to this challenge by

favouring collective investment vehicles like unions’ DC pension plans and labour-sponsored funds. It is not clear however to what extent this kind of social innovation may complement institutional reforms of Pension law in order to avoid poverty for current and future pensioners.

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***Restructuring Strategy: New Networks and Industry Challenges,***

edited by Karel O. COOL, James E. HENDERSON and René ABATE, Malden, MA: Blackwell, 2005, 299 pp., ISBN: 1-4051-2601-9.

This book is about corporate strategy. Its thesis is that influences external to a firm create a need for planning. The first chapter identifies relevant environmental change-factors as: globalization, the impact of technology, regulatory amendments and shifting consumer preferences. The book is different in its emphasis to some others addressing strategy. The authors do not stress the importance of firm or industry survival. Rather, they suggest that external events will inevitably make an industry alter and ultimately lead to its disappearance. Managers should respond by crafting an approach using generic, and sometimes counterintuitive, principles. The authors coin the term “*restructuring strategy*” to describe this process. The goal of such planning should not necessarily be to retain a firm or industry as intact and viable but rather to prepare it to transform. Hence, in chapter one, the notion of “*experimenting with change*” is linked to either of two outcomes: “*convergence to a new industry*” or a “*shift back to the status quo.*”

The book has three sections. In the first, a relational-based view of the firm guides discussion of how, within a sector, strategic alliances can assist to secure overall prosperity. The argument advanced is that there can be commer-

cial value in altruistic behaviour. In particular, when firms cooperate to preserve collective knowledge and assets through cultivating intra-industry networks they, as single entities, may also benefit. This case is demonstrated through analyzing companies that *prima-facie* seem to have little in common.

Part two of the book departs slightly in its format from parts one and three however the insights it offers draw on previously delineated principles. The focus is on identifying planning options during times of external change. Hence, environmental flux rather than a particular corporate strategy is the object of analysis. It is argued that when circumstances change, staying on an established course, consolidating strengths, and limiting growth is better than hurriedly altering. Examples are provided of firms benefiting through applying this approach in the face of a changing environment. In another chapter, mathematical modelling is used to predict the optimal time for new market entry. The discussion here is based on an algorithm. It is complex and de-contextualized. Some of the formula’s variables may, in practice, be difficult to measure and are somewhat abstract. The approach is theoretically relevant but may have more limited