

<u>CASE NO.</u>	<u>VOLUME</u>	<u>PAGE</u>
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Cite as: Central Guaranty Trust Company v. Spectrum Pension Plan, 1997 NSCA 107

DELOITTE & TOUCHE INC.,  
 a body corporate, appointed as  
 Liquidator of estate and effects of  
 Central Guaranty Trust Company,  
 pursuant to the provisions of the  
*Winding-Up Act*, R.S.C. 1985, c.  
 W-11, and the Order of the  
 Honourable Mr. Justice Holden of the  
 Ontario Supreme Court of December  
 6, 1993

PRICE WATERHOUSE LIMITED,  
 a body corporate, acting as  
 Administrator of Spectrum Pension  
 Plan 5 in the Province of Nova Scotia,  
 pursuant to the Order of the Nova  
 Scotia Superintendent of Pensions  
 of April 6, 1993

(Appellant)

- and -

(First Respondent)

- and -

THE MEMBERS AND FORMER  
 MEMBERS of Spectrum Pension  
 Plan (5) and/or their representatives

(Second Respondent)

- and -

THE SUPERINTENDENT OF  
 PENSIONS for the Province  
 of Nova Scotia

(Third Respondent)

C.A. No. 135492

Halifax, N.S.

HALLETT, J.A.

APPEAL HEARD:

May 15, 1997

JUDGMENT DELIVERED:

July 16, 1997

SUBJECT:

**Pension Benefits Act**, R.S.N.S. 1989, c. 340;  
**Entitlement to Surplus in a Pension Plan being Wound up**  
**Judicial Review of Superintendent of Pensions Decision**

SUMMARY:

The Superintendent decided that the Surplus in a pension plan being wound up was impressed with an irrevocable trust for the Members and, thus, should be distributed to the Members on the Wind-up.

The Liquidator of the employer's business appealed that decision to the Supreme Court of Nova Scotia which upheld the Superintendent's decision on the basis that the Superintendent's decision was entitled to be shown substantial deference.

On appeal to the Court of Appeal, the decision of the Supreme Court of Nova Scotia and the Superintendent's decision were set aside, except with respect to the provision that legal fees of the parties were to be paid out of the Surplus.

The Appeal Court concluded that the standard of review of the Superintendent's decision on this issue was one of "correctness". The Appeal Court held further that the Superintendent's interpretation of the annuity contract in which she concluded that the surplus in a successor plan was impressed with a trust for the members was incorrect. The Appeal Court ordered the Surplus, after payment of legal fees, to be paid to the liquidator (Cases applied and followed: **Pezim v. British Columbia Securities Commission et al** [1994], 2 S.C.R. 557; and **Schmidt v. Air Products Canada Limited** (1994), 115 D.L.R. (4th) 631).

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