

Canadians live in an era where an increasing part of their everyday lives is controlled by large corporate interests. In order to acquire various services, these corporations require them to enter into contracts. These contracts are for a wide variety of services – loans, banking services, vehicle leases or purchases, or communication services to name a few. The terms of the contracts are not negotiable. The corporate service provider drafts these contracts which are presented to the consumer on a take-it-or-leave-it basis. They are often lengthy documents, involving multiple clauses. They are known as consumer agreements or contracts of adhesion.

It is respectfully submitted that this appeal raises a broader question of law regarding the division of trust assets in an ongoing pension plan in the context of a corporate divestiture. The fundamental issue can be succinctly expressed - to implement a sale transaction involving an ongoing pension plan comprised of trust assets derived from employer and employee contributions, can an employer unilaterally divide the trust assets in a way that discriminates between identically placed groups of plan members, in the absence of express language in the Trust and Plan documents authorizing such differential treatment?

The decision of this Court in *Schmidt v. Air Products Canada Ltd.*, [1994] 2 S.C.R. 611 ("Schmidt") is the starting point for the analysis of the principles applicable to pension plan surplus. *Schmidt* established the general principle that one must first look to the applicable plan documents to determine the rights, duties and obligations in relation to pension plan assets. In this regard, it is critical to determine whether a true trust has been established, and, if so, the assets to which the trust applies. *Schmidt* further stands for the general principle that if, upon a proper construction of the HBC Plan documents, a trust has been created, another important principle follows: trust law principles are applicable and prevail in relation to such assets.