

Taxpayers may lose life savings

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Judges have cleared the way for the Canada Revenue Agency to confiscate from two taxpayers their pension savings from decades of teaching and police work.

Taxes, penalties and six or seven years of interest could leave Susanne Greenhalgh of St. Catharines and Charles Ross of Sault Ste. Marie with little, if any, savings.

The Federal Court of Appeal has found the former public servants failed to show the CRA was unsound or unreasonable in taking action against them.

Like others before and since, Greenhalgh and Ross had quit lifetime careers shortly before qualifying for an immediate pension. They took jobs at companies they did not own, but were created to employ them, and later transferred from their former pension plans to newly registered individual pension plans about \$564,000 and \$755,000, respectively.

Greenhalgh told the *Toronto Star* in April she had planned to sell gift sets of flavoured vinegar on the Internet, using vinegar supplied by a company of her entrepreneurial husband. Ross planned to earn sales commissions from advising other police officers on the strategy to potentially increase retirement income, and leave more money to heirs if the pensioner were to die prematurely.

The strategy has been promoted by various financial advisers and used by many public-sector workers, particularly when stock markets were soaring in the late 1990s and since then.

Among the advantages, the entire value of pension credits, including the estimated value of early-retirement benefits and inflation protection, could be transferred without triggering any immediate taxes. By contrast, taxes could apply to a third or more of the lump sum pension value if the money was instead transferred to a locked-in form of registered retirement savings plan. In either case, though, all income would be taxed eventually.

CRA's registered plans directorate attempted to warn Greenhalgh and Ross of the severe consequences if such pension plans did not meet certain requirements.

Letters that were not received immediately because of difficulty contacting the new companies warned the primary purpose of a pension plan must be to provide lifetime retirement benefits with respect to service with the employer that establishes the plan.

Brian Jenkins, an actuary with ActuBen Consulting Inc. in Mississauga, later replied that his clients would meet all of the requirements set out in the Income Tax Act and regulations.

But Greenhalgh had unexpected personal difficulties related to the health of her husband. A downturn in stock markets undermined Ross's sales potential. So neither received employment income from their new employers in the first few years, the only years covered by CRA's audit and discussed at the appeal hearing. In addition, CRA officials pointed to the fact each of the taxpayers quickly received a payment of "surplus" pension funds from their new plans.

"The immediate removal of the surplus demonstrated to the Minister (of National Revenue) that the primary purpose of the plan was not to provide lifetime retirement benefits," Judge C. Michael Ryer wrote in his ruling, which was supported by the two other judges and delivered in late July.

Toronto lawyer Eric Fournie said neither of his clients is prepared at this point to discuss the court ruling, which would have devastating financial consequences for them.

They still have a month to decide whether to seek leave from the Supreme Court of Canada to appeal the ruling. Fournie said he could not comment on whether CRA has shown any willingness to negotiate a less damaging settlement.