

April 2010

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Governments seek public input on pension options

In our July 2009 issue of *Legislation matters*, we reviewed what the various governments had done, or were planning to do, in order to implement the recommendations provided by the various commissions or panels in their reports.

We also indicated that the federal Minister of Finance, Mr. Jim Flaherty, along with the provincial and territorial Finance Ministers, launched a process to expand understanding of the issues in May 2009. Having received a report in December 2009, they are now continuing their collaborative work, which should lead to a review of policy options at the next meeting of Finance Ministers in May 2010.

In the mean time, the Governments of Canada, British Columbia, Alberta, Manitoba and Nova Scotia have launched public consultations on pension options. It is noteworthy that most of the governments that are now launching public consultations are the same that have previously set up pension expert panels, which went through extensive public consultations in 2007-2008 on improving the retirement system.

In the same vein, the Ontario Minister of Finance, Mr. Dwight Duncan, announced in his 2010 budget that the Government of Ontario will be seeking advice from interested Ontarians on how retirement income security could be improved for tomorrow's seniors.

Federal

As explained in our special edition of *Legislation matters* on the Budget 2010, the federal Minister of Finance announced that the Government of Canada would launch public consultations in March on how to improve Canada's retirement income system.

On March 24, 2010, in preparation for the May meeting of Finance Ministers, the federal Minister of Finance has undertaken consultations with the public on the government-supported retirement income system, including the main issues in saving for retirement and approaches to ensuring the ongoing strength of the system.

The purpose of this consultation paper is to:

- provide background information on Canada's retirement income system;
- provide an overview of research on retirement income adequacy;
- describe a variety of proposals in the public domain relating to Canada's retirement income system; and
- solicit views of Canadians on Canada's retirement income system and how to ensure its ongoing strength.

The three main broad approaches to addressing perceived issues raised with respect to Canada's retirement income system are:

- Government-sponsored, voluntary defined contribution pension plans. This category includes various proposals to create a new government-sponsored, voluntary defined contribution pension plan.
- Mandatory, defined benefit pension plans. This category includes various proposals to expand the current Canada Pension Plan (CPP) mandatory defined benefit coverage, such as increasing the CPP benefits or the Year's Maximum Pensionable Earnings (YMPE).

- Increased flexibility for private-sector, defined-contribution pension plans and increased opportunities for private savings. This category includes various proposals to amend the tax rules and pension standards regulations to provide more flexibility to the private sector to create broader-based defined contribution pension arrangements. Private sector providers would be permitted to operate defined contribution pension arrangements that do not require an employment relationship, thereby permitting participation by self-employed individuals and employees, either with or without the participation of their employer, in a single pension arrangement. It also includes some automatic features, such as automatic enrolment.

In addition to the launch of these online consultations, a series of cross-country roundtable discussions, speaking engagements and town hall meetings will be held to gather input from Canadians on ensuring the ongoing strength of Canada's retirement income system.

The consultation is open until April 30, 2010.

For more information on the pension consultation paper, visit <http://www.fin.gc.ca/n10/10-022-eng.asp>.

Please note that the federal Minister of Finance has also asked the Senate Standing Committee on Banking, Trade and Commerce, and the House of Commons Standing Committee on Finance to help inform the Government's efforts through their own studies of the government-supported retirement income system.

British Columbia

The Government of British Columbia is seeking public input on ways to strengthen the pension system and expand pension coverage for the majority of workers currently without occupational pension plans.

British Columbians are being asked for their views on how to best address anticipated future shortfalls in Canada's retirement income system.

The B.C. consultation paper focuses on various options and includes:

- Expansion of the existing, mandatory CPP system. This would provide increased, universal CPP pension benefits.
- A voluntary supplement added to the CPP system. This would provide additional, but optional, pension coverage utilizing some of the existing infrastructure of the CPP system.

- Changes to pension standards legislation providing more flexibility in the way pension plans are designed. This would allow for new types of pension plans to better meet the needs of today's employers and workers.
- Tax reform. This would involve amendments to the federal Income Tax Act intended to increase pension plan coverage and retirement savings.
- Blended pension reform measures. A comprehensive approach, combining some or all of the above options.

For more information on the Pension Consultation Paper, visit http://www.fin.gov.bc.ca/pension_plan_review.htm. The final date for submissions was April 1, 2010. Results of the consultation will apparently be used to develop recommendations presented to Canada's premiers at the next Council of the Federation meeting in August.

Alberta

The Government of Alberta is also seeking public input on ways to strengthen the provincial retirement income system and to expand pension coverage for Albertans who are currently not members of a workplace pension plan.

Albertans are asked to comment on or suggest options for consideration.

The Alberta consultation paper essentially focuses on the same options as in British Columbia.

Comments received will also be shared with Alberta's provincial, territorial and federal counterparts.

For more information on the Alberta's pension consultation paper, visit www.pensionconsultation.alberta.ca. The deadline for feedback is April 16, 2010.

Manitoba

Like British Columbia and Alberta, the Government of Manitoba is also seeking public input on ways to strengthen the provincial retirement income system and to expand pension coverage for Manitobans who are currently not members of a workplace pension plan.

The Manitoba consultation paper essentially focuses on the same options as British Columbia and Alberta.

For more information on the Manitoba's pension consultation paper, visit: <http://www.gov.mb.ca/finance/consultations.html>. The deadline for feedback is April 30, 2010.

Nova Scotia

The Department of Labour and Workforce Development released a discussion paper to gather more input from employers, employees, unions and industry about private-sector pension-plan management.

Although the Department has accepted about 90 per cent of the recommendations made by the Nova Scotia Pension Review Panel in its final report of last year, it still wants more input on the review panel's proposed funding formula and whether there should be more flexibility for private-sector pension plans, based on risk, funding arrangements and governance.

The Department reviews all 30 recommendations made by the Panel and indicates as to whether or not it agrees with each of them, and if it seeks more input from the public.

For example, last year the Panel recommended the creation of a province-wide pension plan available to all employers in Nova Scotia, which would be

administered by an independent agency. The Department agrees that a wide-province plan is desirable. However, the Department indicates that a national plan may be a better option for a small province like Nova Scotia. Nova Scotia will continue to participate with their federal, provincial and territorial counterparts to examine pension coverage and the retirement income adequacy of Canadians.

Another example: the Panel concluded that safe harbour rules should not be included in the regulations. The Department does not agree, because "[it] recognizes that the litigation risk can cost a pension plan a lot of difficulty, and may deter people from serving as administrators and trustees". The Department seeks more input from the public, especially from those who would view that this would be an incentive to create new pension plans.

For more information on Nova Scotia's discussion paper, visit www.gov.ns.ca/lwd. The deadline for feedback is April 15, 2010.

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Financial Literacy

As announced in its 2009 budget, the Government of Canada established a Task Force on Financial Literacy in June 2009, comprised of 13 members drawn from the business and education sectors, community organizations and academia.

Needless to say that financial literacy is key for members under defined contribution plan types where they have responsibility to select their own investment mix.

The Task Force on Financial Literacy will provide advice and recommendations to the Minister of Finance on a national strategy to strengthen the financial literacy of Canadians. This strategy will outline the following:

- The overall objectives, as well as a focused, concrete plan of action for strengthening the financial literacy of various segments of the population.
- Ways to leverage existing resources to enhance financial literacy in Canada.
- The best means of promoting financial literacy in Canada.

- A framework for collaboration among all stakeholders – including government organizations at all levels – which would maximize financial literacy efforts in Canada and reduce duplication.
- Ways in which the different stakeholders should collaborate to advance the state of financial literacy research in Canada.
- Methods of assessing the progress made in implementing a national strategy, including identifying appropriate timelines and milestones for achievement.

In February, the Task Force launched a national consultation process with the release of a consultation document, entitled *Leveraging Excellence: Charting a course of action to strengthen financial literacy in Canada*. The consultation process aims at gathering ideas and insights from individuals and organizations across the country and, more specifically, public input on some of the issues and questions raised in this document.

In its consultation document, the Task Force focuses on the following nine topics:

- The financial literacy landscape
- The learning foundation
- Understanding financial behavior
- Borrowing and debt
- Saving and investing
- Planning for retirement
- Protecting against financial fraud
- Communications and technology
- Evaluating national progress on financial literacy

There are three ways that the public can provide their comments to the Task Force:

1. By **presenting in person** at a public session: Task Force members will visit communities from coast to coast to coast from April 6 to May 13, 2010, in every Canadian province and territory, to meet with Canadians face to face.

2. By sending a **formal written submission** to the Task Force by Friday, April 30, 2010, either by email, online, fax or mail.

3. By participating in the **online forum** (April 6 to May 13, 2010).

The consultation document is available at:
<http://www.financialliteracyincanada.com/eng/consulting-with-canadians/consultation-process.php>

The Task Force will draw on global “best practices” and build on the strengths of successful initiatives that are already in place, in Canada. The Task Force will submit a final report by the end of 2010 that recommends to the federal Minister of Finance a national strategy on financial literacy. The Task Force will make its report available to the public, as well as research it has commissioned to develop its recommendations.

3

Update on the Harmonized Sales Tax (HST)

In 2009, the Governments of Ontario and British Columbia agreed to implement a Harmonized Sales Tax (HST). It will replace the existing provincial sales taxes and the federal Goods and Services Tax (GST) beginning **July 1, 2010**.

The HST will be administered by the Canada Revenue Agency (CRA). Legislation to enact the HST has been passed into law by the Governments of Canada and Ontario. Similar legislation is expected to be introduced soon in the province of British Columbia and, subject to legislative approval, would also provide for the implementation of HST in British Columbia beginning July 1, 2010.

This means that there will be one single HST in Ontario and in B.C. The Ontario HST rate will be 13% (5% federal component and an 8% provincial component) and the B.C. HST rate will be 12% (5% federal component and a 7% provincial component).

The HST will have to be applied to the investment management fees (IMF) charged by investment managers to administer the funds offered under your group retirement program.

However, the final rules applicable to IMFs have not been released yet by the Department of Finance Canada.

The Department of Finance Canada will release its final rules later this spring.

We will provide more details to our plan sponsors once the final rules are known.

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Burke v. Hudson's Bay Company – Update

The Supreme Court of Canada has recently decided to hear the Burke appeal on May 18, 2010. We will advise you once the Supreme Court of Canada has made its ruling.

Reminder

Facts

In 1987, the Bay sold the assets of its Northern Stores Division to a retail company that became the North West Company.

At the time of sale, the pension plan sponsored by the Bay, a contributory defined benefit pension plan, had an actuarial surplus of approximately \$94 million.

A pension plan agreement had also been signed by the Bay, whereby it agreed to transfer cash assets equal to the pension liabilities of the transferred employees, but not the actuarial surplus.

Years later, the transferred employees filed a claim where they argued that they were entitled to a pro rata share of the surplus and to an amount equal to their share of plan expenses that had been paid from the pension fund from 1982 to 1986. Prior to 1982, the Bay paid all expenses related to both the administration of the plan and management of the fund.

The trial judge concluded that the transferred employees were entitled to a pro rata share of the surplus because failure to transfer a portion of the surplus constituted a breach of trust. On the other hand, the trial judge concluded that the Bay was entitled as a matter of contract to deduct plan expenses from the pension fund.

The Bay appealed the trial judge's decision on the surplus issue, and the transferred employees appealed the trial judge's decision regarding the payment of plan expenses.

Payment of Plan Expenses

The Ontario Court of Appeal maintained the trial judge's decision by referring to the Kerry decision (for more information on the Kerry decision, please refer to the April 2008 and October 2009 issues of *Legislation matters*).

Surplus issue

After reviewing the plan text and the trust agreement, the Court of Appeal overturned the trial judge's decision and concluded that the transferred employees were not entitled to a pro rata share of the actuarial surplus. In other words, transferred employees are not automatically entitled to a portion of the surplus in the case of a sale, unless the historical plan documentation or the purchase and sale agreement requires such a transfer of the surplus, which was not the case here.

You can contact us

Your feedback is important to us. If you have any comments about our publication, or if you would like us to address a particular issue or subject in a subsequent edition, please feel free to drop us a line at the following address:

legislation.matters@standardlife.ca

www.standardlife.ca

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