

January 2011

## 1

### **Pension reform – Framework for Pooled Registered Pension Plans (PRPPs)**

In preparation for the December 20, 2010, meeting of the Ministers of Finance, the federal Finance Minister, Mr. Jim Flaherty, released a backgrounder entitled “Framework for Pooled Registered Pension Plans”, whereby he is proposing to his provincial and territorial counterparts a new type of pension plan, namely defined contribution Pooled Registered Pension Plans.

PRPPs would not only allow contributions from employers that offer a PRPP and their employees, but also contributions from self-employed persons and employees of an employer that does not offer a PRPP.

Finance ministers emerged from their December 20 conference firmly behind the new PRPP proposal.

In his statement at the close of his meeting with provincial and territorial Finance Ministers and ministers responsible for pensions, Minister Flaherty indicated that: “Over the coming months, federal-provincial-territorial officials will engage with key stakeholders to ensure the framework for these new plans will meet the needs of employees, employers and those financial institutions that may offer the arrangements.”

Minister Flaherty also announced that the finance ministers are committed to working towards a way to modestly expand the Canada Pension Plan (CPP) and review the Task Force on Financial Literacy’s report that is to be released in the new year.

Canada’s Finance Ministers are scheduled to meet in June 2011. We will keep you posted as things progress on the pension reform front.

The main features of PRPPs, as proposed by the federal Finance Minister, Mr. Jim Flaherty, are the following:

- The PRPP is a new type of defined contribution multi-employer pension plan.
- Administrators and their role
  - Regulated financial institutions, including trusts and insurance companies and other financial institutions with a trust subsidiary, will be eligible administrators of PRPPs.
  - The administrator will have a fiduciary duty to plan members – i.e. the administrator will have to ensure that the best interests of members are being protected.
  - PRPPs are expected to provide Canadians with a new accessible, straightforward and administratively low-cost retirement option.
  - Administrators will be required to provide all members with certain information on a regular and periodic basis, such as that regarding investment performance and relative risks and costs and fees.
  - Administrators will generally be responsible for performing the management and operational functions of their PRPP.
  - Although the administrators will take on most of the responsibilities that employers usually bear in pension plans, employers offering a PRPP will be responsible, among other things, for selecting a particular plan for their employees, enrolling their employees in the plan and determining a level of contributions.
- Participation and operation
  - PRPPs would not only allow contributions from employers that offer a PRPP and their employees, but also contributions from self-employed persons and employees of an employer that does not offer a PRPP.
  - Employers may be permitted to enrol their employees into a PRPP during the employee's employment, even after the hiring stage. Employees will be entitled to opt out shortly after enrolment.
  - Employers will have the ability to increase the employee's default contribution rate from time to time, subject to the employee's ability to opt out.
  - Portability of benefits between plans will facilitate transfer.
  - Employer contributions will be locked-in, subject to some jurisdictions allowing employees to unlock their contributions under certain circumstances, such as for small amounts or in cases of financial hardship.
  - Each jurisdiction will make a determination as to whether to require mandatory employer participation.
  - Employers contributing directly to a PRPP and their employees will be permitted to make contributions under the RPP limits, with the pension adjustment reporting.
  - Self-employed persons and other employees will contribute on the basis of their available RRSP limit.

# 2

## Supreme Court of Canada decision in Burke vs. Hudson's Bay Company

In the April 2010 issue of the *Legislation matters* newsletter, we summarized the decision of the Ontario Court of Appeal with regards to the payment of plan expenses and the surplus asset transfer issue.

We also wrote that the Supreme Court of Canada decided to hear the appeal in the Burke vs. Hudson's Bay Company case regarding these issues and that we would keep you informed of its decision.

The Supreme Court of Canada heard the appeal in this case in May 2010 and finally handed down its decision on October 7, 2010.

The Supreme Court of Canada judges unanimously rejected the appeal and upheld the decision of the Ontario Court of Appeal to the effect that:

- The Bay had the right to deduct the plan expenses of the pension fund. The Bay's pension plan did not require it to pay said plan expenses.
- Employees affected by the transfer were not entitled to a share of the surplus assets. The Bay lived up to its fiduciary duty to employees affected by the transfer by protecting their defined benefits.

It is important to note that the Supreme Court of Canada's decision is based on the Bay's pension plan documents. Consequently, you should read the documentation about your pension plan before you apply this decision to your own situation.

### Reminder

#### Facts

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

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

The Bay had also signed an agreement to transfer the assets corresponding to plan commitments of employees affected by the transfer, but not the actuarial surplus.

Years later, the employees affected by the transfer filed a claim alleging that they were entitled to a pro rata share of the surplus and 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 administration and management expenses of the pension fund.

The trial judge concluded that the employees affected by the transfer 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 had the contractual right to deduct plan expenses from the pension fund.

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

In May 2008, the Ontario Court of Appeal maintained the trial judge's decision regarding the Bay's right to deduct the plan expenses of the pension fund 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*). After reviewing the plan text and the trust agreement, the Court of Appeal overturned the trial judge's decision and concluded that the employees affected by the transfer were not entitled to a pro rata share of the actuarial surplus.

# 3

## Maximum contributions and benefits for 2011

This fall, the Canada Revenue Agency (CRA) announced the following maximum contributions and benefits for retirement savings plans in 2011:

- Defined contribution pension plans – The maximum contribution is increased from \$22,450 in 2010 to \$22,970 in 2011.
- DPSPs – The maximum contribution is increased from \$11,225 in 2010 to \$11,485 in 2011.
- RRSPs – The maximum contribution is increased from \$22,000 in 2010 to \$22,450 in 2011.
- Defined benefit pension plans – The maximum benefit per year of credited service is increased from \$2,494.44 in 2010 to \$2,552.22 in 2011.

The Year's Maximum Pensionable Earnings (YMPE) under the Canada Pension Plan is increased from \$47,200 in 2010 to \$48,300 in 2011.

### 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](mailto:legislation.matters@standardlife.ca)