

MARCH 2010

New development regarding CPP deductions and ASO Disability Plans

Our January 2010 [Focus Update](#) provided information on EI and C/QPP deductions under ASO disability plans. Since then, the Federal Court of Appeal released a decision on January 28, 2010 that addresses the issue of whether ASO disability plan benefits are subject to Canada Pension Plan (CPP) premium contributions.

“No” to CPP contributions

The question decided in the appeal was whether long-term disability benefits paid to employees of the Toronto Transit Commission (“TTC”) under an ASO arrangement with Sun Life were subject to employer contributions under the CPP.

The Court unanimously concluded that disability benefit payments under an ASO arrangement were not for the “pensionable performance of services” but were an indemnity for the wages lost by employees who could not work. This meant that the benefit payments were not subject to employer contributions under the CPP.

This decision reversed an earlier Tax Court of Canada decision that had agreed with the position of the Minister of National Revenue that these disability benefit payments were subject to employer CPP contributions.

What this means for plan sponsors

Plan sponsors must now take into account court cases that have arrived at different conclusions for two different types of deductions:

- **Employment insurance.** In 2002 and 2003, the Federal Court of Appeal issued two rulings (*Université Laval v. Canada, 2002 FCA171* and *Canada v. National Bank of Canada, 2003 FCA242*) stating that disability payments under ASO disability plans are subject to employer Employment Insurance (EI) contributions.
- **Canada Pension Plan.** On January 28, 2010, the Federal Court of Appeal released a decision (*Toronto Transit Commission v. The Minister of National Revenue 2010 FCA 33*) that unanimously concluded that long term disability benefit payments under an ASO arrangement were not subject to employer contributions under the CPP. The case did not address Quebec Pension Plan contributions or benefit payments under a short term disability plan.

As we outlined in our January 2010 [Focus Update](#), we will be communicating in coming weeks to plan sponsors about the Federal Court rulings, including the TTC case involving CPP contributions.

In this upcoming message, we will be encouraging plan sponsors to consult with their legal, tax or benefits advisors for advice on how the Federal Court rulings affect their plans. We are recommending this course of action for a few reasons:

- Court rulings are subject to legal interpretation and may not apply to all plans in the same way.
- The recent TTC decision deals with CPP contributions only in relation to a long-term disability plan, and does not address issues relating to Quebec Pension Plan contributions or short-term disability plans.
- There may be continuing legal uncertainty, as the recent TTC decision could be appealed to a higher court.
- The responsibility for remitting any required payroll deductions ultimately rests with the plan sponsor, not Sun Life, and sponsors should be clear about their obligations.

Questions?

If you have any questions, please contact your Sun Life Financial group representative.