KOSKIE MINSKY

JUSTICE MATTERS

Pension and Benefits

This is a summary of Pension and Employee Benefits matters of interest.

Minister Morneau Tables Budget 2019

On March 19, 2019, Finance Minister Bill Morneau tabled the federal government's 2019 budget. The budget contained a number of surprises, both in terms of what it included and what it omitted. Perhaps most significantly for the pension and employee benefits industry, while the government reaffirmed its commitment to introduce tax measures to facilitate the conversion of health and welfare trusts to employee life and health trusts, details regarding these measures were not set out in the Budget. Also notably absent were anticipated tax measures related to the target benefit plans. The Budget also failed to deliver meaningful amendments to the Canadian insolvency regime as it applies to pensions. While it appears that there is more to come with respect to ELHTs, target plans and pension safeguards in insolvency, the budget nevertheless contains many concrete measures which are of significant interest to workers, retirees, unions and boards of trustees of pension and other benefit funds.

PHARMACARE

In 2018, the federal government established the Advisory Council on the Implementation of national Pharmacare, whose mandate includes making recommendations to the federal government on the implementation of a national pharmacare program, and the Council's final report is still pending.

In the interim, and based on the Council's interim report, the government has announced a number of measures related to prescription drugs, including the following:

- The creation of the Canadian Drug Agency, which will have a mandate to assess the effectiveness of, and negotiate prices in respect of, prescription drugs. The full scope of the agencies' negotiating mandate remains unclear at this time;
- The development of a national formulary, a comprehensive list of prescribed drugs, in coordination with the provinces, territories and other stakeholders;
- The development of a national strategy for high-cost drugs for rare diseases. This will entail the co-development of a plan to ensure that patients with rare diseases have better and more consistent

coverage for their treatments.

While widely anticipated, the budget contained no new regulatory powers for the Patented Medicines Price Review Board (PMPRB) to control the prices of patented medical drugs in Canada. Health plans have supported improvements to Canada's updated regulatory framework for controlling the rising costs of patented medial drugs.

RETIREMENT AND PENSIONS

a) Retirement Security

Further to the federal government's recent consultations on improving retirement security, the government has indicated that it will amend the *Companies' Creditors Arrangement* Act, the *Bankruptcy and Insolvency Act*, the *Canada Business Corporations Act*, and the *Pension Benefits Standards Act, 1985*, to:

- Provide courts a greater ability to review of payments made to executives in lead up to insolvency;
- Change decision making processes in corporate decision making, to make clear that federally incorporated businesses are able to consider diverse interests, such as those of workers and pensioners, in corporate decision making;
- Publicly traded, federally incorporated firms will be required to disclose their policies pertaining to workers and pensioners and executive compensation, or explain why they do not have such policies;
- Introduce new pension measures providing that if a plan is wound up it must still provide the same pension benefits as when it was ongoing; and
- Permitting defined benefit plans to fully transfer responsibility to provide pensions to a regulated life insurance company through annuity purchases.

Greater details regarding these proposed measures, and how they will be implemented, will be necessary to determine what, if any, impact they will have on benefit security. However, notably absent at this stage was any specific change to the ranking of pension claims under Canada's insolvency laws, which will certainly come as a disappointment to unions, pensioners and their advocates. While the corporate accountability measures that have been introduced may be seen as a positive development, it was somewhat surprising that there does not appear to be an intention to impose discipline on the payment of dividends to shareholders where a company has significant underfunding in its pension plan.

b) Contributions to Specified Multi-Employer Plans ("SMEPs")

The budget includes a proposal to amend the tax rules to prohibit contributions to a SMEP in respect of members after the end of the year the member attains 71 years of age, and to defined benefit provisions of a SMEP if the member is receiving a pension from the plan (except under a qualifying phased retirement program). The government indicated that it expects this change will ensure employers do not make pension contributions on behalf of older SMEP members in these situations from which they cannot benefit. These changes will only apply in respect of SMEP contributions made pursuant to collective bargaining agreements entered into after 2019, in relation to contributions made after the date the agreement is entered into. It will be important for unions to be aware of this issue when negotiating collective agreements after 2019.

This surprise announcement, once implemented, is likely to have a significant impact on the administration of SMEPPs, and boards of trustees of such plans will be required to put in place procedures to ensure these new limits are respected.

c) National Pension Hub

The government will provide $150,000 over three years to the National Pension Hub to support pension research focussed on improving retirement savings outcomes of Canadians and developing solutions to pension challenges.

d) New Forms of Annuities

To provide greater flexibility in managing retirement savings, the government proposes to permit two new types of annuities under the tax rules for certain registered plans:

- Advanced life deferred annuities will be permitted under RRSPs, RRIFs, DPSPs, PRPPs and DC RPPs (these types of annuities may be deferred until the year the annuitant attains age 85); and
- Variable payment life annuities will be permitted under a PRPP and a DC RPP.

e) GIS Earnings Exemption

The government proposes to enhance the GIS earnings exemption beginning in July 2020 to July 2021, by introducing partial exemption of 50 percent, to apply to up to $10,000 of annual employment and self-employment income beyond the initial $5,000 for each GIS or allowance recipient as well as their spouse.

f) Proactive CPP Enrolment

The government announced that it will begin proactively enrolling CPP contributors who are age 70 or older in 2020 but have not yet applied to receive their retirement benefits.

g) Public Sector Pension Plan Sustainability

The budget includes a proposal for amendments to the *Public Service Superannuation Act*, the *Canadian Forces Superannuation Act*, and the *Canadian Mounted Police Superannuation Act*, to raise the permissible surplus limits under the pension plans established by those statutes from 10% to 25%.

ELHT CONVERSIONS

As is noted above, the government reaffirmed its commitment to introduce tax measures to facilitate the conversion of health and welfare trusts to employee life and health trusts. We understand that the

Department of Finance will release proposed amendments and transition rules, and engage in further consultations shortly.

HEALTH RELATED TAX RELIEF

The government intends to amend the legislation governing the GST/HST as follows:

- Providing relief for Canadians experiencing infertility. At present, human sperm is relieved of GHS/HST, while human ova and in vitro embryos are not;
- Expanding list of GST/HST exempt health care services to include multidisciplinary health care service, (physician, OT/PT combine expertise and work as a team to provide rehabilitation service); and
- Allowing purchase of certain foot care devices to be relieved of GST/HST on order of licenced podiatrists and chiropodists.

In addition, the government will review the Medical Expense Tax Credit in relation to fertility-related medical expenses.

REGISTERED DISABILITY SAVINGS PLANS ("RDSPs")

The government proposes two changes in respect of RDSPs:

- Elimination of the requirement to close an RDSP when a beneficiary no longer qualifies for the disability tax credit. This will allow grants and bonds otherwise required to be repaid to the Government to remain in the RDSP. Some restrictions on access to these amounts will apply.
- Unlike RRSPs, amounts held in RDSPs are not exempt from seizure by creditors in bankruptcy. The budget proposes to exempt RDSPs from seizure in bankruptcy, with the exemption of contributions made in the 12 months before the filing.

CANADIAN TRAINING BENEFIT

The government is introducing a new program, the Canadian Training Benefit, which will be comprised of two components:

- A new, non-taxable Canada Training Credit, designed to assist with the cost of training fees. Qualifying workers aged 25 to 64 would accumulate a credit balance of $250 annually, up to a lifetime limit of $5,000, to be used on training fees. To qualify, workers would have to have earnings of between $10,000 and $147,667 (in the 2019 tax year). The credit balance could be applied against up to half of the cost of training fees at colleges, universities and eligible institutions beginning in 2020. The credit would be claimed with an individual's annual tax return.
- An Employment Insurance Training Support Benefit, to provide income support when an individual requires time to take off work. This support, paid at 55% of an individual's average weekly earnings, would be available through the EI program, and would provide up to four weeks of

income support, every four years

The government intends to consult with the provinces and territories on changes to labour legislation as part of the implementation of these measures.

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