

## Letter from the CLPENS Executive Committee

March 7, 2011

Dear Canada Life Pension Plan Member,

This letter is being sent to all members and some past members of the Canada Life Canadian Employees Pension Plan. Enclosed with this letter is a report from the Executive Committee of The Canada Life Canadian Pension Plan Members' Rights Group ("CLPENS Committee").

The CLPENS is a voluntary association of individuals with an interest in The Canada Life Canadian Employees Pension Plan (the "Plan"). It was formed to pool resources and to provide information about the Plan and to promote awareness among all Plan members about their pension rights.

The attached report from the CLPENS Committee describes in broad terms an agreement that has been reached with The Canada Life Assurance Company ("Canada Life") concerning a proposal to share a portion of the surplus in the Plan in settlement of the litigation commenced in 2005 (the "Settlement Proposal"). This letter is accompanied by a package that describes in detail the different elements of the Settlement Proposal, an estimate of the benefits you would be entitled to under the Settlement Proposal, and the action required on your part.

**The Settlement Proposal will entitle you to receive a one-time benefit provided you take the required actions.** The Settlement Proposal is contingent upon a large majority of the members in various groups (75% for the Partial Wind-Up group and 90% for others) agreeing to take the various actions contained in the Settlement Proposal. This will not compromise any benefits you are currently entitled to or you are receiving under the Plan.

In order for you to fully understand the Settlement Proposal and to have an opportunity to ask questions, you are invited to attend one of the information sessions being held across the country (times and locations of which are set out in the enclosed package). The CLPENS Committee, our legal counsel and actuary, along with representatives of Canada Life and the company's legal counsel, will be represented at these sessions.

**The CLPENS Committee has carefully evaluated the Settlement Proposal and strongly recommends it to the membership. You do not have to bear any direct share of the costs associated with the negotiations and implementation of the Settlement Proposal.**

Please read this Report carefully and attend one of the information sessions and provide your consent to the Settlement Proposal by filling out and returning the enclosed "Decision Form" (orange-bordered item F) to our lawyers, Koskie Minsky LLP, which will authorize them to act on your behalf to implement the Settlement Proposal.

Thank you for your consideration.

Yours truly,  
The CLPENS Committee

## Report by the CLPENS Executive Committee on the Settlement Proposal to Share Pension Plan Surplus

### Executive Summary

#### CLPENS and Its Mission

The Canada Life Canadian Pension Plan Members' Rights Group is a voluntary organization with a mission to provide information, create awareness, and protect the pension interests of the members of the Plan. The CLPENS Executive Committee consists of long-term, ex-Canada Lifers with expertise in pension matters. It has advisors to provide advice on legal and actuarial matters.

#### Background to the Settlement Proposal

Two members of CLPENS initiated a class action law suit against Canada Life in 2005 on two issues:

- Reimbursement to the Plan, or to Plan members, of the expenses of administering the Plan that were paid from Plan assets, and to discontinue the practice in the future, and
- Distribution of the surplus from the portion of the Plan that was partially wound-up following the acquisition of Canada Life by Great-West Life to the affected Plan members (over 2,000).

Following negotiations with Canada Life, including a two-day mediation, a settlement was reached with Canada Life that will be beneficial to all Plan members.

#### Highlights of the Settlement Proposal

**The Settlement Proposal will provide one-time benefits to all members. These benefits will have no effect on any benefits (pension or health) to which the members are currently eligible.** It will have the following effect:

- The surplus in the wound up portion of the pension plan will be distributed in the following proportions:
  - Members affected by the "Integration Partial Wind-Up" - 57.22%
  - Pensioners and Deferred/Vested Members - 12.44%
  - Canada Life - 30.34%

**Your member status under the Settlement Proposal can be found on your "Personal Information Statement" (blue-bordered item E).**

The estimated amount of surplus available for distribution as at June 30, 2010 was \$62.2 million. This amount is subject to fluctuation depending on market conditions leading up to the distribution date. The lump-sum benefits payable to the individuals will be based on the value of their pension Plan benefits.

- The active Plan members will receive a contribution holiday for two years.
- It will be permissible to have the expenses of administering the Plan reimbursed to Canada Life.
- All expenses (legal and actuarial) will be deducted from the partial wind-up surplus before distribution. The members will not be required to bear any expenses involved in negotiating and implementing the Settlement Proposal.

**The above mentioned one-time benefits will be paid only if the different membership groups accept the Settlement Proposal in sufficiently large numbers (75% for the Partial Wind-Up group and 90% for others). If the requisite levels of consent are not reached, no one will receive any benefits.**

### **Transfer to a New Pension Plan**

One of the components of the Settlement Proposal is to permit Canada Life to have certainty about payment of the expenses of administering the pension plan out of plan assets, as well as the use of Plan assets for various other purposes. In order for Canada Life to have certainty going forward, some Plan members will be asked to consent to be transferred to a new pension plan (the "New Plan"), and to a "variation of trust." The New Plan will have benefits identical with the current Plan for a period of two years.

### **Recommendation of the Executive Committee of CLPENS**

**The CLPENS Executive Committee, with advice from its legal and actuarial advisors, has carefully examined the Settlement Proposal and strongly recommends its acceptance.**

### **Actions on Your Part**

Please read the attached report from the Executive Committee of CLPENS and the information package. You can attend one of the information sessions planned across the country (the information package contains the details). Then complete and return the enclosed Decision Form (orange-bordered item F) in the self-addressed postage paid envelope. This will permit our lawyers to take further steps.

### **Timeline for Future Steps**

In order to fully implement the Settlement Proposal, a number of regulatory steps and approvals need to be obtained. Assuming all goes well and on time, distribution of benefits is not expected to occur before the end of 2012.

## Report by the CLPENS Committee on the Settlement Proposal to Share Pension Plan Surplus

This is a report prepared by the Executive Committee (the "Committee") of the Canada Life Pension Plan Members' Rights Group (the "CLPENS"). It provides a broad description of the background to the Settlement Proposal and its contents. The enclosed package gives a detailed description of the Settlement Proposal. All members are invited to attend the special information sessions that have been planned to provide the members with an opportunity to get answers to any questions they may have.

**The CLPENS Committee has carefully examined the Settlement Proposal and strongly recommends its acceptance by the membership.**

The Report is divided into the following sections:

- A. The CLPENS Committee and its Advisors**
- B. Background to the Settlement Proposal**
- C. Pension Plan Surplus and its Ownership**
- D. Underlying Premise for the Settlement Proposal**
- E. Highlights of the Settlement Proposal**
- F. The CLPENS Committee's Recommendation**
- G. Information Sessions**
- H. Next Steps**

### **A. The CLPENS Committee and its Advisors**

The CLPENS was informally established in 2000 and later constituted on a formal basis in 2004. Its Committee consists of individuals (who are all former long term employees of Canada Life) elected in conformity with its Constitution and provide their services on a voluntary basis. The present Committee consists of Wib Antler, Ed Barrett, Alex Harvey, David Kidd, Brian Lynch, Jim Martin, Shriram Mulgund and Gary Nummelin. Several of these members have many years of experience in pension matters and two of them have many years of experience working with the Plan.

The objectives of the CLPENS are to provide information to the members of the Plan, to increase awareness of Plan members' pension rights, and to protect their pension interests. As a part of this mission, the CLPENS has addressed the issues of the Plan expenses and the Partial Wind-Up of the Plan associated with The Great-West Life Assurance Company's acquisition of Canada Life in 2003.

In dealing with the above issues, the CLPENS is being advised by a legal team and actuarial advisors. Our legal team consists of Koskie Minsky LLP in Toronto and Harrison Pensa LLP in London. Our lawyers have extensive experience in pension law and pension surplus matters. Actuarial advice is provided by Marcus Robertson who is a partner at Robertson, Eadie & Associates.

### **B. Background to the Settlement Proposal**

A number of events have occurred in the recent past that have resulted in resignations, retirements, and terminations of a large number of employees. In 2003, Canada Life was acquired by The Great-West Life Assurance Company (the effect of this event spanned over the period July 10, 2003 to June 30, 2005). With a large-scale decrease in the membership of the pension plan, Canada Life declared a "Partial Wind-Up" of the Plan, referred to as the "Integration PWU". In addition, three companies which were associated with Canada Life - Indago Capital Management Inc., Pelican Food Services Limited, and Adason Properties Limited - either ceased their operations or merged with other entities between 1999 and 2001. The Settlement Proposal deals with these prior events as well.

Pension legislation requires the settlement of all basic benefits, and the distribution of all assets, when a pension plan is “wound-up” (either in full or in part). This means that all assets attributable to the wound-up portion of the pension plan have to be dealt with. This includes distribution of any surplus assets. Pension legislation does not, however, dictate to whom surplus assets shall be paid.

Around 2004, the CLPENS became concerned about the validity of payment of certain Plan expenses out of the Plan assets and made a complaint to the Ontario pension regulator, the Financial Services Commission of Ontario (“FSCO”).

The CLPENS initiated a class action proceeding in Toronto in the Spring of 2005 by a Statement of Claim, with two PWU Members named as Plaintiffs: David Kidd and Alex Harvey. A third Plaintiff, Jean Paul Marentette, who is also a PWU Member, was added a short time later as he had started a similar action in London, Ontario that was later discontinued. Among other things, the amended Statement of Claim sought the following:

- Distribution of surplus attributable to the Integration PWU to the PWU Members; and
- Reimbursement of the Plan expenses paid out of the pension fund either to the Plan fund or to Plan members.

It is important to note that the class proceeding deals with the specific claims of the PWU Members to a distribution of the Integration PWU surplus, as well as the broader claims of *all* Plan members concerning the payment of Plan expenses.

Following the initiation of the class action, extensive discussions took place with Canada Life, including a two-day mediation facilitated by Justice Warren Winker, which resulted in the signing of a Memorandum of Understanding (“MOU”) in November, 2007. The MOU set out the framework for negotiations towards a comprehensive settlement of all issues raised in the Statement of Claim.

We have now completed our negotiations with Canada Life and have reached a settlement agreement that is conditional on a number of things, including obtaining sufficient support from eligible Plan members. The Settlement Proposal addresses the claims of the PWU Members related to the Integration PWU surplus, as well as the claims of all Plan members concerning Plan expenses and other issues.

The main terms of the Settlement Proposal are explained in this Report in broad terms. We encourage you to read it carefully and completely. You may refer to the information package provided by Canada Life for additional details.

### **C. Pension Plan Surplus and its Ownership**

#### *What is Pension Plan Surplus?*

Surplus arises in a “defined benefit” plan (such as our Plan) if there are more assets in the pension fund than are needed to pay the promised benefits in accordance with the pension benefit formula. In an ongoing pension plan, the determination of surplus requires an actuarial calculation of the value of future benefits based on certain assumptions. When a pension plan is wound up, in whole or in part, all benefits have to be settled (either in cash or by purchase of annuities) and any amount left over after having settled all benefits and after having paid all the expenses associated with the wind up constitutes surplus.

#### *Ownership of Surplus*

In an ongoing pension plan, no one actually “owns” the surplus. When a pension plan is wound-up, in whole or in part, the assets and liabilities of the wound-up portion of the pension plan must be dealt with. When all benefits have been settled and wind-up expenses have been paid, the disposition of any remaining assets (the “surplus”) has to be dealt with. In such situations, the question of ownership of surplus becomes important.

Our legal team advises us that the PWU Members would have a strong claim that the surplus belongs to them. Canada Life does not agree with this position. This would inevitably lead to a dispute over surplus ownership with lengthy, complex and expensive litigation. There is no certainty of success in this type of litigation. In order to avoid a lengthy and expensive process with no guarantee of success, we believe that the Settlement Proposal set out below is a better option.

#### **D. Underlying Premise for the Settlement Proposal**

As discussed above, the law suit involved two issues – the disposition of the surplus in respect of the Integration PWU, and the payment of Plan expenses from the Plan.

In regards to the question of surplus disposition, the only persons who have a right to force a distribution of surplus from the Plan are the PWU Members. The active members, pensioners and deferred/vested members do not have a legal right to access surplus at this time. The likely difficulty in establishing ownership of surplus by the PWU Members has already been discussed above.

In regards to the question of payment of Plan expenses, all members (including the PWU Members) have a stake in this legal issue. At the time our court case was started, our legal team advised that there was a sound basis to argue that Canada Life is responsible for payment of Plan expenses out of its own pockets, based on the wording of historical Plan documents. The issue of responsibility for pension plan expenses was raised in a case with similar facts that ultimately went to the Supreme Court of Canada in 2009. The pension plan members did not succeed in that case. Although we believe our case is distinguishable, the development of the law since the class proceeding was started is not favourable to our case.

In view of the likely legal hurdles in resolving both of the above issues, the CLPENS Committee has reached a negotiated settlement with Canada Life. The following are the main features of this settlement:

- The surplus in respect of the Integration PWU will be shared between PWU Members, pensioners, deferred/vested members and Canada Life;
- The active members of the Plan will receive a benefit in the form of a two-year contribution holiday;
- Canada Life will be able to pay for the expenses of administering the Plan from the Plan, and use Plan surplus for other purposes as outlined in the Settlement Agreement; and
- The law suit before the court will be settled.

Successful execution of the settlement is contingent upon high levels of consent from the different membership groups as described below. It will also be necessary for certain members of the Plan (other than the PWU Group) to consent to move to a new pension plan.

#### **E. Highlights of the Settlement Proposal**

##### *Protection of Current Pension and Other Benefits*

The Settlement Proposal has no effect on the current pension benefits for all classes of Plan members. Pensioners will continue to receive their current benefits. Deferred/vested members will receive benefits currently promised. Active members will continue to accrue benefits at the current level for at least for two years. The PWU members will receive the full value of their benefits in accordance with applicable legislation.

This Settlement Proposal has no impact on any other benefits provided by Canada Life, including health benefits for active employees and retirees.

### *One-Time Benefits for All Classes of Members*

As a result of this Settlement Proposal, all classes of members will receive specified one-time benefits. The following groups will be covered:

- PWU Members,
- Pensioners and Deferred/Vested Members, and
- Active Members.

**These one-time benefits will be available only if the member consent requirements described below are met. If the necessary consents from eligible members are not obtained, the Settlement Proposal will not proceed and no one will receive these one-time benefits.**

### *Division of Surplus Between Different Groups*

The PWU Surplus will be divided in the following manner:

<b>Recipients</b>	<b>Proportion</b>
PWU Members	57.22%
Pensioners Deferred/Vested Members	12.44%
Canada Life	30.34%
<b>Total</b>	<b>100.00%</b>

The estimated amount of the Integration PWU surplus available for distribution as at June 30, 2010 (after deducting the estimated expenses) is \$62.2 million. The final amount could change depending on the financial conditions at the time of distribution.

### *Benefits to the PWU Members*

The PWU Members will receive a share of the Integration PWU surplus in the form of a lump-sum payment based on the value of the member's benefits under the Plan as at the date of the Integration PWU, excluding the value of any "grow-in" benefits. There will be a minimum payment to each PWU Member of \$1,000.

### *Benefits to the Pensioners and Deferred/Vested Members*

The Pensioners and Deferred/Vested Members (determined as at April 12, 2005) will receive a share of the surplus in the form of a lump-sum payment based on the value of the member's benefits under the Plan as of June 30, 2005. There will be a minimum payment of \$1,000 to every pensioner and deferred/vested member.

### *Active Employees*

All Active Members (determined as at June 30, 2005, plus any new members up to the date the court proceedings are "certified" as class proceedings by the court) will be eligible to receive a two-year pension contribution holiday starting from January 1 of the year following the date the Settlement Proposal receives all necessary court and regulatory approvals. If a member's accruals under the Plan terminate before the expiry of this two-year period, a lump-sum payment equal to the value of any outstanding contribution holiday will be paid to that member, or his or her estate. The cost of this benefit for active members is estimated to be \$3.6 million and will be paid out of the ongoing surplus of the Plan, not the Integration PWU surplus.

### *Consent Requirements for Implementing the Settlement Proposal*

**Implementation of the Settlement Proposal is contingent upon high levels of consent from members in the different classes, including:**

- **75% of the PWU members;**
- **90% of the Active, Retired and Deferred/Vested Members.**

**If the required consent levels are not reached, the Settlement Proposal will not proceed and no one will receive any benefits from the Settlement Proposal. If the Settlement Proposal does proceed, the members who have not consented to the Settlement Proposal may not receive any of the one-time benefits as set out in the Settlement Proposal.**

### *Transfer to New Plan and Variation of Trust*

As a part of the Settlement Proposal, Canada Life will create a new pension plan (the "New Plan"). Consenting Active, Retired and Deferred/Vested members will be transferred to the New Plan, which will provide identical benefits to those under the current Plan for at least two years. On such transfer, their liabilities along with a proportionate share of the assets (including surplus), will be transferred to the New Plan.

The members consenting to transfer to the New Plan will also be consenting to a variation of the trust under which the assets of the Plan are held. Because the issue of payment of Plan expenses out of the Plan was raised in the Court action, Canada Life wants the terms of the trust governing Plan assets to be clarified so that going forward there is no question about its ability to use Plan assets for a number of purposes as agreed under the Settlement Proposal. The New Plan will permit payment of expenses out of the New Plan.

Some of the members whose consent for moving to the New Plan is sought may have designated beneficiaries. It may be necessary to seek consents from such beneficiaries as well. If you wish to avoid having to obtain the consent from your beneficiary, you may have the option to revoke your beneficiary designation which may be restored following Court approval of the Settlement Proposal. In the event that you pass away before such restoration, any entitlement under the Plan would pass to your spouse or estate, as the case may be. The enclosed information package describes the steps required to be taken for this purpose. Your spouse's consent may also be required - if this applies to you, it will be indicated on your Decision Form (orange-bordered item F).

### *Court and Regulatory Approval*

The Settlement requires Court and Regulatory Approval which will be sought after the information sessions (described in Section G below) have been completed and the consent requirements for the Settlement Proposal have been met.

### *Other Considerations*

#### *Fees and Expenses*

Both the CLPENS Committee's and Canada Life's legal and actuarial and other expenses and fees incurred in the negotiation and implementation of the Settlement Proposal will be paid out of the PWU Surplus prior to the split described above. These fees are subject to Court Approval.

#### *Tax Sheltering*

Surplus shares will be paid as a taxable cash lump-sum amount, subject to applicable withholdings. Members entitled to surplus shares greater than \$15,000 may elect to direct all or part of their share to a Registered Retirement Savings Plan (RRSP) without withholdings, subject to showing proof of available RRSP contribution room.



### *Deceased Members*

Should anyone who is eligible to receive a surplus share die before receiving his/her share, the benefit that would have been payable to the individual will instead be payable to his or her spouse, beneficiary or estate, as applicable, subject to fulfillment of any necessary conditions.

### *Special Inclusion of Quebec Members*

The right to surplus distribution on a partial wind-up of a pension plan does not apply in all Canadian jurisdictions. Quebec pension legislation does not recognize the concept of a partial wind-up. Accordingly, former Plan members who were working for Canada Life in Quebec, and whose employment and Plan membership were terminated following Great-West Life's acquisition of Canada Life, were not included in the Integration Partial Wind-Up and have no rights in law to share in the related surplus distribution. However, we have negotiated the Settlement Proposal so that these Quebec members receive the same treatment as the Plan members who were included in the Integration Partial Wind-Up.

### *Prior Partial Wind-Ups*

The Settlement Proposal also deals with three events that took place before the Integration Partial Wind-Up, related to the termination of employment of certain Plan members employed with Indago Capital Management Inc., Adason Properties Limited, and Pelican Food Services Limited. If the necessary consents are obtained from the members affected by these events, as well as those affected by the Integration Partial Wind-Up, partial wind-ups will be declared by Canada Life for these three events (the "Prior Partial Wind-Ups").

The Integration PWU can proceed whether or not the Prior Partial Wind-Ups proceed. But, the Prior Partial Wind-Ups can proceed only if the Integration PWU proceeds.

The members affected by the Prior Partial Wind-Ups are separately represented by their own member committees. Two of the groups, Pelican and Indago, are also represented by Koskie Minsky LLP and Harrison Pensa LLP.

## **F. The CLPENS Committee's Recommendation**

**The CLPENS Committee recommends the Settlement Proposal to all Plan members. Under the circumstances discussed above, it is reasonable, fair and a good deal for all Plan members.**

The benefits described in the Settlement Proposal will only be available if the required levels of consent are received from the various groups described above. We would urge all members to provide their consent so that the Settlement Proposal can be implemented.

We have taken steps to ensure that all categories of eligible Plan members are included in the Settlement Proposal. The Settlement Proposal will benefit Plan members much sooner than if the matter were successfully litigated, and without the attendant risks and expense. The alternative to accepting the Settlement Proposal is costly, lengthy and risky litigation, which is not advisable.

## **G. Information Sessions**

There will be information sessions that you can attend in person, along with your spouse or other family member, in various locations across the country. The locations, dates and times are detailed in the enclosed information package. Members from the CLPENS Committee, our lawyers, as well as representatives from Canada Life and their counsel, will all be at each information session to describe the Settlement Proposal to you and answer your questions.

**At these information sessions, you will have the opportunity to speak to the CLPENS Committee members and one of our lawyers without anyone from Canada Life being present.**

We strongly encourage you to attend an information session if you are able to do so. You may send your Decision Form (orange-bordered item F) to Koskie Minsky LLP before then or you may hand deliver it at the meeting.

If there is no information session in your area, or you are unable to attend, and you have questions about the Settlement Proposal, please call Koskie Minsky/Harrison Pensa toll-free at 1-800-286-2266 or email us at [canadalifeclasse@kmlaw.ca](mailto:canadalifeclasse@kmlaw.ca).

If you have specific questions regarding your pension benefits, please contact the Canada Life Client Service Centre toll-free at 1-888-252-1847.

#### **H. Next Steps**

Once you have reviewed this Report and all the other documents in the package, please fill out and vote **YES** on the enclosed Decision Form (orange-bordered item F) to support the Settlement Proposal and return it to Koskie Minsky LLP in the enclosed envelope. By signing the form and voting **YES**, you:

- Retain Koskie Minsky LLP and Harrison Pensa LLP jointly as your counsel and authorize them to act on your behalf to implement the Settlement Proposal;
- Consent to the Settlement Proposal (all members) and the surplus withdrawal (for PWU Members);
- Consent to the transfer to the New Plan and the variation of trust (Non-PWU Group Members still entitled to benefits under the Plan); and
- Release all your claims against Canada Life in exchange for your settlement under the Settlement Proposal (for all members).