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YEAR-END 2008 AND NEW REQUIREMENTS FOR 2009

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By: Theo Anne Opie, LL.B. © CCH Canadian Limited.

It's year-end time once again! While year-end has become just another routine part of the payroll cycle due to continuous advancements in technology, streamlined processes, and administrative efficiencies from the government, it is still important to be aware of the various changes that will affect the process. What follows is a snapshot of this year's changes and what to expect for 2009. In addition, we are providing our annual checklist to assist in ensuring nothing is left unfinished by the end of February 2009.

Changes to CRA Year-End Reporting

T4 and T4 Summary

There is no change on the T4 information slip for 2008. The 2006 version is the one you have to use for the 2008 tax year. As part of continuing efforts towards sustainable development, the CRA has cancelled the mail out of the preprinted T4 Summary for 2008 and subsequent years.

T4A: Box 28 – Other Income

Three new codes for the reporting of "Other Income" have been added.

- Registered disability savings plan (RDSP) payments paid to a plan beneficiary. In box 38, enter 31.
- Wage Earner Protection Program (WEPP) payments paid to workers due to employer bankruptcy or insolvency. In box 38, enter 32.
- Variable pension benefits paid out of a pension plan. In box 38, enter 33.

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Internet File Transfer (XML)

Starting January 5, 2009, you will be able to file approximately 20,000 various information slips (up to 20MB) in extensible mark-up language (XML) by Internet File Transfer. Depending on the type of information slips and how much information is included on each slip, you may be able to send more than 20,000 slips.

Changes to Pension Adjustment (PA) (Box 52) Reporting for 2008

In 2005, the Minister of Finance proposed several measures related to registered pension plans (RPPs), registered retirement savings plans (RRSPs) and deferred profit sharing plans (DPSPs). Such changes affect the reporting of Pension Adjustments for year-end and should be reflected accordingly for year-end reporting.

The following are the current limits which became law through the passage of Bill C-48, an *Act to implement certain provisions of the budget tabled in Parliament on February 23, 2005*. These limits should be used when determining and calculating 2008 and subsequent years' pension adjustments to be reported in Box 52 of the T4 (Pension Adjustments are not reported on the RL-1).

Defined Benefit RPPs: Maximum Pension Benefit (Per Year of Service)*

- 2008 – $2,333.33
- 2009 – $2,444.44
- after 2009 – indexed

Money Purchase RPP Limits

- 2008 – $21,000
- 2009 – $22,000
- after 2009 – indexed

RRSP Limits

- 2008 – $20,000
- 2009 – $21,000
- 2010 – $22,000
- after 2010 – indexed

* Defined benefit RPPs maximum Pension Adjustments based on limits using the maximum benefit (pension benefit × 9) - $600 = Maximum PA. Maximum PA limit in 2008 = $20,400, 2009 = $21,400, and for 2010 it will be indexed to average wage growth.

CRA Principal Changes for 2009 and Beyond

T4A Redesign

The Canada Revenue Agency is in the process of redesigning the T4A slip. The aim is to change to a more generic style using identifier codes to report the different types of income amounts, as is now done on the T3, T4, T4E, and T5 slips. The redesign will not be implemented this year but most likely in 2010 for reporting in 2011.

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Revenu Québec Changes for Year-End Filing

Changes Made to the RL-1 Slip

New code (RX) for apprenticeship incentive grants: Apprenticeship incentive grants paid by Human Resources and Social Development Canada must be entered in box O of the RL-1 slip. The code corresponding to these grants is RX.

Abolition of code RF for maternity allowances: Maternity allowances paid by the Ministére de l'Emploi et de la Solidarité sociale are no longer entered in box O of the RL-1 slip, because the Quebec maternity allowance program has ended.

Indemnities further to industrial accidents – CSST: Beginning in 2008, you are asked to treat differently certain amounts that you continue to pay to an employee who is absent from work following an industrial accident. Basically, if you continue to pay amounts to such an employee before or after the decision of the CSST, you will not be able to modify retroactively the treatment of the remuneration paid in the current year (or in a previous year) to designate the amounts paid as income replacement indemnities. For more information, see section 5.2 of the Guide to Filing the RL-1 Slip (RL-1.G-V).

Revenu Québec Principal Changes for 2009

Source Deductions Return (Form TP-1015.3-V)

The Source Deductions Return (form TP-1015.3.-V) has been revised to take into account the following changes:

- the annual indexation of the amount with respect to age;
- an increase in the maximum amount for retirement income.

Beginning in 2009, the amount with respect to age ($2,200) is to be indexed annually, using the same indexation method as for the personal income tax system. The amount with respect to age for 2009 is $2,250 ($2,200 x 2.36% (the indexation factor for 2009)).

Beginning in 2009, the maximum amount of eligible retirement income is increased from $1,500 to $2,000.

It is important that your employees and all beneficiaries of amounts that you pay as a payer receive notification from you of the changes. Employees or beneficiaries who indicated any of those amounts on the last form TP-1015.3-V they submitted to you may complete the 2009-01 version of form TP-1015.3-V. Annual indexation of the amount with respect to age (line 9).

Higher thresholds for the three income tax brackets

For 2009, the income tax rates applicable to the three income tax brackets remain at 16%, 20% and 24%. However, the thresholds that determine the bracket in which an individual's taxable income is situated have been indexed:

- The 16% rate applies to taxable income of $38,385 or less. (The threshold was previously $37,500.)
- The 20% rate applies to taxable income over $38,385 but not over $76,770. (The threshold was previously $75,000.)

The 24% rate applies to taxable income over $76,770.

Principal Changes Made to the Guide for Employers (TP-1015.G-V)

Bonuses and retroactive pay

The threshold that determines the method to be used to calculate the income tax withholding from bonuses and retroactive pay has been increased from $12,800 to $13,050 for 2009.

Annual indexation of the maximum deduction for employment income

January 1, 2009, the maximum deduction for employment income ($1,000) that may be claimed by all employees is to be indexed annually, using the same indexation method as for the personal income tax system. The maximum deduction for employment income for 2009 is $1,025 ($1,000 x 2.36% (the indexation factor for 2009)).

Taxable Benefits

Indexation of the $1,000 maximum tax-exempt amount for emergency service volunteers

The $1,000 maximum tax-exempt amount of financial compensation paid to an emergency service volunteer is to be indexed annually beginning January 1, 2009. The maximum tax-exempt amount for 2009 is $1,025 ($1,000 x 2.36% (the indexation factor for 2009)).

New chapter on source deductions, employer contributions and compensation tax

Chapter 9 has been added to this brochure. It deals with the source deductions you must make in respect of benefits (including taxable allowances) that you provide to your employees. That chapter also indicates which benefits are subject to various employer contributions and compensation tax.

2008 Year-End Checklist

- Run your year-end reports early in trial mode to update any erroneous situations. It would not be prudent to wait until you need the reports to find that something is incorrect. Many service bureaus have the capacity to run reports and trial T4s and year-end slips to assist in determining issues early.

- The current edition of the *Employers' Guide – Payroll Deductions and Remittances* (released in late November) is available online. Note that its sister publication, *Employers' Guide – Taxable Benefits*, is no longer automatically mailed to any employer who reported taxable benefits in the previous filing year. All guides are available through the CRA Web site at www.cra-arc.gc.ca.

- If you have Quebec employees, download necessary guides such as the RL-1 Guide and the current Guide for Employers from the MRQ Web site at: www.revenu.gouv.qc.ca/eng/index.asp.

- Order any required year-end slips and summary forms from the CRA and/or Revenu Québec immediately.

- Obtain approval from the CRA or Revenu Québec for creating a laser version of any year-end reporting forms (T4/T4A/RL-1).

- For those using the Web to file year-end slips, ensure that you have or that you obtain your Web access code.

- Include all payroll cheques with a 2008 date in the year-to-date totals for 2008. Include any manual cheques in these totals. Review the last pay periods of the current year and the first pay period of the next year to ensure that all payments with the pay date for the current year are included in the current year's T4s, T4As and RL-1s, as applicable. Cheques/deposits dated in the new year are reported in the next taxation year.

- Remove all 2008 cancelled cheques/deposits from the above totals. You must issue an amended 2007 T4 if a 2007 payroll cheque was cancelled in 2008. Include the effect of manual or cancelled cheques/deposits on pensionable and insurable earnings and on CPP/QPP contributions and EI premiums for both the employee and the employer.

- Balance Revenu Québec remittances to the year-to-date sum of employee tax and QPP deductions and employer QPP, health services fund, compensatory tax (financial institutions only), Commission des norms du travail contributions (the employment standards contribution), and the training tax contribution (Fonds national de formation de la main-d'oeuvre).

- Report an amount in RL-1 box G, pensionable earnings, where an amount is reported in RL-1 box Q, deferred salary or wages, where the employee turned 18 in the year, or where the employee received CPP or QPP disability benefits for part of the year.

- Include the appropriate amounts for all taxable benefits on the T4, T4A and RL-1 forms. Remember that private health services plans and AD&D are taxable in Quebec, but not federally. Also remember, on the T4 slip, taxable benefits amounts are entered in generic boxes along with a specific code representing the type of benefit provided. For more information, check the current edition of the *Employers' Guide – Taxable Benefits*.

- Check to ensure that the insurable earnings multiplied by the 2008 EI premium rate of 1.73% equals the premiums reported in T4 box 18. Insurable earnings are only reported in T4 box 24 when these differ from taxable income reported in T4 box 14.

- Review T4/T4A/RL-1s to ensure no negative amounts are present. Negative amounts indicate the current year's taxable income has been incorrectly stated. Corrections to previous year's slips may be necessary.

- If you provide group term life insurance taxable benefits for former employees, you always have to prepare a T4A slip, even if the benefit is less than $500. However, if you are the administrator or trustee of a multi-employer plan, and you provide taxable benefits under the plan to employees or former employees, you have to prepare a T4A slip only if the benefit exceeds $25.

- Calculate and report the correct value of the 2008 Pension Adjustment on the T4, box 52. See the *Employers' Pension Adjustment Calculation Guide* published by the CRA for complete instructions.

- Use the formula in the back of either the *Employers' Guide – Payroll Deductions and Remittances* or the 86th edition (effective January 1, 2008) of the *Payroll Deductions Formulas for Computer Programs* to verify your CPP contributions and EI premiums (the 87th edition, effective July 1, 2008, only addresses changes to the tax formulas).

- Report an amount in T4 box 26, pensionable earnings, where the employee turned 18 or 70 in the year, received CPP or QPP disability benefits during part of the year, or where QPP pensionable earnings (as reported on the RL-1) are higher than T4 box 14, taxable income.

- Balance source deduction remittances made for the current taxation year to the PD7A/TPZ-1015.R remittance statements (if applicable), the payroll register year-to-date totals, and the T4/T4A/RL-1 run totals.

Theo Anne Opie is a member of the Canadian Payroll Association's Federal Government Relations Advisory Council and writes for PAYSOURCE.

Hot News Items

2009 EI Premium Reduction Rates

The maximum reductions possible, in each category, for short-term disability leave plans which employees can use for personal illness or pregnancy/parental leave, are set out below.

General Reductions (All of Canada Except Quebec)

- Category 1: Paid Sick Leave Plans – employees may earn at least one day per month worked, to at least a 75-day maximum. The rate is 1.238, savings of $0.49 per $100 insurable earnings.

- Category 2: Enhanced Paid Sick Leave Plans – employees may earn at least one and two-thirds days per month worked, to at least a 125-day maximum. The rate is 1.163, savings of $0.57 per $100 insurable earnings.

- Category 3: Weekly Indemnity Plans – employees may have a potential benefit of at least 15 weeks' duration. The rate is 1.175, savings of $0.55 per $100 insurable earnings.

- Category 4: Public–Parapublic Weekly Indemnity Plans – employer is a public or parapublic employer with a potential benefit of at least 52 weeks' duration. The rate is 1.157, savings of $0.57 per $100 insurable earnings.

Quebec Reductions

The rates and multiples indicated below are applicable to employers who deduct QPIP premiums from the salaries of all employees reported under the payroll account that has been assigned a reduced rate.

If you are an employer who deducts QPIP premiums from the salaries of some of your employees and others who are reported under the same payroll deductions account are not subject to these premiums, your reduced rate must be recalculated based on the percentage of your employees who pay QPIP premiums. If you have not already been contacted by the Employment Insurance Premium Reduction Program regarding this rate adjustment, you are advised to contact the Program immediately.

- Category 1: Paid Sick Leave Plans – employees may earn at least one day per month worked, to at least a 75-day maximum. The rate is 1.197, savings of $0.19 per $100 insurable earnings.

- Category 2: Enhanced Paid Sick Leave Plans – employees may earn at least one and two-thirds days per month worked, to at least a 125-day maximum. The rate is 1.103, savings of $0.28 per $100 insurable earnings.

- Category 3: Weekly Indemnity Plans – employees may have a potential benefit of at least 15 weeks' duration. The rate is 1.117, savings of $0.26 per $100 insurable earnings.

- Category 4: Public–Parapublic Weekly Indemnity Plans – employer is a public or parapublic employer with a potential benefit of at least 52 weeks' duration. The rate is 1.096, savings of $0.28 per $100 insurable earnings.

The new 2009 EI premium reduction rates have been incorporated into the "Employment Insurance" section of PAYSOURCE at ¶35,625 and ¶35,627.

Employment Standards

Ontario Moves To Protect Temporary Help Agency Workers

The Ontario government has introduced legislation that, if passed, would ensure that temporary help agency employees are being treated fairly. This legislation would amend the *Employment Standards Act, 2000* (ESA) to change a number of provisions affecting temporary help agency employees.

These changes to the ESA are a component of the government's Poverty Reduction Strategy, which is about creating more opportunity and building a stronger economy.

The amendments are contained in Bill 139, *Employment Standards Amendment Act (Temporary Help Agencies), 2008*. The Bill received first reading December 9, 2008 and subscribers will be notified of the progress of the Bill.

The following is a summary of the proposed changes.

Removing Barriers to Permanent Employment

The proposed legislation would prohibit temporary help agencies from imposing barriers that would prevent or discourage clients of agencies from hiring "assignment employees". If the proposed legislation passes, temporary help agencies would be prohibited from:

- Restricting a client from providing a permanent position to an agency's assignment employee, or charging the client a "temporary to permanent" fee after six months or more have passed since the employee was first assigned to the client
- Restricting an assignment employee from taking permanent employment with a client of the agency, or charging the employee a fee for doing so
- Restricting a client from providing references to an assignment employee or entering into a permanent employment relationship with an assignment employee

Any provisions in temporary help agency contracts with assignment employees or clients that violate the above prohibitions would be void once this legislation comes into force.

Prohibiting Agencies From Charging Fees to Their Employees

Under the proposed legislation, temporary help agencies would be prohibited from:

- Charging a fee to a person for becoming an assignment employee, or assistance in finding or attempting to find work with a client
- Charging a fee to an assignment employee, or prospective assignment employee, for assistance in preparing a resume or preparing for job interviews.

Providing Information to Employees

There are currently no rules about what information temporary help agencies must give their employees when they are sent to client businesses on assignments. As well, quite often, employees do not know the legal name of the agency where they are working.

The proposed legislation, if passed, would require temporary help agencies to:

- Provide the employees, in writing, with the agency's name and contact information as soon as possible after the agency enters into an employment relationship with the employee.
- Agencies would also be required to provide an information sheet prepared by the Director of Employment Standards on the assignment employee's ESA rights.
- Provide the employee, in writing, the client's name and contact information when offering a work assignment. The agency would also be required to provide information on wages, benefits, hours of work and the pay schedule associated with the assignment, as well as a general description of the work to be performed for the client.

Protecting Employment Standards Rights

Under current legislation, a temporary help agency is generally considered to be the employer of a person it sends to work for a client business. The client business is not the employer. The agency is responsible for making sure that a worker's employment standards rights are met.

However, the proposed legislation would prohibit clients of agencies from engaging in reprisals against assignment employees for asserting their employment standards rights. The agency, as the employer, would continue to be

prohibited from reprisals against its employees, under current provisions of the ESA.

If a temporary help agency owes an assignment employee wages, and if a client owes the agency money, the proposed legislation would allow the Director of Employment Standards to make a demand on the client to pay those monies to the Director in trust, for dispersal to the employee.

Revoking "Elect to Work" Exemptions

Currently, the ESA contains special rules for certain employees. Employees who "may elect to work or not when requested to do so", were exempt from the ESA requirements regarding public holidays, and notice of termination and severance pay.

Many temporary help agency employees were considered to be "elect to work" since they could choose to accept or refuse an agency assignment without any negative consequences. However, once an assignment was accepted, those employees were required to report to work as directed by the client business as a condition of its contract with the agency. Because they were considered "elect to work", these employees were exempt from full public holiday entitlements, and requirements around termination and severance.

The government has now made a regulation removing the "elect to work" exemptions regarding public holidays, effective January 2, 2009, ensuring that temporary help agency employees will have the same rights to public holiday entitlements as other employees in Ontario.

If the proposed legislation should pass, the government intends to enact another regulation removing the "elect to work" exemptions regarding termination and severance.

For further information: Public inquiries (Employees and Employers): Pay rates and time off: Ministry of Labour, 416-326-7160 or 1-800-531-5551; Store openings: Ministry of Government and Consumer Services, 416-326-8800 or 1-800-889-9768 .

Media inquiries: Pay rates and time off: Bruce Skeaff, Ministry of Labour , 416-326-7405; Store openings: Ciaran Ganley, Ministry of Government and Consumer Services, 416-325-8659.

Prince Edward Island Unionized Employees To Receive Holiday Pay

Bill 60, *An Act to Amend the Employment Standards Act* (now S.P.E.I. 2008, c. 42) has amended the application provisions of the *Employment Standards Act*, in relation to employees whose terms and conditions of work are established by a collective agreement.

The Bill amends the Act to provide that unionized employees are now entitled to holiday pay. The holiday pay provisions are in addition to the following provisions under the Act currently applicable to employees with a collective agreement: parental, maternity, adoption, and compassionate care leave, freedom from sexual harassment, payment and protection of wages, and payroll records.

Bill 60 received first reading November 26, 2008, second reading November 27, and third reading and Royal Assent December 3. The Bill became law on the date of Royal Assent.

CRA Announces First Quarter Interest Rates

The first quarter interest rates were recently confirmed by the Canada Revenue Agency (CRA). Effective January 1, 2009 through March 31, 2009, the rates will be:

- 6% for interest on unremitted employee income tax source deductions, unremitted CPP and EI contributions, unpaid penalties, overdue personal income tax payments and insufficient income tax instalment payments;
- 4% for interest payable on income tax refunds and overpayments; and
- 2% for deemed interest when computing the taxable benefits on employee or shareholder loan provisions.

The first quarter interest rates have been incorporated into PAYSOURCE in the "Employee Benefits" section at ¶20,155 and ¶20,600, the "Statutory Deductions – Employer Remittances" section at ¶24,304, the "Statutory Deductions – Tax" section at ¶27,020 and the "Year-End Reporting" section at ¶65,686.

Need To Know

2009 WCB Maximum Assessable Earnings

As of this update, we have received confirmation of all of the 2009 WCB maximum assessable earnings figures.

- Alberta – $72,600;
- British Columbia – $68,500;
- Manitoba – $83,000;
- New Brunswick – $55,400;
- Nova Scotia – $49,400;
- Newfoundland/Labrador – $50,379;
- Ontario – $74,600;
- Prince Edward Island – $47,500;
- Quebec – $62,000;
- Saskatchewan – $55,000;
- Northwest Territories/Nunavut – $72,100;
- Yukon – $76,842.

The 2009 maximum assessable earnings figures can be found in PAYSOURCE in the "Workers' Compensation" tab division at ¶80,005.

Minimum Wage Change/Reminders

The new minimum wage rates are located in the "Employment Standards" section of PAYSOURCE at ¶5710, ¶5771, ¶5781 and ¶5791.

Newfoundland and Labrador

On January 1, 2009, the minimum wage will increase to $8.50 per hour, up from the current level of $8.00 per hour.

Nova Scotia

On April 1, 2009, the minimum wage will increase to $8.60 per hour, up from the current level of $8.10 per hour.

Ontario

On March 31, 2009 the minimum wage will increase to $9.50 per hour, up from the current level of $8.75 per hour.

Recent Cases and Rulings

EI Legislation Re Training, Work-sharing Programs and Benefits Valid; But Premiums for 2002, 2003 and 2005 Collected Unlawfully.

• • • **Canada** • • • Facts: In 1996, the *Employment Insurance Act* established the legal framework for a significant restructuring of the unemployment insurance system. In addition to the usual active measures against unemployment, such as an employment service and training and work-sharing programs (ss. 60, 25 and 24), five types of employment benefits were introduced in this legislation (s. 59): wage subsidies, earnings supplements, self-employment assistance, job creation partnerships and skills loans or grants.

Two events related to the financing of the system laid the groundwork for the new legislation: in 1986, on the recommendation of the Auditor General of Canada, the Employment Insurance Account was consolidated with government revenues as a whole and, in 1990, the government stopped financing the Account out of its general revenues, relying on premiums at an annual rate based, at that time, on the cost over only a few previous years. In the 1996 legislation, Parliament revised the financing of the Account in order to balance the program's budget over the long term. Section 66 set out guidelines for a system under which premiums were to be set high enough to cover the system's current expenditures and ensure the gradual accumulation of a reserve so that rates could be stabilized regardless of the constraints of business cycles. In the space of six or seven years, the deficits were absorbed and surpluses totalling more than $40 billion were accumulated. In 2001, Parliament enacted s. 66.1, which, departing from s. 66, authorized the Governor General in Council to set premium rates directly for 2002 and 2003. For 2004, Parliament set the premium rate in the Act itself. For 2005, it went back, by enacting s. 66.3, to having the Governor General in Council set the rates.

The appellants brought declaratory actions to challenge the constitutional validity of the "active" measures, the premium-setting mechanisms, the accumulation of surpluses and the allocation of those surpluses to overall federal expenditures. The Quebec Superior Court and Court of Appeal rejected their arguments.

Held: The appeals should be allowed in part. The versions of ss. 66.1 and 66.3 of the *Employment Insurance Act* in force in 2001, 2002 and 2005 were unconstitutional. Employers' and employees' premiums for those years were collected unlawfully. This declaration is suspended for a period of 12 months from the date of this judgment.

Per McLachlin C.J. and Binnie, LeBel, Deschamps, Fish, Abella and Rothstein JJ.: The impugned active measures are valid. The programs provided for in the *Employment Insurance Act* reflect changes in the economy and the labour market and are part of the "natural evolution" of the unemployment insurance power conferred on the Parliament of Canada. That power must be interpreted generously. Its objectives are not only to remedy the poverty caused by unemployment, but also to maintain the ties between unemployed persons and the labour market. Thus, regulating unemployment insurance does not mean simply taking passive responsibility for paying benefits to Canadian workers during periods when they are not working. It also means taking on a more active role designed to maintain or restore ties between persons who may become or are unemployed and the labour market. Job placement and training programs are initiatives that fell within Parliament's legislative jurisdiction from the outset. These programs, together with work-sharing programs, retain a close enough connection with the system's basic objectives and form to a sufficient extent an integral part of the system. Furthermore, the labour market has changed, and the way the federal power under s. 91(2A) of the *Constitution Act, 1867* is exercised can reflect this. Employment benefits programs illustrate this change, as they are designed to reinforce ties with the labour market or to prepare workers to re-enter it. For example, job creation partnerships are designed to alleviate some of the consequences of weak labour markets in disadvantaged regions and thus reduce unemployment. Earnings supplements also directly affect ties with the labour market: they temporarily increase the income of workers who would otherwise be more hesitant to accept jobs for less pay. Self-employment assistance fosters the establishment of businesses and helps insured participants re-enter the labour market. Wage subsidies paid to employers specifically facilitate entry into the labour market by disadvantaged persons who wish to improve their productivity or gain work experience, and they help establish or maintain the employability of workers who might otherwise be condemned to not working. Skills loans and grants enable insured participants to acquire advanced knowledge, and their purpose is to make it easier for such people to obtain employment.

As long as s. 66 of the Act applied, the existence of criteria for the setting of employment insurance premium rates ensured the application of a principle of allocation of and stability in the amounts being levied, and this justifies characterizing those amounts, from a constitutional standpoint, as a regulatory charge despite the existence of large surpluses because the federal government made a firm policy decision to put an end to deficits in employment insurance, stabilize fluctuating premium rates and strengthen the system by building up an adequate reserve, the 1996 legislation made the Employment Insurance Commission responsible for setting premium rates each year in accordance with the objectives set out in s. 66: ensuring that there would be enough revenue over a business cycle to pay the amounts charged to the Account, and maintaining relatively stable rate levels throughout the business cycle. During the period in question, from 1996 to 2001, the contributions collected were paid into the Consolidated Revenue Fund, the monies were used like any other part of the revenues in the Consolidated Revenue Fund, and the appropriate accounts were kept; the amounts needed for the system to function were credited or charged to the Employment Insurance Account. The government's use of them does not, therefore, constitute a misappropriation of employment insurance monies.

When a new rate-setting mechanism was adopted for 2002, 2003 and 2005, the framework under s. 66 ceased to apply. The Act no longer included criteria to guide the setting of rates, which was now within the discretion of the Governor General in Council. Employment insurance premiums continued to be a part of government revenues, whereas, as a result of the disappearance of the relationship between that levy and the regulatory scheme, premiums were at the same time transformed into a payroll tax. But s. 53 of the *Constitution Act, 1867* reflects the ancient, but fundamental, principle of our democratic system that there should be no taxation without representation. Only Parliament may impose a tax *ab initio*. The delegation of taxing authority is constitutional if the legislation provides expressly and unambiguously for the delegation. The versions of ss. 66.1 and 66.3 that applied in 2002, 2003 and 2005 did not state that Parliament was delegating taxing authority. The delegation they did provide for concerned a charge that had become a levy for general purposes, but it was not specified in the Act that Parliament intended to delegate its taxing authority as such.

Confédération des syndicats nationaux v. Canada (Attorney General), 2008 SCC 68

Editor's Note: Following the release of the above decision, the Canada Revenue Agency issued the following release:

On Dec. 11, 2008, the Supreme Court of Canada (SCC) rendered its decision on the CSN-Arvida case. The appeal was allowed in part. The SCC found that for the years 2002,

2003 and 2005, employee and employer's premiums for Employment Insurance (EI) were collected unlawfully.

The SCC confirmed the Government of Canada's constitutional authority over the premium rate setting process, the operation of the Employment Insurance account, and Part II of the EI act, which includes providing training and skills development.

The SCC has suspended the judgment in respect of the premiums for 12 months and asked the government to rectify the situation.

Employment insurance premiums should continue to be withheld and remitted as usual.

Intent to retire was not pleaded, so could not reduce notice entitlement

• • • **Alberta** • • • Magnan was employed by Brandt Tractor Ltd. for 38 years, most recently as a customer support advisor. Brandt had an unwritten mandatory retirement policy, requiring employees to retire when they reached 65 years of age. Magnan was advised by Brandt's president that following his 65th birthday in November 2004, he could continue to work until the "year end", which Magnan took to mean March 31, 2005, the company's fiscal year end. Magnan was informed that his retirement date was actually December 31, 2004. Magnan brought a wrongful dismissal claim. The trial judge found that Magnan had been constructively dismissed; however, he also concluded that Magnan intended to retire on March 31, 2005, and on that basis, only awarded damages equal to three months' wages and benefits. The trial judge did not award bad faith damages, and found that Magnan had made efforts to mitigate his damages. Magnan appealed.

The appeal was allowed, in part. Since it was never pleaded, or brought up at trial, the finding that Magnan intended to retire on March 31, 2005 was set aside. With respect to the claim for bad faith damages, ignorance of the law does not shield an employer from liability for damages for wrongful dismissal, but the breach of the human rights legislation by the employer here, without more, did not entitle the employee to *Wallace* damages. Finally, the Court of Appeal could find no error in the trial judge's finding that in the circumstances of Magnan's constructive dismissal, it was not reasonable to expect him to accept his employer's offer of allowing him to return to work. Also, there was no evidence that employment opportunities were available to Magnan at his age. Accordingly, based on what the trial judge would have awarded had he not found that Magnan intended to retire on March 31, 2005, Magnan was awarded an additional seven months' damages.

Magnan v. Brandt Tractor Ltd., (Alta. C.A.), 2008 CLLC ¶210-047.

Overtime overpayment was not just cause for dismissal

• • • **British Columbia** • • • Palidwor was the bookkeeper for Julian Ceramic Tile Inc. from 1992 until she was dismissed in 2004. Her job included gathering, collating and verifying the payroll data that was processed for payment. She was hired to work 40 hours a week at straight time. Julian Ceramic Tile terminated her when it became apparent that over a 15-month period from January 2003 to April 2004, Palidwor had claimed and received payment for overtime to which she was not entitled, totalling over $10,000. Palidwor sued for wrongful dismissal. The trial judge found that Palidwor was not entitled to the 15 months of overtime payments that she believed she was entitled to, as she had calculated her payments based on the premise that she was hired to work 35 hours a week plus overtime for any additional work. However, the trial judge found that Palidwor had not acted in a deceitful manner, and had simply been mistaken as to the terms of her employment contract. Accordingly, the trial judge found that Julian Ceramic Tile had no cause to dismiss her without notice, and awarded her six months' notice plus interest. Julian Ceramic Tile appealed.

The appeal was dismissed. Palidwor was found to have made a mistake, as she did not know that the overtime payments she received were contrary to the terms of her employment. An employee who makes a mistake about an employment benefit she is entitled to receive, without any dishonesty, cannot be said to have fundamentally breached her employment contract by receiving the benefit. There was also no error by the trial judge in finding no failure to mitigate by Palidwor. Accordingly, the six months' notice award of $13,870.66 plus $890.00 interest was upheld.

Palidwor v. Julian Ceramic Tile Inc., (B.C.C.A.), 2008 CLLC ¶210-048.

Employee, hired to work for employer that had purchased business of former employer, was entitled to severance pay

• • • **Ontario** • • • Macdonald began working for Erectoweld in 1978. Erectoweld sold the business to ECL in 1993, but then in 1995 Blastech entered into an agreement to lease the property that housed ECL's business, and bought the equipment that ECL used. On August 28, 1995, Blastech moved into the premises, and hired ECL's

employees for the same rate of pay they had earned under ECL. They completed work that had been started by ECL, and brought in other work as well. There was no termination notice given out, no termination pay, and no records of employment. Macdonald worked for Blastech from August 28, 1995 until he was laid off on September 10, 2004. Blastech paid him termination pay and severance pay from August 1995, but Macdonald claimed that he was entitled to severance pay based on employment since 1978.

The claim was allowed. At issue was whether section 9 of the *Employment Standards Act, 2000* applied, which provided that, if an employer sells a business and the purchaser hires an employee, the employment of the employee shall include the time that the employee worked for the seller for the calculation of length or period of employment. The purpose of the section was to protect entitlements related to length of employment when the purchaser of a business continues to employ the employees of the vendor following a sale, including severance pay. In this situation, Blastech acquired the business of ECL as a going concern, and the fact that Blastech actually acquired the property that was necessary to the business from the landlord, who was Erectoweld, instead of directly from ECL, was not important. Macdonald was entitled to judgment of $22,373.

Macdonald v. Blastech Corporation, (Ont. S.C.J.), 2008 CLLC ¶210-050.

Deferred Salary Leave Plan – Retiring After Leave

The CRA was asked to comment on the tax consequences to an employee who retires after a period of leave under a deferred salary leave plan ("DSLP"). Generally, under a DSLP an employee is entitled to fund, through salary deferrals, a leave of absence from employment and the deferred salary would only be included in income when it is ultimately received, rather than when it is earned. To qualify as a DSLP, the employee must return to work after the leave for a period at least as long as the leave of absence. If the employee entered into a DSLP with the intention of retiring following the leave of absence, the deferred salary will be taxable in the year earned rather than in the year received. However, where the arrangement was a qualifying DSLP at the time it was established and the circumstances subsequently change, the arrangement will only cease to be a DSLP at that time and the unpaid deferred salary of the employee would be included in the employee's income at that time without tax consequences for prior years.

Technical Interpretation, Financial Sector and Exempt Entities Division, October 17, 2008, Document No. 2008-0295261E5.

Taxable Benefits: Long-Term Disability and Life Insurance

The CRA was asked about the tax treatment of benefits received by an employee in respect of a long-term disability insurance policy (also known as a wage-loss replacement plan) and a life insurance policy. Although in general, benefits received in the course of employment are taxable under s. 6(1)(*a*), s. 6(1)(*a*)(i) provides an exception for benefits derived from an employer's contributions to a "group sickness and accident insurance plan". This exception would apply to a sickness or accident insurance plan, a disability insurance plan, or an income maintenance insurance plan, as long as the particular plan is a group plan. Contributions made by an employer on behalf of an employee pursuant to one of these plans would not be taxable to the employee pursuant to s. 6(1)(*a*). Benefits paid to an employee from group wage loss replacement plans are included in income pursuant to s. 6(1)(f), but the amount included in income is reduced by the total amount of any contributions made by the employee. Therefore, if the employee paid all of the premiums under the plan, any benefit received under the plan would be non-taxable. In addition, if the plan was not a group plan, and the employer paid the premium on behalf of the employee, the payment would be a taxable benefit under s. 6(1)(*a*), but s. 6(1)(*f*) would not apply to any benefits received.

Section 6(4) requires an employee whose life is insured by his or her employer under a "group term life insurance policy" to include a prescribed benefit in income. If the life insurance policy is not a group life insurance policy, any premiums paid by an employer would be required to be included in the employee's income pursuant to s. 6(1)(*a*). The proceeds received by the beneficiary under a life insurance policy after the insured's death are not taxable, regardless of whether the premiums were paid by the employer or the employee.

Technical Interpretation, Business and Partnerships Division, October 17, 2008, Document No. 2008-0278501E5.

Travel and Accommodation Allowances – Travel to Attend Monthly Staff Meetings

The issue the CRA was asked to review involved sales representatives who were required to travel and execute their employment duties within a territory relatively distant from their employer's head office. For that reason, they could not go to the head office every day. However, once a month, they were required to attend a staff meeting held at the head office. Since they would have to leave from their place of work or from a client's office to attend the meeting, they would receive an allowance from their employer that would cover both their travel and accommodation expenses. Note that those representatives were employed in connection with the sale of property or the negotiation of contracts for their employer. The CRA was asked if those allowances were taxable and if their answer would be different if the staff meetings were not held at the employer's head office but elsewhere (e.g., a meeting room in a large hotel). The CRA confirmed that, when an employee works far away from his employer's head office not by personal choice but because of a requirement of the job, any travel between his place of work (or a client's head office) and his employer's head office is considered to be made in the course of his employment. As a result, the travel and accommodation allowances received by the representatives to attend the staff meeting should be exempted under s. 6(1)(*b*)(v) of the Act provided they were made in respect of a period during which the representatives performed duties involving either the sale of property or the negotiation of contracts for the employer. However, an allowance paid for the use of a motor vehicle would be considered not reasonable and therefore taxable if one of the following two conditions was met: (1) the calculation of the allowance is not based exclusively on the number of kilometres driven by the representatives (see s. 6(1)(*b*)(x)); or (2) the representatives received both an allowance for the use of the vehicle and a total or partial reimbursement of the expenses incurred by him in respect of the use of the vehicle (see s. 6(1)(*b*)(xi)). Regarding the possibility that the meeting be held in the meeting room of a large hotel instead of the employer's head office, the CRA confirmed that their opinion would remain the same regardless of where the staff meeting was held.

Technical Interpretation, Business and Partnerships Division, October 24, 2008, Document No. 2008-0278661E5.