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## PRELIMINARY 2010 EI RATES SET – CHIEF ACTUARY REPORTS TO EI COMMISSION

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

The Canada Employment Insurance Commission recently released the Report of the Chief Actuary to the Employment Insurance Commission on the Employment Insurance (EI) premium rate and maximum insurable earnings.

### Rate Setting Mechanism

The Report of the Chief Actuary provides an estimated break-even premium rate for the coming year based on the principle that the rate should generate enough revenue to cover expected payments. Because the government froze the EI premium rate for 2010 at \$1.73 per \$100 of insurable earnings through its Economic Action Plan, the calculation of this year's break-even premium rate serves an informational purpose only.

The Report also provides the Maximum Insurable Earnings, which represents the ceiling up to which EI premiums are collected and therefore is also the maximum amount considered in an application for EI benefits.

In Budget 2008, the government implemented changes to the governance and management of the EI Account by creating the Canada Employment Insurance Financing Board (CEIFB). The CEIFB will be responsible for a new EI premium rate-setting mechanism and will be in a position to set the 2011 EI premium rate. See the Employment Insurance section of PAYSOURCE at ¶35,425 for more information.

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## Preliminary 2010 EI Premium Rates

The following are the preliminary 2010 EI rates:

- 1.73% (the same as for 2009) frozen by the government for 2010 for residents of provinces without a Provincial Plan (all of Canada except Quebec); and
- 1.36% (compared to 1.38% for 2009) is the forecasted Employment Insurance break-even rate for 2010 for residents of provinces with a Provincial Plan (Quebec) (calculated as 1.73% minus the premium reduction of 0.37% (compared to 0.35% for 2009) granted for Provincial Plans).

## 2010 Maximum Insurable Earnings

In accordance with the indexation formula of section 4 of the *Employment Insurance Act*, which is based on the average weekly earnings, the annual maximum insurable earnings for **2010 shall therefore be set at \$43,200** compared to \$42,300 for 2009.

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## Final EI Rates

While the above rates are still preliminary, the final rate will be set by the EI Commission no later than November 14, 2009.

Also note that by November 30, on the joint recommendation of the Minister of Human Resources and Skills Development and the Minister of Finance, the Governor in Council may substitute a premium rate different from the one set by the Employment Insurance Commission, if the Governor in Council considers it to be in the public interest.

## Hot News Items

### 2010 CPP/QPP Contributions

In October, Revenu Québec announced the 2010 QPP figures. While the Canada Revenue Agency has not yet announced the 2010 Canada Pension Plan (CPP) figures, it is expected that they will be the same.

The 2010 QPP maximum pensionable earnings figure will be \$47,200 – up from \$46,300 in 2009. The new ceiling was calculated according to a QPP legislated formula that takes into account the growth in average weekly wages and salaries in Canada.

Contributors who earn more than \$47,200 in 2010 are not required or permitted to make additional contributions to the QPP.

The basic exemption amount for 2010 remains \$3,500. Therefore, maximum contributory earnings are \$43,700. Individuals who earn less than that amount do not need to contribute to the QPP.

The employee and employer contribution rates for 2010 will remain unchanged at 4.95%, and the self-employed contribution rate will remain unchanged at 9.9%.

The maximum employer and employee contribution to the plan for 2010 will be \$2,163.15 and the maximum self-employed contribution will be \$4,326.30. The maximums in 2009 were \$2,118.60 and \$4,237.20.

The new CPP/QPP rates will be incorporated into PAYSOURCE with the next report once the Canada Revenue Agency confirms the 2010 CPP figures.

## 2010 WCB Maximum Assessable Earnings

As of this update, we have received confirmation of the following 2010 WCB maximum assessable earnings figures.

- Alberta\* – 77,000;
- British Columbia – \$71,200;
- Manitoba – \$89,000;
- New Brunswick – \$56,300;
- Newfoundland/Labrador – \$51,235;
- Ontario – \$77,600;
- Prince Edward Island – \$47,500;
- Quebec\* – \$63,000;
- Saskatchewan – \$55,000.
- N.W.T/Nun – \$75,200.

\*The Alberta and Quebec rates are preliminary and may be subject to change.

The new maximum assessable earnings figures have been incorporated into PAYSOURCE in the “Workers’ Compensation” tab division at \$180,005.

## Need To Know

### Changes to the CPP Now Part of Legislation Before Parliament

In May 2009, the federal, provincial and territorial Ministers of Finance recommended changes to the Canada Pension Plan as part of the regular reviews of the Plan that they are required to undertake every three years.

The proposed changes were found to be affordable within the current CPP contribution rate of 9.9% on earnings up to average wages and could improve the long-term sustainability of the Plan. Therefore, at this time, an increase to the contribution rate is not expected.

The changes have now been included in Part 2 of Bill C-51, *An Act to implement certain provisions of the budget tabled in Parliament on January 27, 2009 and to implement other measures*, which received first reading in the House of Commons September 30, 2009 and second

reading October 7, 2009. The progress of the Bill will be noted in future Reports.

Anyone currently receiving a CPP retirement pension, disability benefits, survivor benefits or combined benefits will not have these benefits affected by the proposed changes. Nor will they apply to anyone who receives their CPP retirement pension or other CPP benefits prior to the proposed changes taking effect, beginning in 2011.

Contribution requirements for some CPP retirement pensioners who work, and their employers, will be affected by the proposed changes.

The following summarizes the changes that will affect pension recipients and employers alike and sets out when and how those changes will be effective.

### 1. Removal of the Work Cessation Test

Currently, the Work Cessation Test requires individuals who apply to take their CPP benefit early, (i.e., before age 65) to either stop work or reduce their earnings. After having stopped work or reducing earnings for at least two months, the individual may return to work and/or earn more.

**Change:** Remove the work cessation test in 2012 so that a person may take their retirement pension as early as age 60 without the requirement of a work interruption or earnings reduction.

**Effective Date:** This change would not affect existing CPP beneficiaries or those who take their CPP retirement pension before 2012.

### 2. Working Beneficiaries To Participate in the CPP (Mandatory Before 65 and Voluntary After 65)

Currently, those who receive a CPP pension and return to work (i.e., working beneficiaries) do not pay CPP contributions and, therefore, do not continue to build their CPP pension. Virtually all other workers in Canada are required to pay CPP contributions.

**Change:**

- *Under Age 65* – Require individuals under the age of 65 who receive a CPP retirement benefit and work, as well as their employers, to make CPP contributions that will increase their CPP retirement benefit.
- *65 years of age and over:* – Permit individuals aged 65 or over to make CPP contributions that will increase their

CPP retirement benefit. Note that employers of those opting to participate in the CPP would be required to also contribute.

These contributions will result in increased retirement benefits, including persons already receiving the maximum pension amounts. The additional benefits would be earned at a rate of 1/40th of the maximum pension amount (\$10,905 in 2009) per year of additional contributions. The exact amount of the additional benefit would depend on the earnings level of the contributor. The resulting pension could be above the maximum.

While further information in the form of regulations or guides is needed, the expectation is that for employees 65 or over, the option to continue participating in the CPP would be made on an annual basis.

### 3. Increase in the General Low Earnings Drop-Out

The CPP retirement pension amount is based on the number of years a person has worked and contributed to the Plan, as well as the salary or wages he or she earned. Specifically, it is calculated as 25% of an individual's "average career earnings", starting at age 18 and ending at the age of CPP take-up.

Currently, the average of earnings over the span of the career is calculated allowing for 15% of the years where earnings are low or nil for whatever reason (e.g., full-time post-secondary education attendance or spells of unemployment) to be dropped. This provision is called the "general low earnings drop-out". The 15% gives individuals who take their CPP at age 65 almost seven years of low or zero earnings years that can be dropped from the calculation of their average career earnings.

**Change:** Increase the general drop-out from 15% to:

- 16% in 2012 allowing a maximum of almost seven and a half years of low or zero earnings to be dropped from the contributory period, and
- 17% in 2014 allowing a maximum of eight years to be dropped from the contributory period

**Effective Date:** This change would not affect existing CPP beneficiaries or those who take their benefit before the change comes into effect.

### 4. Pension Adjustments for Early and Late CPP Take-Up

The normal age of CPP take-up is age 65. The CPP's flexible retirement provisions allow take-up of the retirement benefit as early as age 60 and after age 65 to as late as age 70. An actuarial adjustment is made to the basic benefit for those individuals who elect to take it either before or after age 65.

Currently, adjustments reduce the early pension by 0.5% per month for each month that the pension is taken before an individual's 65th birthday to age 60. Therefore, if an individual chooses to take the pension at age 60, the basic amount will be reduced by 30%. The late pension is increased by 0.5% per month for each month that the pension is taken after age 65 up to the age of 70. Therefore, if an individual chooses to take the pension at age 70, the basic amount will be increased by 30%.

#### Change:

- The early pension reduction would be gradually increased to 0.6% per month for each month that the pension is taken before age 65. **Effective date:** This would be done over a period of five years, starting in 2012.
- The late pension augmentation would be gradually increased to 0.7% per month for each month that the pension is taken after an individual's 65th birthday, up to age 70. **Effective date:** This would be done over a period of three years, starting in 2011.
- To require regular reporting on the actuarially fair level of the pension adjustments at least every nine years, starting in 2016. Finance Ministers will review these adjustments, based on an assessment by the Chief Actuary of the Plan, and recommend whether changes are needed.

### Making Tax Payments Online – CRA "My Payments" Portal

On October 2, 2009, the Minister of National Revenue announced that the CRA has set up a new online service that allows individuals and businesses to make payments directly from the taxpayer's bank account to the CRA. The "My Payment" portal is on the CRA Web site at [www.cra-arc.gc.ca/esrvc-srvce/tx/mypymnt/menu-eng.html](http://www.cra-arc.gc.ca/esrvc-srvce/tx/mypymnt/menu-eng.html). It can be used if the taxpayer has access to online banking at a participating financial institution. Reproduced below is a series of questions and answers that were released by the CRA with the online payment announcement.

**Q.1 What is My Payment?**

**A.1** My Payment is a new payment option that allows individuals and businesses to make payments online, via the Canada Revenue Agency (CRA) Web site.

**Q.2 Who can use My Payment?**

**A.2** You must have access to online banking at a participating Canadian financial institution to use this service. The My Payment service is offered through Interac® Online (Trade-mark of Interac Inc. Used under license) and is currently available to taxpayers with online banking capabilities at the following financial institutions:

- BMO Bank of Montreal
- Scotiabank
- TD Canada Trust
- RBC Royal Bank

You must have access to sufficient funds, and the transaction total must be within your financial institution's withdrawal limit for online banking.

**Q.3 How does My Payment work?**

**A.3** From the CRA Web site, you enter the amount of your payment and indicate which account the payment is for (this can be done multiple times for multiple accounts). Once you have confirmed your transaction details, you are ready to make an online payment. You select your financial institution from the list provided and continue by logging in to online banking with your usual banking authentication credentials. A transaction receipt with a confirmation number will be displayed. Keep this number for your records.

**Q.4 Why should I use My Payment instead of the service provided by my financial institution?**

**A.4** You will still be able to use your online banking service to make electronic payments, similar to those made to a utility company, for your personal income taxes. However, payments to business revenue lines (payroll accounts, corporation income tax, etc.) are generally not possible from a personal account at a financial institution. These payments have typically required a corporate account, which often has a higher associated fee structure. My Payment will now allow a business owner to send payments online to the CRA from a personal account at a participating financial institution.

**Q.5 How is CRA able to offer the My Payment service?**

**A.5** My Payment is made possible through an agreement between the CRA and Public Works and Government Services Canada, as the Receiver General for Canada. My Payment, using the Receiver General Buy Button and the

Interac Online option, will thereby provide debit payment services to taxpayers and businesses.

**Q.6 My financial institution isn't offering the My Payment service. Why is that?**

**A.6** To participate in My Payment, the financial institution must have an agreement with Interac Online, allowing its clients to send money to any merchant/organization currently accepting Interac Online payments.

**Q.7 What if my financial institution doesn't allow me to use My Payment?**

**A.7** Several other methods, including other online banking methods, exist for making payments to the CRA. For more information, go to [www.cra.gc.ca/payments](http://www.cra.gc.ca/payments).

**Q.8 Why should I use My Payment?**

**A.8** My Payment is a quick, easy, and secure way to send money instantly for payments to the CRA. My Payment simplifies accounting because the transfer is immediate. There is no need to pay early to make sure your payment arrives on time or to monitor your account because of an outstanding cheque.

**Q.9 How can I be sure my transfer was successful?**

**A.9** Immediately after completing the transaction, you can print a receipt with a confirmation number for your records. Keep that number; in the unlikely event that the payment is not reflected in your CRA accounts, a CRA representative can use it to trace your payment.

**Q.10 Is My Payment secure?**

**A.10** The My Payment service is as secure as your existing online banking service. Users of the My Payment service: do not need to enter any financial information, card numbers, or login information on the CRA Web site; complete their transaction by logging in to their existing online banking service, as they would for any regular financial transaction; and can feel secure knowing that no personal information is shared between the CRA and their financial institution.

**Q.11 Is there a charge to use My Payment?**

**A.11** The CRA does not charge any fees to use My Payment. Contact your financial institution to find out about any fees that may apply as part of your regular banking package.

**Q.12 What types of remittances can be made using My Payment?**

**A.12** The following CRA remittance types can be made using this service:

- individual income tax

- child and family benefits repayments
- goods and services tax/harmonized sales tax
- payroll deductions
- corporation income tax
- excise duty
- excise tax
- Air Travellers Security Charge
- softwood lumber products export charge
- Workers' Compensation Board of Nova Scotia payroll remittances
- non-resident withholding tax (Part XIII)

**Q.13 If I make my payment outside of regular business hours, on a weekend, or on a statutory holiday, when will my payment be credited?**

**A.13** Your payment will be credited the following business day.

## Nova Scotia Introduces Public Emergency Leave

The July 2009 issue of *PaySource*, No. 169 included a lead article on "Payroll and the H1N1 Influenza Pandemic". Amongst other things, the article provided an overview of the Ontario and Alberta legislation that permits government declared emergency leave and noted that other provinces could pass similar legislation.

Well, it appears that Nova Scotia is the first province to follow suit. Bill 40, the *An Act to Amend the Labour Standards Code Respecting a Protected Emergency Leave* received first reading October 15, 2009.

Bill 40 would allow employees to take an unpaid leave during a natural disaster or public health risk in order to attend to their own needs or those of a family member.

Unpaid emergency leaves would be available during public emergencies declared under Nova Scotia's *Emergency Management Act*, Canada's *Emergencies Act*, under an order or directive of a medical officer of health pursuant to the *Health Protection Act*, or by government regulation. Under the *Emergency Management Act*, a municipality may declare a state of local emergency, which would qualify as a public emergency.

An employee is entitled to an unpaid leave of absence for as long as the employee cannot perform the duties of the employee's position because of the emergency.

An employee shall give the employer as much notice as is reasonably practicable of the employee's intention to take an emergency leave or, where required to leave before notice can be provided, the employee shall advise the employer of the emergency leave as soon as possible after the leave begins.

Where the employer requests, an employee must provide the employer with evidence (that is reasonable in the circumstances) that the employee is entitled to the leave and such evidence must be provided within a reasonable time subject to the circumstances.

Emergency leave continues for as long as the emergency continues and the emergency prevents the employee from performing the employee's work duties but the entitlement ends on the day the emergency is terminated or the emergency no longer prevents the employee from performing the employee's work duties.

The emergency leave rights and responsibilities of employees and employers under the Bill are similar to those with respect to parental or maternity leaves. At the end of an unpaid emergency leave, an employer must permit an employee to resume employment in his or her former position or where that position is not available, to a comparable position at not less than the same wage and benefits and with no loss of seniority or benefits accrued up to the commencement of the leave. If the employer's operations were suspended or discontinued while the employee was on emergency leave and have not resumed when the leave ends, the employer must comply with the notice of termination provisions, and when the operations resume, reinstate the employee in accordance with the established seniority system, if any.

Also, as with parental and maternity leaves, where an employee is denied his or her right to an emergency leave of absence or where any of the provisions with respect to return to work, seniority, or benefits is violated, the employee may make a complaint to the Director of Employment Standards. If a violation is found, the Director may require that the employer do any act to comply with the Act, or compensate or rectify any injury. The Director's powers include the power to reinstate the employee and order financial compensation.

The definition of *family member* for the purposes of emergency leave is the same as that with respect to compassionate care leave, which, in relation to the employee, is as follows: spouse or common-law partner, a parent, a spouse or common-law partner of a parent, a child, a child

of the spouse or common-law partner, siblings, grandparents, grandchildren, in-laws, aunts, uncles, nieces, nephews, foster parents, wards, guardians or a gravely ill person who considers the employee to be like a family member.

The progress of the Bill will be noted in future Reports.

## Recent Cases and Rulings

### Employee notified of performance deficiencies and warned of possible dismissal

• • • **Saskatchewan** • • • Schutte was hired by Radio CJVR (“the station”) to act as program director, music director and on-air morning show co-host for the radio station. The station also hired Byrnes to provide consultation, as it was transitioning from country music to an “oldies” format. From February 2002 through July 2003, Byrnes provided numerous reports based on visits to the station and review of tapes of the radio shows. The reports were critical of Schutte’s performance as program manager and music director, and there were some comments about his performance as morning show co-host. All of the suggestions in the report were discussed with Schutte, and resulted in a plan of action. Eventually, Schutte was given a performance review with a number of expectations for improvement, and was informed that if his performance did not improve by a specific date, he would be terminated. Soon after, Schutte was terminated, and was given \$3,600 in severance pay in addition to salary and vacation pay owing. Schutte brought an action for wrongful dismissal. The trial judge allowed the action and awarded five months’ salary in damages. The station appealed.

The appeal was allowed. The trial judge found that, since the employer neither alleged nor proved that Schutte was incapable of performing the duties of his job, it could not rely on incompetence to dismiss him for cause. This view placed undue emphasis on the literal meaning of “incompetence”, and too little on the actual nature of the complaints in this situation regarding Schutte’s job performance. Complaints that an employee is incapable of performing his job and complaints that he is consistently failing to meet a reasonable standard of performance are capable of constituting just grounds for dismissal. The standard required to constitute grounds for summary dismissal is less stringent in cases where, as here, the employee was given repeated notice that his performance was deficient, considerable assistance was provided to help him

improve, and he was given a clear warning that failure to improve would result in termination. The station’s expectations were reasonable, Schutte clearly failed to meet those expectations, he was advised of his failings, and was warned of the potential consequences.

*Radio CJVR Ltd. v. Schutte*, (Sask. C.A.), 2009 CLC ¶210-042.

### Dishonesty did not justify termination of long-standing employee with unblemished record

• • • **Ontario** • • • Fewer had worked for 22 years for Toromont, as well as for its predecessor. When Toromont acquired a company in Newfoundland, Fewer agreed to relocate from London, Ontario to Newfoundland for three to four years in order to work as the operations manager while the new company was integrated with Toromont. Fewer was appointed General Manager of the operation in Newfoundland and he was seen as a valuable employee. Three years into his work in Newfoundland, Fewer raised the issue of a successor for him because he wanted to move back to London with his family. In addition, he informed Toromont that he would need to take some time off work in order to deal with a medical condition. While away on medical leave, Fewer was placed on suspension for a number of allegations contained in an anonymous letter that Fewer had used company funds for personal purposes and had improperly charged personal expenses to the company. Fewer provided a written response to the allegations but he was subsequently dismissed. Fewer brought a wrongful dismissal action. Toromont claimed that his conduct justified his termination.

The action was allowed. Toromont failed to demonstrate just cause for its dismissal of Fewer. During his 22 years with the company, Fewer had an unblemished employment record and none of the allegations made against him were shown to be serious enough to justify termination. Toromont did not provide him with regular performance appraisals, as it had promised, in order to update him on his progress as an employee. In addition, Fewer’s acceptance of the position in Newfoundland was premised on him being able to maintain his family and business connections in Ontario and that he would only be in Newfoundland for three or four years. Fewer was awarded 16 months’ reasonable notice.

*Fewer v. Toromont Industries Limited*, (Ont. S.C.J.), 2009 CLC ¶210-044.

### ***Pension Benefits – Lump-Sum Amount Paid to a Retiree***

The transaction the CRA was asked to rule on involved a corporation exempted from Part I income tax under s. 149(1)(c) of the Act. The corporation implemented a defined benefit pension plan, of which it was the sponsor and administrator, for its employees. Since the plan did not provide for a cost of living indexation of the pensions, this had severe implications on the financial situation of the low-income retirees. Following their representations regarding the erosion of their retirement income, the corporation and the pension plan agreed to compensate them for the non-indexation of their pension benefits. Since the terms of the pension agreement did not allow the corporation to pay to the retirees an amount other than a pension and the corporation did not want to modify its agreement, the corporation and the pension plan signed a memorandum of understanding under which the corporation would pay a lump-sum amount to each eligible retiree or to each eligible surviving spouse of an eligible deceased retiree. To be eligible for the payments, the retirees or surviving spouses would have to qualify as annuitants under the plan at the time of the payment. The lump-sum payments would be funded in part by the corporation and in part by the future actuarial gains belonging to the pensioners. Under the agreement, the pension plan would agree to renounce and transfer to the corporation some of its future actuarial gains up to a certain percentage of the above lump-sum amounts paid. This transferred amount would bear interest from the date of the payments until full reimbursement. The payments would be made by the corporation from its general funds. The CRA was asked if the payments would be taxable in accordance with s. 56(1)(a)(i). The CRA confirmed that each lump-sum payment received by a retiree or a surviving spouse would be treated as an amount received in lieu of a superannuation or pension benefit, and would be included in their income for the year of receipt under s. 56(1)(a)(i).

Tax Ruling, Financial Sector and Exempt Entities Division, August 19, 2009, Document No. 2009-0321881R3.

### ***Residence for Retired Members of the Clergy***

The situation the CRA was asked to review involved a church that acquired a residence for its retired vicars and missionaries. The church was a registered charitable organization and the work done by its vicars and missionaries constituted their only livelihood. Their conditions of life were like the ones experienced by the Catholic priests in charge of a parish. The CRA was asked to comment on the tax implications for the church, and its vicars and missionaries to buy the residence.

The purchase of the residence would represent the acquisition of a capital property whose adjusted cost base would be equal to the purchase cost plus the acquisition expenses (like commissions and legal fees) and future capital expenses. The future sale of the residence could result in a capital gain but the gain would not be taxable since the church is a charitable organization.

The fact that the new residence would be made available to the retired vicars and missionaries who would not earn any income from an employment with the church would not result in the inclusion of an employment taxable benefit in their income. Since the retired vicars and missionaries are not in charge of a diocese, parish or congregation, are not ministering to a diocese, parish or congregation, and are not engaged exclusively in the full-time administrative service by appointment of a religious order or religious denomination, they would not meet the condition in s. 8(1)(c)(ii) and would not therefore qualify for the clergy residence deduction under s. 8(1)(c). For additional information on this topic, see CRA Guide RC4108 "Registered Charities and the Income Tax Act" and the Operating a Registered Charity page on the CRA website at [www.cra-arc.gc.ca/tx/chrts/prtng/menu-eng.html](http://www.cra-arc.gc.ca/tx/chrts/prtng/menu-eng.html).

Technical Interpretation, Business and Partnerships Division, July 29, 2009, Document No.2009-0314611E5.