

Injured Workers' Consultants

Representing injured workers free of charge since 1969

30 November 2010

Honourable Dwight Duncan
Minister of Finance
Retirement Income Security Submission
c/o Communications & Corporate Affairs Branch
3rd Floor, Frost Building North
95 Grosvenor Street
Toronto, ON
M7A 1Z1

sent electronically to: Pension.Feedback@ontario.ca

Dear Minister Duncan:

Re: Submission on CPP expansion

Our office is a community legal aid clinic that specializes in matters relating to workers' compensation and injured workers. Thank you for addressing the issue of retirement income and the expansion of the Canada Pension Plan, and for inviting public comment.

Attached is a submission that deals with some of the issues concerning the injured worker community. In addition to the need to increase the retirement pension under the CPP, we also raise two additional problems for people with disabilities under the current Act. Although they may not be part of the Federal-Provincial consultation agenda next month, we hope that you will share our interest in resolving these additional problems for the retirement pensions of people with disabilities. We look forward to an opportunity to discuss these matters in the future.

Yours truly,
Injured Workers' Consultants
per:

John McKinnon

Copies: Peter Tabuns, MPP (Toronto – Danforth)
Jack Layton, MP (Toronto – Danforth)

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~ A Community Legal Aid Clinic ~

Securing Our Retirement Future:
Consultation with Ontarians on Canada's
Retirement Income System

Submission of Injured Workers' Consultants Community Legal Clinic

Introduction

Injured Workers' Consultants is a community legal aid clinic providing advice and representation to the injured worker community without charge since 1969. In addition to legal advice and representation on individual cases, our mandate includes public legal education, community development, and submissions for law reform on matters of concern to the injured worker community.

We welcome this opportunity to comment on the government's initiative to strengthen the retirement income system, an issue important to all Ontarians. In this submission we support the proposal to increase retirement benefits by increasing the earnings replaced by the CPP.

We also take this opportunity to bring to your attention a gap in the CPP that greatly reduces the retirement income of contributors who become disabled. Our experience with workers injured in Ontario shows that the gap between the retirement benefit provisions of the provincial *Workplace Safety & Insurance Act (WSIA)* and the federal *Canada Pension Plan* often results in a drastic decline in their standard of living at retirement age.

In this submission we recommend:

- doubling the retirement pension for all contributors by increasing the earnings replaced by the CPP
- requiring workers' compensation boards to maintain contributions to the CPP for lost earnings from work related disability
- excluding all periods of disability from the contributory period of the retirement pension

Increase the Retirement Pension

The majority of injured workers in our community come from lower waged employment and smaller, non-unionized workplaces. Most have no employment pensions and little if any personal retirement savings. Past retirement savings are generally depleted before retirement as a result of financial pressures resulting from disability and lack of income support. The Ministry discussion paper notes that the average retirement pension this year is only 56% of the possible maximum retirement pension amount. It is clear that, in order to benefit most contributors, the retirement pension must be increased significantly.

As noted in the Ministry's discussion paper, increasing the CPP replacement rate from the current 25% would benefit all CPP contributors. We have had an opportunity to review the proposal of the Canadian Labour Congress which recommends a doubling of the retirement

pension plan through increased employer and employee contributions. This proposal would significantly improve the future retirement pension for many people in the injured worker community and we commend that proposal to the government.

Workers' Compensation Boards to Maintain CPP Contributions

Under the current schemes, contributors who become disabled from work end up with reduced CPP pensions at retirement age because they lose contribution years. Under the WSIA, workers suffering a loss of earnings from a workplace injury or disease receive compensation of up to 85% of net pre-injury earnings. Since their compensation is based on net earnings, i.e. after deduction of the workers' CPP contribution, injured workers on benefits continue, in effect, to 'pay for' their CPP contributions. The problem is that no money is sent by the Board to the CPP on their behalf. Years of little or no CPP contributions significantly reduces the contributor's average lifetime earnings and, in turn, the amount of the retirement pension.

The provincial Board has its own fund to pay retirement benefits, but the amount payable always falls significantly short of what the worker would have been entitled to under the CPP, but for his work disability. A contributor who suffers a wage loss due to a workplace injury or disease should receive workers' compensation for lost earnings until the age of 65. At age 65, these benefits stop and are replaced with a smaller loss of retirement income benefit. This retirement benefit is comprised of 5% of the wage loss benefit that the Board has invested in a private retirement investment fund. Compared to CPP contributions at nearly 10% of earnings and the low administration costs of a publicly administered CPP, this workers' compensation benefit could never fully compensate injured workers for their lost retirement income from the CPP. As a result, injured workers are generally left with significantly less income at retirement age.

Fred's story¹ illustrates how one falls between the cracks of the WSIA and CPP. Fred finished school at age 21 in 1966 and started working in a skilled trade. He always earned above the maximum earnings covered by the CPP. Fred would turn 65 in 2010. Based on his earnings at the maximum, he would be eligible for the maximum CPP retirement pension of about \$934 a month in 2010. But in 1991, Fred had an accident at work. He sustained a permanent injury that left him unable to continue working in his trade. The workers' compensation board recognized the injury was significant and that Fred would only be capable of part time, minimum wage jobs in the future. He received workers' compensation for 85% of his expected net loss of future earnings.²

Fred has not been making CPP contributions since his accident. He does not qualify for CPP disability benefit because he is considered capable of minimal employment. Fred tries various part time minimum wage jobs but never earns enough to make further CPP contributions. With no taxable earnings and little money left over at the end of each month, Fred has not been able to make RRSP contributions.

¹ Fred is a fictional character created for illustrative purposes but the benefit calculations use current figures under the *Canada Pension Plan* legislation.

² Cost of living adjustments under the WSIA (and regulations) for workers like Fred are partial. Over time, inflation significantly erodes the dollar value of the benefits.

Fred's CPP retirement benefit will be based on his average lifetime earnings, including the 19 years in which he was unable to make CPP contributions. He received workers compensation for the loss of earnings for those years, but not for the loss of his CPP contributions. Because he has lost 19 years of CPP contributions due to his work disability, his monthly CPP retirement pension will be about \$650 a month, a reduction of 30% from what he would have received but for his disabling workplace accident. Since Fred has no RRSPs and lost the benefit of his company pension when he was unable to return to his trade, his \$650 CPP will be his sole pension source. Loss of retirement income benefits under the WSIA do not make up for that loss.

Fred's story exemplifies how injured workers' uncompensated losses can interfere with retirement income security. Fortunately, simple legislative adjustments can go a long way towards restoring retirement income security for injured workers. For people like Fred, the best scenario would be for the WSIB to pay into the CPP an amount equivalent to the employer and employee contributions on Fred's lost wages. This was recommended by Professor Paul Weiler in a review of workers' compensation commissioned by the Ontario government: "Ideally, the direction for reform in this area would be for workers' compensation to maintain, uninterrupted, the protection of the injured worker under CPP and UIC, notwithstanding a period of absence from work due to the disability."³

At a minimum, workers' compensation boards should pay the 5% loss of retirement income amount into the CPP rather than into private investment funds. This option would not cost any more than the status quo. Injured workers would enjoy the benefits of higher CPP pensions and the security of the public system. Their retirement funds would not be subject to the higher investment fees and risks incurred in the private sector.

Excluding All Periods of Severe and Prolonged Disability from Contributory Period

Under the CPP, the retirement pension is based on average lifetime earnings during the contributory period. The retirement pension of a person who leaves the workforce before age 65 will be reduced by the inclusion of years of 'zero earnings' and no contributions in his or her average earnings calculation. However, the contributory period for the retirement pension may end early if a contributor becomes disabled within the meaning of the Plan (section 49). This ensures that the CPP does not discriminate on the basis of disability by treating contributors who develop severe and prolonged disabilities the same as people who voluntarily leave the workforce early.

However, at present, the CPP does *not* end the contributory period for all contributors who develop a severe and prolonged disability within the meaning of the CPP. The wording of the legislation permits the CPP to end the contributory period when a person becomes disabled as defined in the legislation. However, the practice is only to do this for people who actually receive the disability benefit.

³ Reshaping Workers' Compensation for Ontario, Paul C. Weiler, November 1980, a report submitted to the Minister of Labour.

Contributors to the CPP who become disabled from work injuries have faced barriers to accessing the disability benefit. One barrier was addressed two decades ago by the introduction of the late application rules for the disability benefit. Still, there remains a large group of contributors who become disabled within the meaning of the Act but do not qualify for the disability benefit: those who become disabled by progressive disabilities and deteriorating injuries.

When a person applies for the CPP Disability benefit, the CPP first decides whether the applicant has sufficient contributions as of the date of disability. If not, the application is declined and there is no consideration of the disability itself. The CPP does not decide whether the applicant is disabled unless they meet the contributory requirements.

This refusal to decide whether a person is disabled has a significant adverse effect on contributors who became disabled as a result of progressive disabilities and deteriorating injuries. For example, consider a person who is subject to the '4 of the last 6 years' contribution requirement. The person is involved in a serious accident and stops working, but the disability does not meet the definition of "severe and prolonged" under the Act at that time. The person receives medical and vocational rehabilitation and attempts to return to employment but these fail and produce an aggravation of the injuries. The condition worsens and after 3 years has deteriorated to meet the definition of "severe and prolonged." The person then applies for the Canada Pension Disability benefit but is refused because he does not have contributions for 4 of the last 6 years before he became disabled within the meaning of the Act.

If the CPP reviewed each disability benefit application in order to decide whether the person is disabled within the meaning of the CPP, it would be possible to end the contributory period even though the person does not qualify to receive a disability benefit.

At present, contributors who develop episodic, or progressive, or deteriorating disabilities suffer a triple disadvantage: they can no longer work due to their disability, they cannot receive the disability benefit due to lack of recent contributions, and their retirement pension is depleted because the contributory period continues to accumulate years of 'zero earnings' as if the contributor had voluntarily chosen early retirement. This is not a fair way to treat disabled contributors.

Periods of disability should be excluded from the contributory period for all disabled contributors, regardless of whether it is a sudden or gradual onset disability. The purpose of excluding years of disability from the contributory period is so that we do not discriminate on the basis of disability; people who cannot contribute to the CPP due to the onset of disability must not be treated the same as healthy people who choose early retirement. Fortunately, there is a simple solution to this issue. This can be achieved by simply providing a process for the CPP to make a decision on whether a contributor meets the disability criteria under the CPP, regardless of whether the person has sufficient contributions to receive a disability benefit. That way, all disabled contributors will have the benefit of shortened contributory periods that exclude years of disability and the resulting protection of their CPP retirement benefits.

Respectfully submitted this 30th day of November, 2010
Injured Workers Consultants Community Legal Clinic