

Canada Gazette

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ARCHIVED — Vol. 147, No. 26 — December 18, 2013

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Registration

SOR/2013-233 December 6, 2013

CANADA PENSION PLAN

Regulations Amending the Canada Pension Plan Regulations

P.C. 2013-1335 December 5, 2013

Whereas the Minister of National Revenue, on behalf of the Government of Canada, entered into an agreement with the Government of Ontario on February 10, 2012 to exempt certain employment by Her Majesty in right of Ontario or Her agents from pensionable employment under the *Canada Pension Plan* ([see footnote a](#));

Therefore, His Excellency the Governor General in Council, on the recommendation of the Minister of National Revenue, pursuant to paragraph 7(1)(e) and subsection 40(1) ([see footnote b](#)) of the *Canada Pension Plan* ([see footnote c](#)), makes the annexed *Regulations Amending the Canada Pension Plan Regulations*.

REGULATIONS AMENDING THE CANADA PENSION PLAN REGULATIONS

AMENDMENT

1. Item 1 of Schedule IV to the *Canada Pension Plan Regulations* ([see footnote 1](#)) is replaced by the following:

1. *Province of Ontario*

(a) Employment as a judge appointed by the Government of Canada.

(b) Employment by appointment of Her Majesty in right of Ontario, or of an agent of Her Majesty in right of Ontario, as a member of an agency, board, commission, committee or other incorporated or unincorporated body, who is paid fees or other remuneration on a per diem basis, or a retainer or honorarium, and who is not in the full-time employment of Her Majesty in right of Ontario or of an agent of Her Majesty in right of Ontario.

COMING INTO FORCE

2. These Regulations come into force on the day on which they are registered.

REGULATORY IMPACT ANALYSIS STATEMENT

(This statement is not part of the Regulations.)

Issue

The *Canada Pension Plan Regulations* (CPP Regulations) provide that employment by a province (other than Quebec) or by an agent of a province (other than Quebec) is included in pensionable employment except where that employment is specified in Schedule IV to the CPP Regulations. The province of Quebec is not included because it administers its own provincial pension plan.

Schedule IV to the CPP Regulations currently lists, as exempted employment (i.e. employment in respect of which contributions are not required under the Canada Pension Plan [CPP] legislation), various types of employment of part-time, Crown-appointed members of boards, commissions, authorities, or unincorporated bodies for all provinces (except Ontario and Prince Edward Island), or their agents, that participate in the Plan. Ontario had interpreted the term "fixed or ascertainable" used in the CPP legislation as meaning that part-time Crown appointees were not considered to be "officers" for purposes of the CPP legislation. Accordingly, the employment of these individuals was not considered by Ontario as being pensionable employment, and these individuals did not accrue benefits under the Plan.

Recent court decisions have given clearer direction as to whether per diem fees and similar remuneration meet the "ascertainable" test and have maintained that unless the part-time employment of Crown appointees is listed in Schedule IV to the CPP Regulations, that employment will be pensionable. At the same time, the Government of Ontario has requested that Schedule IV be amended to describe the types of employment that are to be exempted employment.

Objectives

- Respond to the request of the Government of Ontario.
- Implement the agreement between the Government of Ontario and the Government of Canada.
- Align the pension treatment of Ontario part-time Crown appointees with other provincial part-time Crown appointees.

Description

Schedule IV to the CPP Regulations is amended to add a description of the types of employment that the Government of Ontario has requested be exempted from pensionable employment. The types of employment relate to individuals who are employed by appointment of Her Majesty in right of Ontario or of one of her agents as part-time members of an agency, board, commission, committee or other incorporated or unincorporated body and who are paid fees or other remuneration on a per-day basis, or are in receipt of a retainer or honorarium.

The amended Regulations would come into force on the day on which they are registered.

"One-for-One" Rule

The "One-for-One" Rule does not apply to this proposal, as there is no change in administrative costs to business.

Small business lens

The small business lens does not apply to this proposal, as there are no incremental costs imposed on small business.

Rationale

The Minister of National Revenue entered into an agreement on behalf of the Government of Canada with the Government of Ontario, whereby the Minister would recommend to her colleagues in Cabinet that Schedule IV to the CPP Regulations be amended to exempt the employment of approximately 4 000 part-time, provincial appointees from pensionable employment. Since Ontario and its agents have always considered these individuals to be in employment that is not pensionable, the amendment codifies an existing practice.

Amending Schedule IV to the CPP Regulations to exempt from pensionable employment the employment of persons appointed by the government of Ontario or by one of its agents to employment described in the Schedule will ensure that the treatment of these persons aligns with that of others appointed to similar positions in other provinces.

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Footnote a

R.S., c. C-8

Footnote b

S.C. 2004, c. 22, s. 19

Footnote c

R.S., c. C-8

Footnote 1

C.R.C., c. 385

Date modified: 2013-12-1

