



Report on the Exclusion of Part-Time and Per Diem Order-In-Council Appointees from the Canada Pension Plan

Introduction

The Society of Ontario Adjudicators and Regulators (“SOAR”) is a volunteer organization consisting of chairs, members and staff of the adjudicative and regulatory agencies and tribunals of the Province of Ontario.

This report outlines concerns in relation to the exclusion from participation in the Canada Pension Plan (“CPP”) of individuals who are appointed to certain boards and tribunals by Order-in-Council (“OIC”) on a part-time, or per diem, basis.

The Regulation preventing part-time and per diem OICs from making CPP contributions will mean that unless there is other pensionable income, the part-time and per diem employee will lose entitlement to CPP disability benefits.

Unless a person earns at least \$54,900 in other, pensionable employment, part-time or per diem OICs will see reduced CPP benefits at retirement. The effect on the value of a retirement income could be more than \$75,000 over a 20 year retirement period.

The Regulation disproportionately affects those who have had no pensionable employment because of child rearing responsibilities. Since women are more likely to take time from paid employment for child rearing, the Regulation disproportionately affects women.

There is also a disproportionate effect on younger people who have contributed to CPP for fewer than 25 years in previous employment.

Change in employment status

Until 2014, part-time and per diem OIC appointees were considered to be self-employed for the purposes of income tax. They contributed to CPP, paying both the employer and the employee contributions.

In 2014, in response to some court decisions, the Ontario government determined that, effective January 1, 2014, part-time OIC appointees would be considered to be

employees. As employees, these individuals can no longer make contributions to CPP as self-employed individuals.

In the ordinary course, this would not be an issue, since in Canada, employers and employees both contribute to CPP with respect to income from employment.

Regulation excluding part-time and per diem appointees from CPP

At the same time as the determination that part-time and per diem appointees are employees and not self-employed, Ontario asked the Federal Government to exclude part-time and per diem appointees from the CPP.

Under Schedule IV of the *Canada Pension Plan Regulations*, CRC, c 385, the following employment is exempt from contributing to CPP:

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.

As a result, income received by part-time OIC appointees is not pensionable employment for the purpose of the CPP. Since contribution by the appointees personally cannot be made, unless the appointee has other pensionable income, the appointee is completely excluded from CPP.

Who is affected?

According to a “Regulatory Impact Analysis Statement” issued by the *Canada Revenue Agency* at the time of the change to the Regulation, the change affected *approximately 4,000 part-time and per diem provincial appointees*.

Some provincial appointees derive relatively small amounts of income from that work and they typically have income from other employment that is pensionable. The change has minimal or no impact on these people.

The people who are directly and significantly impacted by the change are those who derive most or all of their income from their OIC appointment.

There are a number of tribunals that use per diem appointees to do much of the adjudicative or regulatory work of the tribunal. In some cases, all of this work is done by

per diem appointees. Although classified as “part-time” appointees, many work on a *full-time basis*.

Loss of entitlement to CPP disability benefits

A person who becomes disabled and unable to work can apply for a CPP disability pension. However, eligibility is contingent on having made contributions in the time before the disability.

If the person has contributed to CPP for 25 years or more, the person must have contributions in three of the last six years to be eligible for a CPP disability pension.

If the person has fewer than 25 years of contributions, the person must have contributed to the CPP in four of the last six years.

If a part-time or per diem OIC appointee has a ten-year appointment and does not have other income, the person becomes ineligible for a CPP disability pension either three or four years after the start of the appointment. Since the formula favours older people (who have already contributed for more than 25 years) the impact is particularly disadvantageous for younger appointees.

Drop out provisions

The value of a CPP retirement pension is based on contributions from pensionable employment from age 18 to age 65 or an earlier age if the person elects to retire before age 65. The pension is calculated on the basis of the best 39 years of contributions.

The Plan features drop out provisions. A general drop out provision can remove the lowest 17% years of contributions. If, for example, a person retires at age 65, the pension will be calculated on the contributions in the 47 years between age 19 and 65. The lowest 8 years (17% of 47) can be dropped out from the calculation, resulting in a higher pension. For part-time and per diem OICs, the general drop out would typically be used to drop out years of post-secondary education, which would usually feature a time of low earnings. If the individual obtained a law degree, there could be 8 years of low earnings, which would account for the entire available drop out period.

A person who had low or no contributions in earlier employment may not be able to drop out those years if the person has a ten year appointment as a part-time or per diem appointee with no contributions. As a result, the value of the retirement pension may be significantly reduced.

There is also a child-rearing drop out provision, allowing years in which a person was not employed and raising children to be dropped out of the calculation. However, use of this drop out reduces the amount that can be used for the general drop out provision.

Since women are more likely to have years of no CPP contributions because of child rearing, the provisions may disproportionately affect women.

Examples of loss of retirement income

The impact of the Regulation on a part-time or per diem appointee will vary depending on the person's age, whether retirement is at age 65 or earlier, whether there is a child-rearing drop out, the amount of contributions when the person did have pensionable employment, and whether the person has pensionable employment in addition to employment as part-time or per diem OIC, and the amount of the other income.

We retained Mr. Doug Runchey of DR Pensions Consulting to assess the impact on two current per diem employees. The assessment assumed that each person would have a ten-year appointment with no concurrent pensionable employment, and that they would apply for a CPP retirement pension at age 65, and that they would collect that pension for twenty years. The detailed assessments are appendices to this report.

Mr. Runchey found that one of the individuals will experience a loss of *approximately \$77,000 over the twenty year retirement period. The second individual will experience a loss of approximately \$78,000.*

The Public Interest

The work done by part-time and per diem appointees to Ontario's tribunals, boards and agencies perform work that can have an enormous impact on the lives of those who appear before those organizations. It is obvious that there is a public interest in ensuring that highly qualified people are available to serve as OIC appointees.

The disqualification of part-time and per diem OICs from the CPP provides a significant disincentive to anyone considering applying for such a position if the position will mean that they have little or no pensionable employment.

Because of important conflict of interest considerations, an appointment as an OIC may preclude other employment in the area in which the individual has expertise.

Many SOAR members have expressed their concerns over the exclusion from CPP coverage and benefits, including those who have resigned their appointment, or are

considering doing so, because of the impact of the exclusion. We have heard from others who have decided to not pursue an appointment because of this issue.

Some appointees are interested in part-time per diem employment because, for various reasons including parenting responsibilities, they are only available for part-time employment. A part-time appointment can provide an important life-work balance. However, the value of that advantage may be undermined if the employment is exempt from CPP.

The overall situation is further aggravated by the fact that unlike other employees of the Ontario Public Service, part-time and per diem employees are also excluded from employer sponsored pension plans such as the Ontario Pension Board plan. They are also of course excluded from all other benefits that other employees are entitled to, including health care benefits. Most are also excluded from participation in the Employment Insurance plan.

The government of Ontario has recognized that retirement based only on CPP is inadequate. It has created the Ontario Retirement Pension Plan, which is designed to help Ontario workers retire with greater financial security.

The exemption by Ontario of its own employees from CPP, and the resultant loss of CPP retirement income, is clearly at odds with this important initiative.

As we have noted, the exemption is particularly disadvantageous to women, who are more likely to have taken time from pensionable employment for child-rearing.

Apart from retirement income, a CPP disability pension is an important part of the social income system in Canada. Depriving people who have accepted a public appointment of entitlement to a disability pension is clearly not in the public interest. As we have noted, the impact in this regard is particularly disadvantageous to younger workers.

Other Provinces

We understand that one justification for the Province's request for the change to the CPP Regulation to deny access to CPP for part-time and per diem employees is that other provinces have made similar requests and that the change brings Ontario into line with the other provinces.

On this point, we note that the provisions for the other provinces are not uniform. Some exclude all employment that involves payment of a per diem. Others exclude employment only with specified boards or tribunals.

In addition, the circumstances for Ontario may be different than for other provinces. In Ontario, as we have noted, there are tribunals that utilize part-time or per diem appointees to do the bulk of, or significant amounts, of the work of the Tribunal.

Possible solutions

The most principled solution is to request that the federal government amend the Regulation to the CPP Act to remove the exemption from CPP for part-time and per diem employees.

Alternatively, it may be possible to develop a formula or system so that individuals who earn most or all of their income from their part-time or per diem OIC are not exempt from contributing to CPP, even if most part-time or per diem employees are exempt.

As this is a matter of significant concern to some of our members, we respectfully request that the Ontario government review the Regulation to the CPP to address the inequity that has resulted from the exemption of CPP from part-time and per diem employment of government appointees.

Submitted to the SOAR Board of Directors by the Advocacy and Innovation Committee

Approved by the SOAR Board of Directors, April 2016