



August 7, 2009

The Hon. James M. Flaherty, P.C., M.P.
Minister of Finance
Department of Finance Canada
140 O'Connor Street
Ottawa, ON K1A 0G5

Dear Minister,

Re: Pre-funding post-retirement benefits

I am writing on behalf of the National Pension and Benefits Law Section of the Canadian Bar Association (CBA Section) to urge you to consider a more tax effective way for employers to pre-fund post-retirement health and welfare benefits (PRBs). The CBA is a national association of over 37,000 members, and our mandate includes improvement in the law and the administration of justice. The CBA Section includes approximately 600 lawyers from across the country practising different aspects of pension and benefits law.

The CBA Section is concerned by the general inability of organizations in Canada to pre-fund PRBs in a tax effective manner, particularly given existing constraints under the *Income Tax Act* (Canada) (ITA) and the administrative policies of the Canada Revenue Agency with respect to health and welfare trusts that militate against pre-funding. ITA amendments are required, and for policy reasons, tax effective pre-funding of PRBs should be available to all employers and not limited to any particular sector.

Some factors that call for immediate attention to the issue include:

- increasing costs of PRBs, in part driven by rising health care costs combined with the erosion of provincial medicare coverage;
- changes to accounting rules requiring disclosure of liabilities with respect to PRB obligations;
- increasing number of retirees;
- limited options to discharge PRB obligations, especially in contrast to pension benefits which can, for example, be annuitized;
- negative impact of PRB obligations on the ongoing operations of industries facing economic challenges (e.g. manufacturing); and

- need for a more level playing field with employers in the United States, who can reduce the costs and accounting impact of PRB liabilities through the establishment of Voluntary Employees' Beneficiary Associations (VEBA).

Employers' inability to pre-fund for PRBs in a tax effective manner has already led to organizations amending or even terminating their PRB plans to manage costs and accounting liabilities. The amendment or termination of PRB plans will have negative implications for current and future retirees and may lead to costly and time-consuming litigation.

The CBA Section would be pleased to be involved in any consultations you may arrange in connection with this issue, and to provide written comments on any proposed changes to the ITA to address the funding of health and welfare benefits.
Thank you for considering our views.

Yours truly,

(Original signed by Gaylene Schellenberg for Barbara Austin)

Barbara Austin
Chair, National Pension and Benefits Law Section