

Case In Point

Federal Court of Appeal Interpretation Stands: Remuneration of Office-Holders Pensionable for CPP Purposes

Date: October 17, 2012

On October 4, 2012, the Supreme Court of Canada denied leave to appeal from the Federal Court of Appeal's decision in [Minister of National Revenue and Real Estate Council of Alberta](#) ("RECA"), and in doing so has helped to clarify how certain amounts paid to board members, council members and office-holders are to be treated for the purposes of the *Canada Pension Plan* ("CPP").

In RECA, the issue was the CPP treatment of meeting attendance fees paid to a member of the Real Estate Council of Alberta. The fees paid to the member were made in accordance with a fee schedule based on attendance at Council and committee meetings. CPP contributions were not made on these payments.

The Minister of National Revenue determined that the fees were in fact subject to CPP contributions and the Council appealed. At the Tax Court of Canada ("TCC"), the issue was whether the remuneration paid to the member in her capacity as an office-holder, not an employee, was captured by the CPP. It held that the meeting fees paid to the member were not fixed or ascertainable because earnings for a year could not be calculated in advance. The TCC concluded that, given the definition of 'office' in the CPP, the fees were not pensionable or subject to CPP contributions. (For a detailed summary of this TCC decision, see our *FTR Now* of March 8, 2011, "[Remuneration of Office-Holders May Not Be Pensionable For CPP Purposes](#).")

The Federal Court of Appeal overturned this decision, finding that it was "on all fours" with [Canada v. Ontario](#), which held that those "who hold a position and are given a *per diem* payment are given a "fixed or ascertainable stipend or remuneration" within the meaning of the subsections" in the CPP. The Court stated that the member "was in a position for pay. If there were no tasks for her to perform in a year, she would not be paid in that year. But that takes nothing away from the fact her position was a position for pay." The Minister's assessment for the taxation years in question was restored.

The RECA and *Canada v. Ontario* decisions clarify that CPP contributions are generally required on fees and other compensatory amounts paid to board members, council members and office-holders. This will be the case even if the amounts to be paid in a year cannot be determined in advance.

See our *FTR Now* dated January 26, 2012, "[Federal Court of Appeal Interprets Term "Fixed or Ascertainable" for CPP Purposes](#)" for a detailed discussion of the *Canada v. Ontario* decision.