

Radar

February 4, 2016

The Radar is published weekly. Content in this issue is current to February 4, 2016.

In this issue

- 1 A Message from the Editor
- 1 General
- 3 Retirement & Investment

A Message from the Editor

There are no key items of concern to highlight this week.

General

New Brunswick – Budget - HST

On February 2, 2016, New Brunswick released its 2016-2017 Budget. Among other measures, the Budget announced an increase to the Harmonized Sales Tax (HST).

Effective July 1, 2016, the provincial portion of the HST rate will increase by two percentage points, from 8% to 10%, raising the joint federal-provincial HST rate from 13% to 15%.

To lessen the impact of the HST increase, a refundable provincial HST credit of \$300 for individuals, \$300 for spouse or equivalent, and \$100 per child under the age of 19, will be provided. Single parent families will receive a \$300 credit for their first child. The full HST credit will be provided to New Brunswickers with a family income of less than \$35,000 per year. The credit will be reduced by two cents for every dollar of income above \$35,000. This will mean that individuals with incomes of less than \$50,000, or a family of two adults and two children with incomes of less than \$75,000, could receive some benefit from the HST credit.

Source: [2016-2017 Budget](#)

Ontario – Termination - Dependent Contractor

On January 27, 2016, the Ontario Court of Appeal released its decision in *Keenan v. Canac Kitchens Ltd.*

Among other matters, the case looks at the use of “exclusivity” to determine if a person is a dependent or independent contractor. Is exclusivity to be determined at, or about, the time of termination of the business/employment relationship?

The plaintiffs had worked full-time for the defendant (the “Company”) beginning in 1976 and 1983 respectively. They continued as fulltime employees until October 1987 when they were called into a meeting and told that they would carry on their work as contractors.

The plaintiffs were to be paid, as before, on a piece work basis but the amount would be increased to reflect the fact that they were paid in gross, without deductions for income taxes, employment insurance and CPP. Shortly after the 1987 meeting, the plaintiffs were presented with a draft agreement, which reflected the new arrangements and which had already been signed by the Company. Only one of the plaintiffs signed the agreement and she did not obtain independent legal advice before she signed. The agreements required the plaintiffs, as “sub-contractors” of the Company, to devote “full-time and attention” to the Company.

At that time, the plaintiffs also received records of employment which showed that the reason for issuance was that they had quit their jobs with the Company. The plaintiffs never incorporated; they carried on business together as a sole proprietorship.

For all intents and purposes, after the 1987 meeting, the plaintiffs’ working relationship with the Company and their duties remained unaltered. The plaintiffs considered themselves loyal employees of the Company. They continued to enjoy employee discounts, wore shirts with the Company logo, and used Company business cards. One of the employees received a signet ring for 20 years of loyal service. The trial judge determined that to the outside world, and in particular, to the Company’s customers, the plaintiffs were representatives of the Company.

With the exception of some weekend jobs and work for friends and family, the plaintiffs continued to work exclusively for the Company until the end of 2006. Beginning in 2007, the plaintiffs started to do some work for a competitor; they did so because the work from the Company had slowed down. The trial judge found that the Company had turned a “blind eye” to the work that the plaintiffs performed for the competitor. The trial judge found that, despite taking on work for the competitor, a “substantial majority” of the plaintiffs’ work continued to be done for the Company. The plaintiffs’ relationship with the Company ended in March 2009.

The trial judge found that the plaintiffs were economically dependent on the Company due to the fact that they worked “exclusively” for the Company or at a high level of exclusivity. Therefore, the trial judge found that they were dependent contractors and entitled to reasonable notice on termination.

On appeal, the Company argued that the plaintiffs did not work “exclusively” for the Company in the approximately two-year period immediately preceding termination and, therefore, that the trial judge erred in finding that the plaintiffs were dependent contractors.

The Court of Appeal determined that “exclusivity” cannot be determined on a “snapshot” approach because it is integrally tied to the question of economic dependency. Therefore, a determination of exclusivity must involve a consideration of the full history of the relationship.

Of the respective 32 and 25 years of service that the plaintiffs worked for the Company, in all but two of those years they exclusively served the Company. With this history of the work relationship between the parties in mind, the Court of Appeal found no fault in the trial judge’s finding of the requisite high degree of exclusivity.

Source: [Keenan v. Canac Kitchens Ltd.](#)

Retirement & Investment

Ontario – Asset Transfers - MEPPs

On February 2, 2016, the Ontario Ministry of Finance released draft amendments to *O. Reg. 310/13* relating to asset transfers under sections 80 and 81 of the *Pension Benefits Act* (PBA).

The proposed amendments would allow recent amendments to the PBA (pursuant to Bill 144) to come into effect. The amendments to the PBA allow the existing rules that apply to single employer pension plans (SEPPs) in circumstances of a merger to apply also to multi-employer pension plans (MEPPs).

Comments can be submitted until March 21, 2016.

Source: [Amendments to O. Reg. 310/13: Asset Transfers under Sections 80 and 81 of the Pension Benefits Act \(PBA\)](#)

Contact Information

If you would like further information on any of these topics, please contact your Aon Hewitt consultant at info@aonhewitt.com.

The Aon Hewitt Radar is provided for information purposes only and should not be relied upon as legal advice or opinion.

About Aon Hewitt

Aon Hewitt empowers organizations and individuals to secure a better future through innovative talent, retirement and health solutions. We advise, design and execute a wide range of solutions that enable clients to cultivate talent to drive organizational and personal performance and growth, navigate retirement risk while providing new levels of financial security, and redefine health solutions for greater choice, affordability and wellness. Aon Hewitt is the global leader in human resource solutions, with over 35,000 professionals in 90 countries serving more than 20,000 clients worldwide across 100+ solutions. For more information on Aon Hewitt, please visit aonhewitt.com.

© 2016 Aon Hewitt Inc. All Rights Reserved.

This document contains confidential information and trade secrets protected by copyrights owned by Aon Hewitt. The document is intended to remain strictly confidential and to be used only for your internal needs and only for the purpose for which it was initially created by Aon Hewitt. No part of this document may be disclosed to any third party or reproduced by any means without the prior written consent of Aon Hewitt.