

Employment and Labour seminar

Do you sponsor a Group RRSP or defined
contribution pension plan?

Beware of “estimates” that your provider wants to
give your employees.

June 10, 2016

Toronto, Ontario, Canada

Mary Picard
Partner
Dentons Canada LLP
Tel: (416) 863-4469
Email: mary.picard@dentons.com

Aiwen Xu
Associate
Dentons Canada LLP
Tel: (416) 863-4395
Email: aiwen.xu@dentons.com

Approach To DC 'All Wrong'

The approach to help defined contribution pension plan members save for retirement is “all wrong,” says Marlena Lee, vice-president, research, at Dimensional Fund Advisors. In the session ‘Managing Retirement Income Uncertainty: Our Approach to the Retirement Problem’ at its Toronto investment event, she said the industry needs to start thinking about monthly income in retirement, not net worth. She said it is more natural for people to think in terms of income – how much they need to cover monthly expenses. However, if income is the goal, current tools don't go far enough to have a fully integrated investment solution. Income calculators, for example, determine wealth accumulated and the majority of investment options are still focused on maximizing wealth, rather than income. The bottom line, she said, is the uncertainty of income is not managed and without managing projected income uncertainty, participants cannot effectively plan and take actions to improve their retirement situation.

THE POINT:

a watch-out regarding employee retirement and savings plans:

employers are legally liable for what their service providers tell their employees

if you're an employer who provides a capital accumulation plan of any kind:

Don't let your service providers tell your employees what they guess the employees will be getting from their account in future

OR . . . Think very seriously and get legal advice if you're going to let them do it

What does this apply to?

- Group RRSP (group registered retirement savings plan)
- defined contribution registered pension plan
- TFSA (tax free savings account)
- DPSP (deferred profit sharing plan)
- Non-registered plan

All of these are capital accumulation plans – similar to a bank account where contributions and investment growth accumulate.

This presentation has nothing to do with defined benefit pension plans.

Communicating the value of a retirement savings plan to employees

Who's the “provider”?

- Sun Life
- Manulife
- Great-West Life
- Industrial Alliance
- banks
- credit unions

OLD WORLD:

The provider makes “tools” available so that employees can take action to press buttons, input information and actively control the “modelling” to come up with estimates of what their accounts will look like in future. If they don't make a decision to use those “tools”, they aren't given any estimates.

New world:

The provider unilaterally tells the employees how much they estimate the employees will get in future. The provider is giving an estimate with no inputs whatsoever and no action by employees.

The new world is that not a tool that has been provided. It's a unilateral communication from the provider.

New world example: Manulife

Manulife Financial
For your future™



John Brown
123 Any Street
Anytown ON
A1A 2B2



Annual report: Looking ahead to your retirement

January 1, 2013 to December 31, 2013

ABC Company Limited

John Brown

The current value of your account is **\$10,796.30**. If you continue your average monthly contributions until you retire at age 65, your estimated income during your retirement will be **\$39,500*** each year.

\$39,500

?
What's your
retirement
income goal?

Your estimated
annual retirement
income

Your annual
retirement income
goal

To set your retirement income goal, login to your account at www.manulife.ca/GRO and choose "Steps Retirement Program". You can try different retirement income projections and get more details about this calculation.

Your estimated annual retirement income is based on the following information:

- Your Manulife group savings \$10,796
- Average monthly contribution to your Manulife group plans for the last 12 months \$250
- Retirement age 65
- Estimated rate of return 5.01%
- Estimated total accumulated savings at retirement \$300,000

*Your estimated income at retirement is expressed in today's dollars. It is an estimate of how much your future annual income would be worth today. Your estimated annual retirement income is an illustration only, not a guarantee of what you will have when you reach retirement age. Your actual retirement income may be higher or lower, depending on the performance of your investments. Neither Manulife, nor any of its agents, employees, or representatives are providing legal, tax, or investment advice. All contributions are subject to plan and legislative limits.

Your customer number
123456789

Plan you are a member of
Group Savings Plan

Important information

- ▶ Your money is being invested in the **default investments** for your plan. See the section *Your investments by asset class* on page 3 for details.
- ▶ You have not yet designated a beneficiary. You can do so by downloading the Change Form at www.manulife.ca/GRO or by contacting Manulife Financial.

We can help

Contact your plan's advisor
Jonathan Smith
J.S. Consulting Inc.
1-800-123-4567
jsmith@jconsulting.com

Contact us
1-888-727-7766
gromail@manulife.com
www.manulife.ca/GRO

John Brown

The Current value of your account is **\$10,796.30**. If you continue your average monthly contributions until you retire at age 65, your estimated income during your retirement will be **\$39,500*** each year.

*Your estimated income at retirement is expressed in today's dollars. It is an estimate of how much your future annual income would be worth today.



Your estimated annual retirement income is an illustration only, not a guarantee of what you will have when you reach retirement age. Your actual retirement income may be higher or lower, depending on the performance of your investments. Neither Manulife, nor any of its agents, employees, or representatives are providing legal, tax, or investment advice. All contributions are subject to plan and legislative limits.

New world example: Sun Life

March 21, 2016

Providing estimated annual income improves the member experience

The Retirement Planner is an important tool, helping members understand whether they are on track to meet their retirement income goals. Providing a plan member's current annual income information improves the member experience by making it possible for Sun Life to show a member's estimated income replacement rate and their progress towards a retirement income goal on the **my financial centre** section of the member site, even if the member has not completed the Retirement Planner.

If we have the member's salary	If we don't have the member's salary
<div> Will I have enough to retire? 🤔 As of 03 Mar 2016</div> <div><p>\$3,790 Estimated monthly income at retirement</p><p>65% Estimate of current income replaced at retirement</p><p>Your income in retirement</p><div><div></div><div>➤ Your goal - \$4,670 🤔</div><div>➤ You are here - \$3,790 🤔</div></div><p>Click to view my retirement plan</p><p>Retirement Planner</p></div>	<div> Will I have enough to retire? 🤔 As of 03 Mar 2016</div> <div><p>\$2,310 Estimated monthly income at retirement</p><p>Click to view my retirement plan</p><p>Retirement Planner</p></div>

Annual income estimates also feed to the payroll module of MAX Review when a campaign is run. Members will be able to clearly see the effect of contribution amounts on their pay and the percentage of company matching funds they're receiving. This easily understood, personally relevant online experience will greatly enhance the MAX Review experience year after year.

New world: Sun Life (cont'd)

- 2 -

What options do plan sponsors have for providing estimated annual income information?

Plan sponsors are now able to provide this information within a standard demographic file. The 'Upload a salary file' feature on the plan sponsor website can also be used for plans that make the Retirement Planner available to their members.

Plan Sponsors have the flexibility with either option to provide the estimated annual income information that makes sense for their members when used in member tools or for targeted communications. Both options also allow plan sponsors to provide defined benefit plan information, if applicable, providing members with a more accurate income replacement rate.

The 'Upload a salary file' feature on the sponsor site can be used anytime to update member information, and the file uploaded can include all members or just a subset, as needed.

Questions about providing estimated annual income information?

Contact your Sun Life Financial Group Retirement Services representative.

Old world: what did it look like?

- Provider sends email alerts to encourage employees to use the provider's tools – asset allocation tools and retirement planner tools
- The email can be configured to go to members of the plan who have not used those tools in the last year, for example
- Providers have the ability to target emails to plan members who start using the tool but did not complete it within 14 days (etc.)



ARE YOU RETIREMENT READY?

Whether retirement is around the corner or decades away, creating a plan for your financial future has never been easier.

The **Retirement Planner** is a smart, simple online calculator that helps you get a clear picture of your progress toward your retirement goals.

In a few easy steps you can determine:

- how much income you may have every month when you retire,
- if you're on track to meet your retirement goals, and
- create an action plan to achieve your goals.

GETTING STARTED

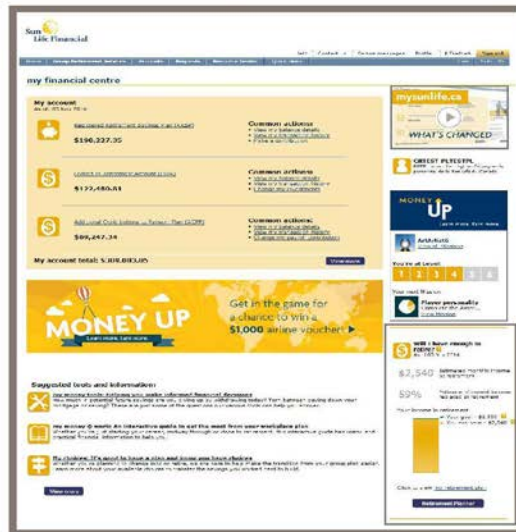
IT'S SIMPLE TO DO:

Log in to **mysunlife.ca** with your access ID and password

Click the **my financial centre** link under **my financial future**, then click the **Retirement Planner** button in the *Will I have enough to retire?* section on **my financial centre**.

Retirement Planner opens in a separate window – like all the online tools – so you never lose your place on the site.

When you save this data and close the tool, the results are reflected on **my financial centre** in real-time – so you will always be aware of your progress.



Life's brighter under the sun

HERE'S THE INFORMATION YOU NEED HANDY TO COMPLETE THE RETIREMENT PLANNER:

- your current salary,
- your balances and any contributions for all of your registered and non-registered savings accounts held outside of Sun Life Financial, and
- expected income from other sources.

LOOKING FOR MORE DETAIL?

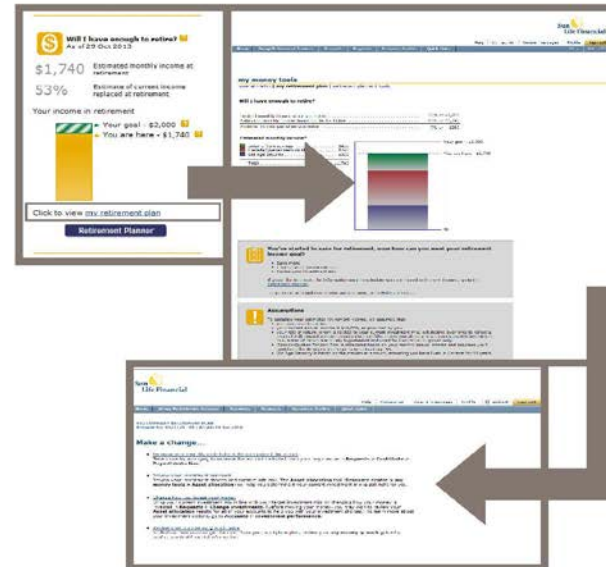
Just above the **Retirement Planner** button is a link to the *my retirement plan* page. When you access this page from this link or from the *my money tools* section – you'll see a bar graph with a more detailed breakdown of:

- the sources for your estimated monthly retirement income, and
- the key assumptions used to calculate this information.

Want to change something? There are links to the **Retirement Planner** and the *make a change* page where you can see the various actions you can take to move you closer to your retirement goals.

ALREADY COMPLETED THE RETIREMENT PLANNER?

Remember to check back periodically to update your information and assess whether the information you have provided is still correct for your current situation.



LIVE YOUR RETIREMENT THE WAY YOU'VE PLANNED

You can access the **Retirement Planner** on mysunlife.ca directly from *my financial centre* or from *my money tools* (under *My suggested tools and information* or from the top navigation menu: *Resource Centre* → *my money tools*).

DON'T HAVE YOUR ACCESS ID OR PASSWORD?


Sign in to mysunlife.ca using your account number (see your welcome letter or your statement for this number) and select **Register now**.

- Forgot your access ID? Select **I forgot my access ID**.
- Forgot your password? Select **I forgot my password**.

KNOW YOUR RESPONSIBILITIES

As a member of a group plan, you're responsible for making investment decisions and for using the tools and information that have been provided to help you make these decisions. You should also decide if seeking investment advice from a qualified individual makes sense for you.

Group Retirement Services are provided by Sun Life Assurance Company of Canada, a member of the Sun Life Financial group of companies.



Account number: 98765123456789

1

For the period January 1 to December 31, 2010

How the value of my plans changed this period

Value of my plans on January 1, 2010	\$10,873.91
My contributions	\$8,23.25
My employer's contributions	\$420.00
Withdrawals from my plans	-\$50.00
Fees	-\$25.00
My investment gains and losses	\$3703.32
Value of my plans on December 31, 2010	\$123,043.48


Personal rates of return for my plans

3 MONTH	YEAR-TO-DATE	1 YEAR	3 YEAR	5 YEAR	SINCE SEPT. 30, 2001
2.39%	9.54%	9.54%	9.82%	11.54%	12.28%

Your personal rates of return are net of management fees. For more information on how we calculate your personal rates of return, please see the glossary on page 11 or sign in to your account at [mysunlife.ca](#).

My plans and their values

Defined Contribution Pension Plan	\$101,052.52
Registered Retirement Savings Plan	\$3986.73
Tax-Free Savings Account	\$8,004.23
Value of my plans on December 31, 2010	\$123,043.48



For more information

- Sign in to [mysunlife.ca](#)
- Call Sun Life Financial at 1 866 733-802

What's inside

- Details of my plans 2
- Performance of funds and fees 7
- My financial future 8
- Information I should know 10
- Glossary of terms 11

TIP

Welcome to Sun Life Financial

Review this easy-to-read format of your statement for an overview of your account and other important information about your plan.





ABC Company Retirement Program

My Defined Contribution Pension Plan (DCPP)

TIP

What is vesting?

The term vesting refers to the amount of your employer's contributions that you own and have rights to if you were, for example, to leave your company. For more details, see the Glossary.



Retiring soon?

John, you'll soon be eligible to start receiving our pension from the ABC Company Retirement Program. Call Sun Life Financial's Retirement Specialists at 1-866-733-8822 to learn more.

2

My Defined Contribution Pension Plan profile

TIP

Overview of your Detailed Plan Information

On the next few pages you will find an overview for each plan covering how much money you have, how your investments are performing, and important information about your plan.

Plan registration number	9999999
Where registered	Ontario
Province of employment	Ontario
My beneficiary	JANE SAMPLE SPOUSE, spouse (100%)
My spouse	JANE SAMPLE SPOUSE
My vesting status	100% vested
Funds locked in	\$10,052.52
Funds not locked in	\$0.00
My important dates	
Birth date	September 27, 1960
Date I started my employment	January 15, 1999
Date I joined the plan	September 1, 2001
Vesting date	September 1, 2008
Normal retirement date	September 30, 2025
Earliest retirement date	September 30, 2015

How my Defined Contribution Pension Plan's value changed this period

Value of my Defined Contribution Pension Plan on January 1, 2010	\$98108.25
My contributions	\$1,000.00
Member required: \$940.00	
Member voluntary: \$160.00	
My employer's contributions	\$420.00
Employer required: \$420.00	
Fees	-\$263.43
My investment gains and losses	\$1,524.27
Value of my Defined Contribution Pension Plan on December 31, 2010	\$101,052.52

Use online tools to reach your investment goals

As an added-value to members, Sun Life Financial's Plan Member Services website offers free online tools to help you with your investment goals. Take advantage of the retirement and financial planning calculators to plan your investment future. You can also use the asset allocation and retirement planner tools to find out your investment personality and determine your future retirement savings. Sign in to mysunlife.ca with your access ID and password and click on my money tools under the Resource Centre drop down menu.

My retirement goal

Planned retirement year..... 2015
Retirement lifestyle..... \$10,000 per year
Retirement lifestyle completion date..... September 30, 2010

Lifestyle goal comparison

Required assets to support retirement lifestyle..... \$975,000
Estimated assets at retirement..... \$850,000
Estimated shortfall of assets..... \$125,000

The estimated shortfall of assets represents the gap between what you should have to provide for your retirement lifestyle and the estimate of what you will have at retirement based on your assets and future savings.

Note: The information is based on details you provided when completing the retirement planner. Sign in to mysunlife.ca to review your results, see the assumptions made in these calculations, and redo the tool if your situation has changed since the last time you saved your results on September 20, 2010.

At your current savings rate, your goal is out of reach.



Use online tools to reach your investment goals

As an added value to members, Sun Life Financial's Plan Member Services website offers free online tools to help you with your investment goals. Take advantage of the retirement and financial planning calculators to plan your investment future. You can also use asset allocation and retirement planner tools to find out your investment personality and determine your future retirement savings. Sign in to mysunlife.ca with your access ID and password and click on **my money tools** under the **Resource Centre** drop down menu.

Note: The information is based on details you provided when completing the retirement planner. Sign in to mysunlife.ca to review your results, see the assumptions made in these calculations, and redo the tool if your situation has changed since the last time you saved your results on September 20, 2010.

3

About my plans

Review our privacy policy

Your privacy is important to us. We may leverage our strengths in our worldwide operations and in our negotiated relationships with third party providers to help us service some of our customers. In some instances our employees, service providers, agents and/or reinsurers may be located in jurisdictions outside Canada, and your personal information may be subject to the laws of those foreign jurisdictions. To view our current privacy policy, please visit www.sunlife.ca

Information I should know

Have you reviewed your statement recently?

Please review this statement carefully. All information is based on data received from you or your plan sponsor and is subject to legislation and the rules of your plan which will govern in case of differences. Please advise Sun Life Financial or your plan sponsor of errors so that your records may be corrected. Sun Life Financial and your plan sponsor reserve the right to correct any errors. For additional information about the details covered in this statement or about your plan, please contact mysunlife.ca

Registered funds at 71

The value of your account held in registered pension plans, registered retirement savings plans and/or deferred profit sharing plans must be disbursed by December 31st of the year during which you reach the age of 71. You may use registered funds to obtain an annuity or another prescribed plan such as a Registered Retirement Income Fund, Life Income Fund, Prescribed Retirement Income Fund or Locked-In Retirement Income Fund (depending on the pension jurisdiction). Please contact Sun Life Financial or your financial advisor if you need more information or clarification about disbursing your savings.

What Exactly are the Risks Here?

- Legal:
 - Negligent Misrepresentation
 - Breach of Contract
 - Breach of Fiduciary Obligation
- Reputational
 - Story of the prosthetic dolphin fin
 - Disgruntled individuals may have a good point even though they may not have a valid legal claim
 - Are disclaimers adequate? Do you really want to litigate?

Negligent Misrepresentation: Case Law

- The *Cognos* test - elements of negligent misrepresentation
 - Duty of care
 - An untrue, inaccurate or misleading statement, including an omission
 - Misrepresentation was made negligently
 - Reasonable reliance on the misrepresentation
 - Damages are suffered as a result
- Claims can arise
 - in the course of day-to-day plan administration
 - when there is a substantive change to the pension plan

Negligent Misrepresentation: Case Law (cont'd)

Gauthier v. Canada (2000) 185 DLR (4th) 660 (NBCA)

- Facts:

- Gauthier was an employee with the RCMP for 21 years
- The RCMP Compensation Branch overestimated Gauthier's pension
- Gauthier retired from the RCMP and took a lower paying job
- When the RCMP discovered the overpayment, the RCMP decreased the pension payments and asked for a repayment of all overpayments

- Court decision:

- The RCMP negligently misrepresented Gauthier's pension
- Gauthier retired in reliance upon erroneous calculations
- The RCMP was liable to compensate Gauthier \$78,000 for his loss

Negligent Misrepresentation: Case Law (cont'd)

Deraps v. Labourer's Pension Fund of Central and Eastern Canada (1999)
179 DLR (4th) 168 (ONCA)

- Facts:

- The plan administrator gave Mr. and Mrs. Deraps forms containing the option to waive joint and survivor benefits
- Mrs. Deraps signed the forms waiving her joint and survivor benefits
- Mr. Deraps died less than a year later and Mrs. Deraps was denied benefits under the plan

- Court decision:

- The plan administrator owed a duty of care to Mrs. Deraps
- The plan administrator must provide clear and accurate information
- The plan administrator must clearly explain that signing the waiver may result in no pension benefits

Negligent Misrepresentation: Case Law (cont'd)

Smith v. Casco 2011 ONCA 306

- Facts:

- Mr. Smith selected a pension that provided 5 years of guaranteed benefits and paid more upon retirement, but eliminated the joint and survivor benefit
- Mrs. Smith signed a form waiving her spousal survivor pension without reading it clearly
- Mrs. Smith brought a claim in negligent misrepresentation when the pension ended 2 years after Mr. Smith's death, the end of the guarantee period

- Court decision:

- The trial judge held that the employer failed to advise Mrs. Smith of the consequences of signing the waiver
- The Court of Appeal cited the statute which requires the waiver form to be approved by the Superintendent
- The Court of Appeal found the waiver form to be substantially different from the form approved by the Superintendent

WHY WHY WHY ????

CAPSA Guideline No. 8 – March 28, 2014 – Canadian Association of Pension Supervisory Authorities

“3.3 Information and Tools Regarding Projected Account Balance at Retirement

Plan administrators should consider providing members with information and tools to help them understand and estimate their plan benefits on retirement.

Plan administrators should consider providing members, periodically, with an estimate or a general illustration of the accumulated value of the member’s account at retirement, as well as an estimate or example of the benefit that may result from the accumulated value.

Members should be informed that statements regarding projected account balances and future benefits are estimates only, and the assumptions used in the estimates should be clearly stated.

In addition, plan administrators should describe to members the purpose of the pension plan. Members should be informed that other sources of benefits or savings may be necessary to achieve their retirement income goals.”

What's happening in the U.S.?

- In May 2013 the Department of Labor issued an advanced notice of proposed rulemaking (they called it ANPR). It proposed that DC plans illustrate how a participant's account would translate into a lifetime income stream. It also suggested that sponsors could be exempt from claims regarding illustrations if they used a numerated methods and assumptions.
- According to U.S. commentators, the 2013 ANPR generated quite a bit of controversy.
- In May 2015 two U.S. senators introduced legislation that would require defined contribution plan sponsors to provide lifetime income stream information. The proposed legislation provided for plan sponsors to be exempt from liability if Department of Labor assumptions and model disclosure rules were followed (summoned to the 2013 ANPR proposed rule).
- In April 2016 it was reported that Phyllis Borzi, Assistant Secretary of Labor of the Employee Benefits Security Administration stated that the Labor Department is considering submissions and seeking data about the proposed new rule.