

Spring brings reports of budding pension crisis

For much of the country, the month of May brings out the first flowers. However, this year, the first buds of spring were accompanied by dire warnings on the solvency of the nation's major pension plans.

A series of articles published by the *Globe and Mail* and other sources state that Canada's pension plans are a "ticking time bomb" that could explode into insolvency and market panic unless plan sponsors channel billions of dollars to meet their unfunded liabilities.

In a May 24, 2003 article, the newspaper reported that funding shortfalls on more than 1,000 different public and private pension plans amounted to \$225 billion, or 20 per cent of the country's gross domestic product. It goes on to warn that each year for the next 15 years, as much as two per cent of the nation's GDP will have to be channelled to these pension plans in order meet their funding shortfall.

At particular risk are some of the 359 defined benefit programs covering unionized work forces. According to the article, many of these plans upgraded member benefits throughout the 1990s without corresponding increases in funding. On average, these plans only have enough assets to cover 85 per cent of their pension obligations. An additional \$20 billion is required to fully meet their commitments.

The problem isn't solely a result of union negotiations or confined to unionized workplaces.

A May 13, 2003 *Globe* article suggests that many companies continue to assume their pension funds will generate returns of as much 10 or more per cent, despite the fact that the markets have declined for three years in a row. These overly aggressive assumptions not only undermine the real value of pension funds, they can also inflate the entire profit picture of these companies. According to the article, some of the continent's largest companies would have seen their profits shaved by as much as 50 per cent -- or even eliminated altogether -- had they projected more realistic rates of return on their pension programs.

Other articles from the same newspaper go on to blame federal regulators for failing to protect workers from having pension benefits reduced or, potentially, entire pension programs cut.

However, the mounting problem has not gone unnoticed at the federal level. In a May 21, 2003 speech to the National Press Club, Superintendent of Financial Institutions Nick Le Pan warned that 60 of the 370 defined benefit pensions his office regulates are on a watch list and are considered to be seriously underfunded. The problem is not confined to defined benefit plans, he stressed. In total, 177 plans were not fully funded, he reported, and, of those, 12 were taking contribution holidays.

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While pension plans must file valuation reports every three years, the Office of the Superintendent of Financial Institutions (OSFI) now conducts annual stress tests of pension plan funding. OSFI plans to conduct tests on a six-month basis and even more frequently in the near future.

"It is clear that plan sponsors, unions and others have to be very careful about enhancing benefits unless they are sure they can pay for them," Mr. Le Pan said. "The current environment calls for a lot of caution when enhancing benefits and for a focus on what is affordable."

He went on to urge board members of plan sponsors to be aware of the financial position of their organizations' pension plans. He also urged plan members to exercise their rights to obtain information about their pension from plan administrators.

The superintendent also promised to be "less tolerant" of plans that are operating just above or just below the fully funded line.

It is clear that plan sponsors may face some hard questions in the coming months about viability of their pension programs, especially if one of the major national plans experiences a funding crisis.

Your Coughlin & Associates Ltd. consultant is available to analyse your plan's funding and develop appropriate strategies to meet your organization's long-term pension management goals.

Pension points

- Pension shortfalls resulting from declining markets are not confined to Canada. Falling markets wiped out more than £60 billion, or 18 per cent, of British pension fund assets in 2002.
- France continues to suffer from mass public sector strikes and walkouts by workers protesting their government's plan to increase the time
- required to fully qualify for government pension benefits. The current level is 37.5 years. The government plans to move that requirement to 40 years and, ultimately, to 42 years by 2020. France currently has an annual pension deficit of 50 billion euros, or about \$80 billion Canadian.
- In an April 24, 2003 announcement, Standard & Poors reported that the pension plans of 308 companies in the S&P 500 were underfunded in 2002 while 35 plans were overfunded. This compares to
- 79 underfunded plans and 264 overfunded plans in 1999.
- TransCanada Pipelines Ltd. has introduced the market's first *retro pension*. The natural gas utility has announced that it will wind up its defined contribution pension plan in favour of a defined benefit plan. The company launched its defined contribution pension plan in 1999 but found it was too complicated to administer and failed to provide sufficient long-term security to its employees.

Supreme Court to hear challenge to Quebec health care rules

The Supreme Court of Canada has agreed to hear a case filed by a Quebec doctor and his patient challenging a Quebec law that prevents residents from buying private insurance to cover health care services that are already provided by the provincial health care plan.

The challenge dates to 1997 when the patient had to wait over a year to receive a hip replacement through the province's public health care system.

As well, the doctor was forced to stop providing emergency house calls on a private basis. Both the doctor and the patient contend that the province's laws violated their right to offer and receive private health care services.

If the Court rules in their favour, Quebec's Hospital Insurance Act and Health Insurance Act would be overturned and may have to be rewritten to accommodate private health care services within the province's public system. The ruling would also have a similar impact on the other provincial health care programs. As well, it would also radically change the basis of employee benefit plans which, generally, are designed to fund the costs of medical services not covered by public health care plans.



Second hand smoke a workplace hazard, Nova Scotia EI board says

A federal Employment Insurance (EI) board of referees has ruled that second hand smoke can be considered a workplace hazard.

In a May 2003 decision, the board ruled in favour of a blackjack dealer who quit her job at a Halifax casino due to frequent nosebleeds and other discomfort attributed to the second hand smoke in the workplace. The woman was initially denied Employment Insurance benefits and was told by EI officials that she should have found other work before leaving the casino.

She then appealed to the EI board of referees who determined that there was sufficient medical evidence to substantiate the dangers of second hand smoke.

Employment Insurance regulations state that workers can qualify for EI benefits when they quit a job due to sexual harassment, discrimination, the relocation of a spouse or dependant or when working conditions endanger health and safety.

Unfunded pension liability sparks Saskatchewan suit

The union representing 10,000 Saskatchewan pension plan members has filed a class action suit against the government, alleging that it has reneged on its obligation to provide matching contributions to its employee superannuation plan.

According to the suit filed by the National Union of Public and General Employees, the Saskatchewan government neglected to make necessary contributions to the plan dating to 1977 when it introduced a new pension for its employees. While employees have contributed \$100 million to the plan since that time, the government has contributed \$2.8 million, the union says.

Provincial finance department officials have admitted that the government's plan carries an unfunded liability of over \$1.2 billion.

Saskatchewan's Public Service Superannuation Plan provides pensions to approximately 8,000 members. Another 2,100 members are still working and will be entitled to pension benefits in the near future.

BC and Ontario courts endorse same sex marriages

The Ontario Court of Appeal overturned that province's marriage laws June 10 to rule that same sex marriages are legal, effective immediately.

According to the court, the equality provisions of the Charter of Rights override previous rulings prohibiting marriage to gay and lesbian couples.

Ontario now joins British Columbia and Quebec in upholding the rights of same sex couples to marry.

The move follows a May 2003 ruling by the British Columbia Court of Appeal that also overturned earlier prohibitions on gay marriage rights. However, in the BC case, the court allowed the province a grace period until July 12, 2004 to draft new marriage laws.

In upholding same sex couples' right to marry, both the Ontario and British Columbia courts strongly rejected earlier assertions that the fundamental purpose of marriage was the procreation of children, which could only result from the sexual union between husband and wife.

Changes in both technology and adoption laws have made it possible for same sex couples to have children, thereby eliminating any justification for discrimination, the courts suggested.

Earlier rulings relied on the principle

of procreation as the legal lever to prevent recognition of same sex marriages. Both courts also recognized the significant changes in social values that have been reflected in recent human rights legislation.

"Civil marriage should adapt to contemporary notions of marriage as an institution in a society which recognizes the rights of homosexual persons to non-discriminatory treatment," the BC court ruled.

Ontario's wording was even stronger.

"A law that prohibits same-sex couples from marrying does not accord with the needs, capacities and circumstances of same-sex couples," the Ontario court stated. "Same sex couples can choose to have children through adoption, surrogacy and donor insemination. Importantly, procreation and child-rearing are not the only purposes of marriage or the only reason why couples choose to marry."

While the rulings apply only to the licensing of marriage within those two provinces, the changing of the marriage definition falls into the jurisdiction of the federal government, which has until June 30, 2003 to appeal the Ontario ruling to the Supreme Court of Canada. The issue is further complicated by the position of the premier of Alberta who has

threatened to use the notwithstanding clause of the Constitution to override any court ruling favouring same sex marriages in that province.



These latest rulings could have a significant impact on employee benefits, group insurance, joint annuities and pension plans. Since males and females have different lifespans and illness rates, the change of spousal definitions to include two members of the same sex, in addition to the traditional male-female definition, will likely affect key underwriting assumptions such as mortality and morbidity. Its impact on pricing assumptions, as well as annuity and pension payout schedules, is still to be determined.

PEI updates its Employment Standards Act

Prince Edward Island has passed legislation revising its Employment Standards Act.

Under the terms of Bill 47, workers may take up to three days of unpaid leave of absence per 12 calendar months to attend to the care or health of family member,

provided they have been employed for a continuous period of six months or more. They may also take three unpaid days leave for sickness, as long as they provide a certificate from a medical practitioner.

The new bill also adds provisions allowing employees with 10 to 15 years of continuous employment to have six weeks of notice of termination. Those with more than 15 years of service are now entitled to have eight weeks of notice.

Cancer, heart disease, stroke continue to lead mortality stats

The outbreak of new diseases such as West Nile virus and SARS along with potential threats such as Mad Cow disease have struck both fear and alarm throughout Canada's health care system.

However, when it comes to mortality, "traditional" illnesses such as heart disease, cancer and stroke continue to account for the large majority of deaths in Canada. The following lists some of the leading causes of death in Canada in 1997, as compiled by Statistics Canada and published by CBC News. Keep this data in mind the next time you consider buying life, disability, extended health or critical illness insurance coverage.



Cause of death	Number	Percentage
Cancer	58,703	27.2%
Heart disease	57,417	26.6%
Cerebrovascular disease (includes stroke)	16,051	7.4%
Pulmonary disease	9,618	4.5%
Unintentional injury	8,626	4.0%
Pneumonia and influenza	8,032	3.7%
Diabetes mellitus	5,699	2.6%
Diseases of the central nervous system	5,049	2.3%
Diseases of the arteries, arterioles & capillaries	4,767	2.2%
Psychoses	4,645	2.2%
Suicide	3,681	1.7%
Nephritis, nephrotic syndrome and nephrosis	2,654	1.2%
Liver disease	2,030	0.9%
HIV	626	0.3%
Drug & alcohol dependence	612	0.3%
Homicide	503	0.2%
Drowning	318	0.1%
Malnutrition	206	0.1%
Total number of deaths (all causes, including those not listed above.)	215,669	

Privacy commission decries BC's privacy legislation

Canada's privacy commission has served notice to the province of British Columbia that its proposed privacy legislation does not meet the requirements of the federal Personal Information Protection and Electronic Documents Act (PIPEDA.)

In a May 7, 2003 letter to BC Minister of Management Services Sandy Santori, former federal Privacy Commissioner George Radwanski stated that BC's proposed privacy law "has a number of grave deficiencies that would make it impossible for the Government of Canada to recognize this legislation as substantially similar to the federal act."

Under the terms of the federal privacy legislation, any provincial act that is found not to be substantially similar to PIPEDA will be legally subordinate to the federal law. While the provincial law will remain in effect, the stricter standards of the federal legislation will take precedence legally. Provinces have until January 1, 2004 to enact privacy legislation that is "substantially similar" to PIPEDA.

In the letter to the BC cabinet minister, Mr. Radwanski asserted that the privacy guarantees in the federal law must comprise the minimum threshold or floor and that "a provincial law must be at least as good or it is not substantially similar."

According to the federal privacy commission, BC's Bill 38 fell down by failing to guarantee the *protection of information* that may have been collected prior to its enactment. It also failed to specify that *express, written consent* must be provided by an individual before his/her personal or private information may be disclosed to another party.

The commissioner also expressed concern that the British Columbia bill appears to approach employee privacy rights from the perspective of employers, allowing employee information to be collected and disclosed without their consent.

"...appears to approach employee privacy rights from the perspective of employers..."

"PIPEDA makes no distinction between information collected, used or disclosed in employment and in commercial activities. The protection afforded employees covered by Bill 38 would be drastically inferior to that enjoyed by employees covered by PIPEDA," Mr. Radwanski wrote.

In addition, Bill 38 failed to provide similar guarantees of *access to personal information* as those outlined in the federal privacy law.

For plan sponsors, Mr. Radwanski's public letter (it was distributed to the media on May 8, 2003) may be a warning shot to demonstrate that the federal government intends to ensure that its new privacy laws are taken seriously at all levels. It signals that the terms of the federal privacy act are expected to be the *minimum* standard of privacy protection in the country and that even tougher provincial standards should not be unexpected.

At the moment, provincial privacy laws vary. Quebec's legislation has been in place for some years and has already been endorsed as being substantially similar to PIPEDA. Ontario, by

contrast, introduced and then withdrew its strict privacy legislation following public outcries by various business groups. It is not expected to introduce a revised law until late 2004. Alberta, Manitoba and Saskatchewan have also introduced legislation with no major public reaction from the federal privacy commission.



BC health care ruling pits courts against legislatures

An individual's right to public health care versus legislators' right to establish health care budgets will be the main focus of a Supreme Court case involving a British Columbia child diagnosed with severe autism.

The landmark case follows a ruling by the British Columbia Court of Appeal that ordered the provincial government to provide specialized treatment to the child, regardless of costs. The child was originally denied therapy because it was considered to

be too expensive. A similar ruling occurred in Ontario on May 28 in a separate case also involving the treatment of an autistic child.

The case pits those, largely in the judiciary, who say that the equality provisions of the Charter of Rights must extend to government-provided health care programs against those who believe that appointed judges have no basis to prevent democratically elected legislators from implementing budgetary and tax programs.

Ultimately, the *judiciary versus legislature* debate could spawn confusion for plan administrators and sponsors as they attempt to balance changing health care laws against the conflicting messages of two different but powerful levels of government.

Watch for more information on this issue as it becomes available.

Alberta project tests free dental services to low-income seniors

Seniors eligible for support under the Alberta Special Needs Assistance for Seniors Program will now be eligible to receive full dental care services to April 2004.

As part of a pilot project launched by the provincial government and the University of Alberta Department of Dentistry, eligible seniors could have as much as 100 per cent of their dental costs covered by the province, to a lifetime maximum of \$5,000, provided they use the services of the university's dentistry program.

Under the plan, low-income seniors are required to go the university's dentistry department to obtain an estimate of their required dental work and to complete a program application. Once the application has been approved, both the university and the individual will be notified and the necessary funding will be earmarked for the required dental procedure. The individual will then book an appointment for the procedure. No individual payments or reimbursements are involved.

Care will be provided by the 70 third and fourth year students enrolled in the university's dentistry program.

Coverage includes extractions, fillings, dental hygiene, denture replacement and repair, and oral surgery.

Approximately 15,000 Alberta seniors qualify for assistance under the program.

PPN update

The former **Carver's Pharmacy**, now **PharmaPlus Drug Mart**, of 1200B Wellington Street in Ottawa and the **PharmaPlus Drug Mart** located at 1 Centrepointe Drive, Nepean, are no longer members of the Coughlin & Associates Ltd. Preferred Provider Network.

Fast facts

Effective July 1, 2003, diabetic supplies such as needles, syringes, lancets and swabs will be covered by the Saskatchewan Drug Plan. Insulin, certain diabetic drugs and test strips are already covered by the plan. Plus, effective September 1, the cost of specialized nutritional products for those with complex medical conditions will also be covered.

Manitoba has increased its coverage for optometric services from \$28 to \$32.40.

The Canadian Dental Association has moved the following procedures in its *Uniform Listing of Procedure Codes and Services* from periodontal services to prevention services:

- ▶ occlusal equilibration;
- ▶ periodontal appliances (included bruxism appliances) and related adjustments and repairs;
- ▶ TMJ appliances and related adjustments and re-lines; and
- ▶ myofascial pain dysfunction syndrome appliances and related adjustments and re-lines.

The US Bureau of Labour Statistics reports that private sector benefit expenses rose 6.1 per cent in the United States in the year ending March, 2003. State and local government benefit costs rose by 6.6 per cent. Benefits now account for 30 per cent of compensation costs, the Bureau says.

Human resources research indicates that job tenure averaged six years in 2002, down from seven years in 2001. The average worker can expect to change jobs eight times in his/her career.

A study released by the Canadian Heart and Stroke Foundation paints a grim picture of today's youth. According to *The Growing Burden of Heart Disease* by Andreas Wielgosz, 37 per cent of children aged two to 11 are overweight and only 10 per cent of young people are active enough to keep their hearts healthy. Never before have major risk factors for heart disease appeared at such young ages, the study suggests. The study warns of the potential for a "terrible squeeze" in the decades ahead when aging baby boomers and today's young people may both develop a high risk of heart disease at roughly the same time. Approximately 50,000 Canadians die of cardiovascular diseases every year.

Annual premiums for the Quebec drug plan will increase from a maximum of \$422 to \$460 beginning July 1. The plan covers the cost of medication for Quebec residents who do not have private pharmacare coverage.