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AT A GLANCE ...

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Supreme Court sides with government on federal pension surplus

The Supreme Court of Canada has ruled that the unions representing members of the federal public service, the RCMP and the Armed Forces are not entitled to the $28 billion pension plan surplus appropriated previously by the federal government.

In a 9-0 decision, the Court ruled that the government does not have to return the funds it took from the pension plans to meet its deficit reduction goals.

The case dates back to 1999 when the government passed bill C-79, allowing it to take the accumulated surplus in the three federal pension plans and direct the funds to help pay down the government's deficit.

The move was strongly opposed by the federal public service unions and other groups, who maintained that the government violated its fiduciary duties by appropriating the funds and using them for purposes other than providing pension benefits to plan members and retirees.

(See the March 2012 issue of the *Coughlin Courier* for background.)

However, Canada's highest court disagreed, stating that "*plan members' interests are limited to their interest in the defined benefits to which they are entitled under the plans.*"

While the funds were used by the government to reduce its deficit, it had no effect on plan members, the Court said.

"*They did not suffer any detriment as a result of the government's accounting treatment. The government did not expropriate any property of plan members.*"

The federal government maintains that the surplus was simply part of the accounting entries summarizing contributions and deductions that form part of its consolidated revenues. Since the surplus did not contain or invest in equities, properties, cash or securities, it had no hard assets that required traditional fiduciary governance. ❧

Ontario common-law spouses may not get pension death benefits

The Ontario Court of Appeal has ruled that a common-law spouse may not qualify to receive survivor pension benefits, even if he/she is living with the plan member at the time of death.

In a landmark decision, the court said that, under certain circumstances, separated spouses rather than common-law spouses, should be first in line to receive pre-retirement benefits on the death of a member, making the disbursement of survivor benefits more complicated for pension plan administrators.

The complicated case involved a married couple that executed a will specifying that the wife would be the sole beneficiary of the man's estate on his death. However, the couple separated in 1996 but did not formalize the separation through any legal documentation, such as a separation agreement. By 2000, the man began a common-law relationship with another woman. Despite that fact, in 2002, he designated his former wife and their children as beneficiaries of his pension plan.

In 2008, the man died and both the former wife and the common-law spouse claimed they were entitled to his pension's death benefits. The case then went to litigation.

In her submission to the court, the common-law spouse argued that, as the person living with the member at the time of death, she should receive priority over other claimants to his pension's benefits. Her argument was backed by administrative precedence. Plan administrators often disburse pension benefits to existing common-law spouses ahead of former spouses. In her case, she argued that more than one person could qualify as a member's legal spouse.

The man's former wife maintained that the term "spouse" applied only to legally married individuals.

The problem for the Ontario court was that, technically, both women met the definition of the term "spouse," as defined under Ontario's Pensions Benefits Act (PBA).

Initially, the Ontario Court of Justice sided with the common-law spouse. The case was then appealled to the Ontario Court of Appeal.

In its review, the Court of Appeal reviewed Section 48 of the Pension Benefits Act. While conceding that both women qualified as spouses under the PBA, it noted that Section 48(3), paragraph 28, of the PBA, which deals with the disbursement of benefits to spouses "*living separate and apart from the member,*" outlines terms and conditions that can only be met by a legally married spouse.

In the view of the court, common-law spouses can become spouses only by living in a conjugal relationship with a member. However, since it is possible for legally married spouses to live separate and apart, the terms of the PBA must then refer only to legally married individuals. As a result, the court awarded the benefits to the separated spouse.

"*…it makes no sense to conceive of a common-law spouse living separate and apart from the member,*" ruled Justice Russell Juriansz. "*While a person may be a common-law spouse in other contexts, only a legally married spouse can live separate and apart from the member and still be a 'spouse' within the PBA. The circumstances contemplated by Section 48(3) –that the member and spouse are living separate and apart at the date of the death – can only be satisfied by the legally married spouse.*"

Reinforcing the decision was the member's 2002 designation of the ex-spouse and his daughters as beneficiaries of the pension. Under Section 48(6) of the PBA, "*a member may designate a beneficiary and the beneficiary is entitled to be paid an amount equal to the commuted value of the deferred pension if the member or former member does not have a spouse on the date of death or the member is living separate and apart from his or her spouse on that date.*"

As a designated beneficiary, the ex-spouse was entitled to the benefit, the Court said.

The Court's decision was far from straight-forward. By defining the term "spouse" as a legally married individual under Section 48(3), the Court decision opens the question of whether the spousal definition applies ***only*** to Section 48(3) or to the entire PBA. If the answer is "*yes,*" then the PBA will contain two spousal definitions, one for Section 48(3) and another for the rest of the Act. If it is "*no,*" then common-law partners could, potentially, be disqualified from receiving pre-retirement death benefits, even when they satisfy the definition of common-law spouse. In addition, the Appeals Court decision was not unanimous, with one of the three justices favouring the argument presented by the common-law spouse.

As a result, an appeal to the Supreme Court of Canada is possible.

For now, under the Ontario Pension Benefits Act, a person living in a common-law relationship with a plan member who is separated but not divorced from his/her ex-spouse may not qualify to receive a pension plan's death benefits, unless he or she has been specifically designated as a beneficiary under the pension plan. ❧

Finance ministers agree to consider CPP expansion

Canada's finance ministers have agreed to study the possible enhancement of the Canada Pension Plan (CPP.)

In the annual meeting of the federal and provincial finance ministers held in December 2012, the ministers agreed to consider "*modest increases*" to the program, provided appropriate "*economic triggers*" are in place to support the expansion of the universal pension plan.

The first step will involve defining those terms before the next finance ministers' meeting in June 2013.

"*The ministers agree that we would task officials with working on definitions of 'modest increase' and 'economic triggers' that we would then discuss at our next meeting,*" said federal Minister of Finance Jim Flaherty. "*We'll need to have some kind of measure of real gross domestic product growth and unemployment rate, or both, so the ministers can be confident that the economy can take the extra burden that would be put on employers and employees.*"

With the economy growing at a sluggish pace and the risk of a revived recession stalking Canada's trading partners in Europe and the United States, the ministers are reluctant to add new levels of taxation to support public pensions without an appropriate economic foundation being in place.

Currently, the Canada Pension Plan provides a maximum benefit of 25 per cent of the yearly maximum pensionable earnings (YMPE). In 2013, that will amount to $987.67 per month. The plan is funded through joint employer-employee contributions totalling 9.9 per cent of each eligible employee's annual pensionable earnings. Increasing the pension's pay-out will require hiking of both individual and corporate payroll taxes.

The possible enhancement of the CPP would be a victory for the province of Ontario, which has supported expanding the government pension plan to provide a pay-out of as much as 35 per cent of the YMPE with a corresponding joint employer and employee contribution rate of 12 per cent of pensionable earnings. Similar plans have also been proposed by the Canadian Labour Congress and other groups.

While the ultimate "*modest increase*" may not come close to the contribution and pay-out levels proposed by Ontario, the fact that the country's finance ministers are open to considering enhancing the CPP could spell the end of the federal government's proposal to develop the pooled registered pension plan (PRPP), an alternate government pension plan that would allow workers employed by organizations that do not offer pension plans or group RRSPs to save privately for retirement through workplace payroll contributions. With PRPPs, employee contributions would be directed to and administered by private financial institutions.

The PRPP concept has been strongly favoured by Canada's banks, insurance companies and other financial institutions but has been panned by policy research groups such as the C.D. Howe Institute and organized labour.

Meanwhile, with the average Canadian saving only $60,000 for retirement by age 65 and with the initial wave of baby boomers beginning to claim government pension benefits, the government pension plan and proposals for its possible enhancement will continue to be a priority throughout 2013. ❧

Tax updates

The following changes were made to tax policies on selected financial service products, effective January 1, 2013:

- Employer contributions to group accident or sickness plans will be considered a taxable benefit and must be included in the income for the year in which contributions were made. In addition, contributions made by an employer after March 28, 2012 that relate to coverage that will be provided after 2012 will also be considered a taxable benefit and must be included in 2013 income.

  The new regulations affect products such as group accidental death and dismemberment (AD&D) and group critical illness (CI) insurance plans. They do not affect group health and dental plans.

- The province of Quebec will reduce the premium tax on universal life insurance products from 2.55 per cent to 2.3 per cent. The reduction applies to both new and in-force policies.

- Effective January 1, 2013, the Quebec Sales Tax (QST) will be further harmonized with the federal Goods and Services Tax (GST). As a result, the QST will no longer be applied on the GST. However, the QST rate will increase to 9.975 per cent from its former level of 9.5 per cent.

  The new arrangement will be applied on administrative services only (ASO) plans without pooling, employee assistance programs and other fee for service plans in Quebec. ❧

Less than half of unemployed qualify for Employment Insurance

Only 78.4 per cent of unemployed Canadians were eligible to receive Employment Insurance (EI) benefits in 2011, Statistics Canada reports. That rate is the lowest since the agency began collecting those statistics.

However, the EI eligibility data is even more disturbing when reviewed as follows:

-Number of unemployed in 2011:	1.34 million
-Number who were contributors to EI:	867,000
-Number of those who lost their jobs involuntarily:	695,000
-Number of involuntary unemployed who received EI benefits:	545,000 (78.4 per cent of EI contributors who lost their jobs involuntarily.)
-Percentage of *all* unemployed to receive EI benefits	**40.6**

The large number of people working in part-time or temporary jobs is the main reason for the spread between the total number of unemployed and those who qualify to receive Employment Insurance benefits, Statistics Canada says.

Under current regulations, EI contributors must work between 420 and 700 hours in a year to qualify for benefits. First-time employees must work a minimum of 910 hours. Those qualification minimums often result in part-time workers being denied EI benefits.

The Canadian Labour Congress and other labour organizations have proposed reducing the EI program's minimum hourly qualification to 360 hours to allow more part-time workers to qualify for the benefit. ❧

Living longer — and sicker — lives

The good news: everybody on the planet is living longer. The bad news: most of us will be sick for a long time.

A world-wide study of health trends and mortality indicates that people are living longer but, in doing so, have to cope with chronic illnesses and disabilities for far longer periods than previously recorded.

The study, conducted by the Institute of Health Metrics and Evaluation of the University of Washington and funded by the Bill & Melinda Gates Foundation, indicates that almost everywhere in the world except Africa, fewer children are dying and more people are living longer lives.

"*The biggest contributor to the global health burden isn't premature death but chronic illnesses, injuries, mental health conditions and bone and joint diseases,*" says study leader Christopher Murray.

Among its findings:

- Since 1990, the number of deaths among children under age five has dropped from 10 million annually to seven million.
- High blood pressure has become the leading health risk world-wide.
- High blood pressure, smoking and alcohol-related illnesses account for half of the world's health problems.
- As life expectancy increases, the number of years people have to cope with vision and hearing loss, depression, and other illnesses is increasing.
- The incidence of diabetes among people age 15-49 is growing. In Africa, 8.8 deaths per 100,000 are linked to the disease. That compares to 1.0 per 100,000 in Europe.
- Heart disease and cancer are still the leading causes of death world-wide.
- Lung cancer is now the fifth leading cause of death in the world.
- AIDS is now the sixth leading cause of death. In 1990, it was the 35th.
- Regional differences still highlight mortality statistics. For example, homicide ranks as the third leading cause of death in men in Latin America. In the United States, it ranks 21st. In Europe, it is the 57th cause of death in men.
- At 15 cases per 100,000 deaths, central and southeast Asia have the highest incidence of fatal strokes in the world. That compares to three per 100,000 in North America.

The study involved more than 480 researchers in 50 countries. ❧

Chronic illness sufferers slow to adopt healthier lifestyles

Statistics Canada reports that Canadians age 50 or older that have been diagnosed with a major chronic illness such as diabetes, cancer or heart disease seldom make the lifestyle changes to improve the quality of their lives.

In a 12-year study of victims of five chronic illnesses including heart disease, cancer, stroke, respiratory illness and diabetes among those age 50-plus, the government agency found that most people did not make any significant lifestyle changes after their diagnosis.

According to the study, most victims of chronic illness only make modest efforts to improve their situation after diagnosis. For example, smokers may reduce the number of cigarettes they may smoke but will not give up smoking altogether. The same also applied to lifestyle changes such as increasing physical activity or making dietary changes.

Fatigue or the symptoms of the illnesses in question are often cited as reasons for the lack of change in lifestyle, the study suggests.

"*They often said things like they were too tired or their illness was preventing them from doing so,*" says Statistics Canada senior analyst and study co-ordinator Pamela Ramage-Morin. "*If there is a mobility or a disability issue that results from the condition, then that's a barrier to becoming physically active.*"

However, she noted, the side-effects of some medications or the use of multiple medications by the elderly can result in fatigue or less physical activity, thereby making exercise or other lifestyle adjustments difficult.

According to the study, those with diabetes are most likely to make the necessary lifestyle adjustments including cutting smoking, drinking less alcohol, exercising more and eating healthier foods. However, those with respiratory diseases such as chronic bronchitis or emphysema were less likely to change their smoking or dietary regimes. They also tended to become less physically active.

Ms. Ramage-Morin cautions that those with respiratory illnesses are more likely to be smokers and had a greater chance of being addicted to nicotine.

"*Twenty-five per cent of those with lung and/or airway disease were smokers before their diagnosis,*" she says. "*That didn't change substantially* [after diagnosis] *nor did the number of cigarettes that they smoked each day. Three-quarters of the people who smoked prior to diagnosis continued to smoke afterwards.*"

The five illnesses studied account for 60 per cent of all deaths in Canada.

For plan sponsors, the Statistics Canada study underlines the necessity of establishing appropriate wellness and disability management programs to encourage healthy living among plan members and active rehabilitation of employees following their disability from one of the five studied illnesses. ❧

When it comes to claims, honesty is always the best policy

An Ontario court has upheld the termination for cause of an employee who falsified a group medical claim.

The case involves a manager employed by a major retail organization who placed a $170 benefit claim in the name of a dependant child that did not exist.

While the retailer's benefit plan operated on a self-insured basis, it used a large group insurance company as its plan administrator. A random audit by the insurer found that the woman had submitted the on-line claim for massage therapy under the name of a fictitious daughter.

When initially confronted by her manager, the woman offered no defence. At other times, she said that she submitted the claim in the phantom dependant's name in order to alert the plan administrator to remove the dependant's name from her files. Further investigations found that she had submitted and signed other falsified claim forms. However, in those cases, she asserted that the claims had been submitted by somebody who had broken into her home and used her computer to complete the forms.

When her employer terminated her for cause, she began litigation.

In reviewing the case, the court found that by not being forthright in admitting to the falsification of the claim, the employer was justified in terminating the woman for cause. The ruling was further reinforced by the thoroughness of the insurer's investigation and the fact that both the insurer and the employer had given her several opportunities to provide a truthful explanation of her actions.

"*In falsifying and submitting medical benefits claims forms, in lying to the insurer about [the name of the fictitious daughter] being her daughter when asked, and in failing to forthrightly tell her employer when asked during the investigation that she had falsified the documents, constituted conduct so fundamental to the employer-employer relationship and to her managerial position that it constituted cause for termination without reasonable notice or pay in lieu thereof,*" ruled Ontario Court of Justice judge Carole Brown.

While the case should serve as a moral for those considering falsifying their medical or dental claims, it can also provide an illustration of how a solid trust relationship between plan sponsors and plan administrators can protect the integrity of a group benefits plan. ❧

Skilled labour shortages spur development of new benefits

Many Canadian companies offer robust benefits to full-time employees. However, as US-based business writer Emma Collins explores below, a new trend is emerging in some high-demand sectors: companies that fight for needed employees by offering unconventional benefits. Emma's main beat is distance education MBA rankings with mbaonline.com. She is also an expert in the current job market for new graduates.

In today's uncertain marketplace, a number of companies that need highly skilled workers are seeing key positions go unfilled for months at a time. According to Robert Funk, chairman of US staffing firm Express Employment Professionals: "*Companies all over are having a difficult time recruiting the kind of people they're looking for.*"

Mr. Funk notes that his company alone has 18,000 open job orders, asserting "*there is higher demand for skilled jobs and less demand for unskilled positions than we've seen coming out of past recessions.*" In fields requiring skilled expertise, such as the medical, some engineering, and high-tech industries, the talent deficit is driving many employers to spend large amounts on their payroll.

Meanwhile, others are finding alternatives to high salaries.

"*Here, if you're a professional developer, web designer or on-line marketing specialist, you can pick the company you work for,*" says Gabriel Shaoolian, chief executive of Blue Fountain Media, a New York web design and marketing company.

Attracting quality employees has placed a unique burden on these companies. In an industry where top talent can command premium salaries, the fight for quality employees can become expensive. The solution: In addition to their traditional benefits programs, many companies have adopted innovative benefits to attract prospective talent.

An example can be seen at Evernote, a California-based software company. There, every full-time worker, from receptionist to top executive, is entitled to housecleaning twice a month, courtesy of the company. Genentech, a biotechnology company owned by the Roche Group, offers take-home dinners and helps employees find last-minute babysitters when a child is too sick to go to school. The Stanford School of Medicine has also begun a project that provides its doctors with house cleaning and in-home dinner delivery.

For many employers, the cost of these unique benefit packages can quickly add up. However, for the right employees, they can be enticing.

Despite the costs, some companies maintain that innovative benefits that simplify the stress of day-to-day life can be invaluable to ambitious, career-driven employees.

According to Hannah Valantine, associate dean at the Stanford School of Medicine, that school's benefits package is part of a broader effort to support doctors in the modern age.

"*If you're coming home at the end of the day exhausted and you have a pile of cleaning to do, it's the kind of things that leads rapidly to burnout,*" says Dr. Valantine. "*We're trying to send a very strong message that the institution cares about you and about your life.*"

That belief in the importance of work-life integration has also driven many Silicon Valley tech companies, as well as some western Canadian oil and gas companies, to introduce unorthodox benefit plans.

"*What you see is benefits thinking that is more holistic about individuals and their health,*" says Jordan Newman, a spokesman for Google. "*We want things that are functional for you and your family.*"

Today, benefits such as home cleaning or executive jets may not be available to everybody. However, as the technology, medical, petroleum and other sectors continue to blur the line between home life and work life, the influence of these new benefit plans may grow in coming years. While the idea of work as a constant presence in life may seem daunting for some, those pursuing engaging work at companies they admire may be willing to embrace the integration between work and home, especially if it alleviates potential stressors and encourages personal satisfaction and creativity. ❧

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Fast facts

- A January 2010 study by the Canadian Heart & Stroke Foundation indicates that certain key health risks increased significantly between 1994 and 2005. According to *A perfect storm of heart disease looming on our horizon,* rates of high blood pressure jumped by 77 per cent during that time; diabetes, 45 per cent; and obesity, 18 per cent. Among those age 35 to 49, the incidence rate increases were even higher: 127 per cent; 64 per cent; and 20 per cent respectively.

- Effective March 31, 2014, the federal government will no longer produce or distribute marijuana for medical purposes, Health Canada says. The government plans to open the production of medical marijuana to the private sector. "*The aim is to treat marijuana as much as possible like any other narcotic used for medical purposes,*" the government agency says.

- Women continue to experience a higher incidence of long-term disability, according to the US-based Council for Disability Awareness. According to that organization, 57 per cent of new disability claimants in 2011 were women.

- Four in 10 people are relying on their home to fund their retirement, a Harris Decima survey conducted for the BMO Retirement Institute indicates. The poll of 1,002 people also indicates that almost half of Canadians feel that they have not saved enough for retirement. Relying on uncertain realty markets to fund a long-term retirement is inadvisable, BMO suggests.

- Statistics Canada data indicates that 90 per cent of women outside of Quebec took some form of maternity leave following the birth of their child. In Quebec, 99 per cent of women took maternity leave. The average length of leave was 44 weeks in the nine other provinces, compared to 48 weeks in Quebec. The percentage of fathers taking leave following the birth of a child varied considerably, the agency says. In Quebec, 76 per cent of new fathers took leave compared to only 26 per cent in the rest of the country.

- The government of Manitoba has introduced legislation to eliminate a legal exemption allowing employers to pay employees with disabilities less than the minimum wage. Currently, the province issues permits to employers to allow employees with mental or physical disabilities to be paid less than the minimum wage. Approximately 20 permits are active. In the mid-1990s, more than 200 permits were granted throughout the province.

- Group benefits can help employers retain skilled workers, an Ipsos Reid poll conducted for Munich Re suggests. According to the survey, 60 per cent of those nearing retirement plan to work past their normal retirement age in order to retain their group benefits coverage. Of those, 30 per cent cited the retention of group benefits as the main reason for delaying their retirement.

- According to the Russian Pension Fund, 37.4 per cent of Russian pensioners were still working as of October 1, 2012, compared to 23 per cent in 2011. Inadequate pension funds were the main reason for continuing to work. Of those that remain on the job, the average duration of their post-retirement career was six years.

- The US territory of Puerto Rico is facing a financial crisis similar to that experienced by Greece. Poor debt management and revenue generation, along with a stagnant economy, have left the island territory with sizeable fiscal problems. Its civil service pension plan has a funding ratio of only six per cent while its teachers' pension plan has a ratio of 20 per cent. Both funds are expected to run out of money in 2014. ❧

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PPN update

Perth Downtown Pharmasave has joined the Coughlin & Associates Ltd. Preferred Provider Network (PPN). Their address is 57 Foster Street, Perth, Ontario. Phone: 613-267-1578. ❧

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