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AT A GLANCE ...

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Supreme Court to rule on standing of pension creditors

The Supreme Court of Canada has agreed to hear a case that will ultimately decide whether pension plan members have priority over other creditors in cases of corporate bankruptcy.

The case involves Indalex, a Toronto-based smelter that filed for bankruptcy protection under the Canadian Creditors Arrangement Act in 2009. At that time, the company had a pension shortfall of $6.75 million. As part of the company's restructuring efforts, Indalex was able to secure debtor-in-possession (DIP) bridge financing, allowing the firm to cover its costs while shutting down operations.

However, under the terms of the financing package, the DIP lender was to be given priority over other creditors.

The terms of that arrangement were not conveyed to pension plan members. That sparked a court challenge from the union representing pension plan members.

In its submissions, the representatives of the pension members argued that the company deliberately under-funded the pension plan, unilaterally impacting the rights of plan members. The union went on to argue that plan members should have a right to any remaining assets of the company.

The case was eventually heard by the Ontario Court of Appeal, which ruled in favour of the pension plan members. The company then appealled to the Supreme Court.

According to legal and bankruptcy experts, the Indalex case has *"far reaching and profound consequences"*, opening the door to a possible re-write of the Companies Creditors Arrangement Act itself.

Many companies have to resort to short-term debt financing to cover their costs during periods of financial restructuring. To place lenders of such emergency funding behind pensioners could make restructuring money harder to secure, thereby increasing the number of potential bankruptcies.

In addition, according to the Moody's Investors Service ratings agency, should the Ontario Court of Appeal ruling be confirmed by the Supreme Court, companies with underfunded pension plans could face ratings downgrades.

On the other hand, a Supreme Court ruling endorsing the earlier Ontario Court of Appeal ruling could represent an *"exciting development in pension law,"* says Hugh O'Reilly, the lawyer representing the actuarial firm appointed to administer the Indalex pension plan. It would mean that employers facing bankruptcy would be required to address their pension obligations and deal with their pension deficits.

"This would seem to change the landscape quite a bit," he noted. *"What it says is that employees and retirees need to be at the table a lot sooner."*

A date for the Supreme Court hearing will be set later in 2012. ❧

25 per cent of health care goes to the terminally ill

Dying is a costly business.

A study by University of Alberta researcher Konrad Fassbender indicates that 25 per cent of the country's health care costs are dedicated to patients nearing the end of life.

With health care costs on the rise and with the number of people expected to die each year projected to almost double by 2036, it may be time to consider how much money should be channelled by the health care system to support terminally ill patients, Mr. Fassbender suggests.

"The bottom line is that if you don't know how much something costs, then it's really difficult to say how much we should spend," Professor Fassbender says.

Based on his research, the costs per incident to the health care system to treat some illnesses or conditions can range above the $30,000 level.

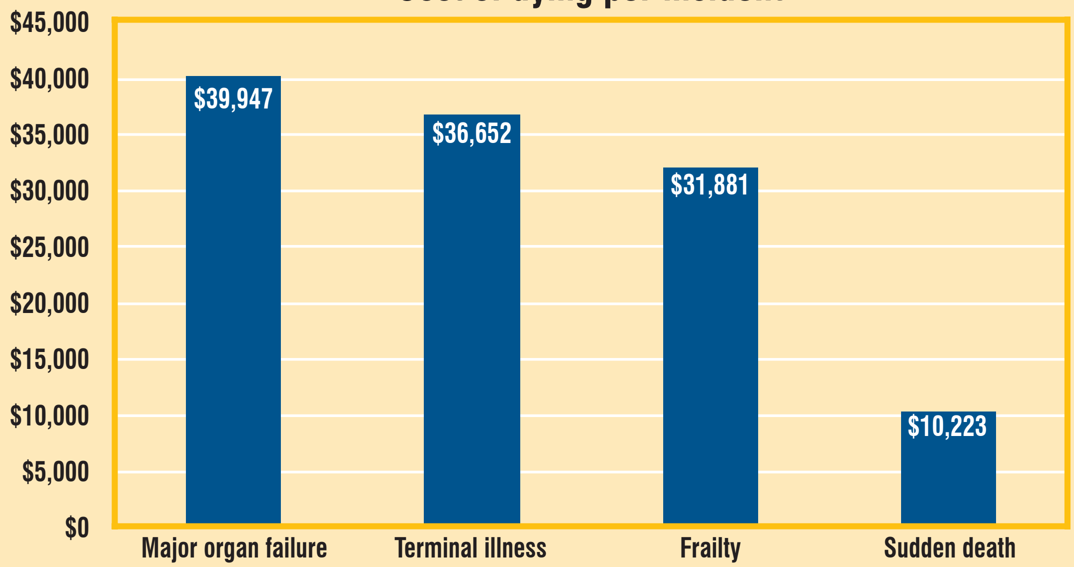
These costs do not include funeral or burial costs.

"In health, we somehow have bought into the fact that we need to provide this level of care at any cost, without any real data of its effectiveness, without any knowledge of how much it costs," he asserts.

Approximately 70 per cent of Canadians die in a hospital, where the most expensive equipment, services and resources are used to treat the terminally ill.

In total, 238,617 Canadians died in 2008. That number is expected to reach 330,000 in 2026 and 425,000 in 2036. ❧

Cost of dying per incident



Retirement wave will slow economic growth, Stats Canada says

The pending wave of retirements of baby boomers is expected to reduce economic growth to near stagnation levels, according to Statistics Canada.

According to the government agency, while the size of the workforce is expected to grow from 18 million today to 22.5 million by 2031, the ratio of workers to retirees is expected to shrink from 6:1 to 3:1, cutting per capita economic growth.

Current economic policy maintains that economic growth is easier to maintain when the largest share of the population is working, as has been the case since the late 1970s.

Since 1976, economic growth has averaged 1.6 per cent per year. With the halving of the ratio of workers to retired, the annual growth rate could be reduced to the 0.2 to 0.7 per cent range, the agency says.

That low level of growth could also result in higher unemployment, less investment and reduced output, it says.

The last time the ratio of working to non-working people was comparable to the Statistics Canada projections for 2031 was in the early 1970s, just prior to the entry of most boomers into the workforce. ❧

Most people don't understand TFSAs, survey says

Three years after their introduction, most Canadians are still unfamiliar with tax-free savings accounts (TFSAs), a survey by ING Direct says.

According to that company, 64 per cent of 1,700 people surveyed by Angus Reid indicated that they did not know what a TFSA was, or had no understanding of how they worked.

While commonly mistaken for registered retirement savings plans (RRSPs), tax-free savings accounts operate almost opposite to RRSPs, despite their common objectives.

While RRSPs allow consumers to deduct their annual contributions to their plans, TFSAs provide no such tax deductions. However, unlike RRSPs, when money is withdrawn from TFSAs, it is not subject to taxation.

As well, RRSPs have an annual contribution limit of 18 per cent of income to a maximum of $22,970. TFSAs have an annual contribution limit of $5,000.

Like RRSPs, proceeds from TFSAs can be invested in a variety of vehicles including equities, mutual funds, guaranteed investment contracts (GICs) and savings accounts. Both RRSPs and TFSAs have penalties for over contributing to the plans. Last year, more than 100,000 people were penalized by the Canada Revenue Agency for over contributing to their TFSA.

Since their introduction, more than 6.8 million people have opened tax-free savings accounts. The total value of the accounts amounts to more than $40 billion.

"The survey data suggests that a great many Canadians are missing a valuable opportunity to save more for their retirement while deferring taxes," says Coughlin & Associates Ltd. President Brian Bockstael. *"One should always take advantage of a chance to save more."*

For more information on tax-free savings accounts, contact Coughlin Individual Financial Services Department consultant Richard Seguin at 613-231-2266, Extension 204 (rseguin@coughlin.ca), or Jacques Poirier at 613-231-2266, Extension 244 (jpoirier@coughlin.ca). ❧

Ontario simplifies pension division rules for divorce

The Ontario government has introduced changes to its Family Law Act to make the division of pension assets easier on divorce.

Under the new rules, which went into effect on January 1, 2012, the two parties involved in a divorce proceeding will no longer have to provide independent actuarial valuations of their respective pension assets. Instead, pension plan administrators must prepare a valuation of the benefits, based on formulas set in the Act. As a result, divorcing couples will no longer have to fight complex legal disputes over which pension valuation to use for asset division purposes.

Another major change involves making the access to pension assets easier for non-member spouses. Under previous rules, non-member spouses often could not receive a portion of the pension until the member had accrued the benefits and left the pension plan, retired or died. Often, this resulted in non-member spouses waiting years to access their share of the pension benefit.

Now, if a member is still accruing benefits, the non-member spouse may receive a lump sum settlement out of the plan, creating an immediate division of the pension assets. This should eliminate the need for *"if and when"* settlement arrangements during pension divisions.

While the new rules should streamline divorce proceedings and asset divisions, it should be noted that they can only be applied to court orders and separation agreements dated January 1, 2012 or later. Documents dated prior to January 1, 2012 must be administered based on the old rules.

For more information on the changes to the Family Law Act, go to www.fsco.gov.on.ca. Key-in "*Division of pensions*" in the search field and look for the question and answer format on pension asset division. ❧

CPP experience study offers insight into disability trends

A study released by the Office of the Chief Actuary of the Canada Pension Plan (CPP) illustrates the changing pattern of disability since 1970.

According to the *Canada Pension Plan Experience Study of Disability Beneficiaries, Actuarial Study No. 9,* released in September 2011, the causes, incidence rates, durations and claimant profiles have changed substantially since disability was added to CPP benefits in 1970.

While the study focuses exclusively on CPP claimants, the general patterns of disability and claimant profiles could be useful to plan sponsors and plan administrators involved in group disability management.

Cyclical patterns

Covering the period from 1970 to 2007, the CPP disability experience shows the number of new disability beneficiaries growing from 8,400 per year in 1970, peaking at 58,000 annually in 1992 then declining sharply to approximately 30,000 per year from 1992 to 1996 only to rise to the 33,000 level from 2003 to 2007. While there are many reasons for the sharp increase in claims from 1970, including increased awareness of the benefit and more liberal administration standards, the study notes that there were distinct peaks in claims activity during the recessions of the early 1980s and early 1990s.

Similar patterns also tend to occur in private disability plans.

In other words, economic factors *can* have an impact on disability claims activity.

Gender

Not surprisingly, as more women entered the workforce, the percentage of female claimants also increased. From representing 13 per cent of all claimants in 1970, the proportion of female claimants has steadily increased since then. Today, 51 per cent of all CPP disability benefit claimants are women, the same ratio as women to men in the general population.

Cause of disability

Perhaps the most noticeable change in disability patterns from 1970 occurs in the cause of disability. In 1970, circulatory problems accounted for almost four out of 10 CPP disability claims. Today, they represent just 10 per cent of claims. However, the proportion of claims from mental illness has tripled from eight per cent of claims to 22 per cent. Neoplasms and musculoskeletal claims have also almost doubled since then.

This is illustrated in the following table:

New disability beneficiaries by cause (%)

Year	Musculoskeletal	Circulatory	Mental	Neoplasm	Other	Nervous	Injury
1970	13%	39%	8%	12%	17%	8%	4%
1975	22	32	8	10	17	6	6
1980	23	29	8	14	15	6	5
1985	29	24	8	13	14	6	7
1990	33	17	11	12	12	7	7
1995	23	14	20	16	14	9	4
2000	20	12	21	18	15	10	4
2005	22	10	23	18	14	9	5
2007	21	10	22	19	14	9	5

(From: *Canada Pension Plan Experience Study of Disability Beneficiaries, Actuarial Study No.9*)

When reviewed by age, incidence rates vary even more. Among those under age 40, illnesses of the nervous system represented the highest number of CPP disability claims in 2007. However, for those in the 40 to 55 age category, mental illness led the way, accounting for 26 per cent of claims. At 26 per cent, musculoskeletal illnesses generated the largest portion of claims among those age 55 or older.

Incidence rates

The incidence rates of disability have seen sharp declines from the 1970s, especially at older ages, the CPP report says. From the male rate of 21 to 38 cases per 1,000 and the female rate of 17 to 26 cases per 1,000 in 1975 for those age 60 to 64, incidence rates among both groups now hover in the nine to 13 per 1,000 lives level.

Despite the across-the-board declines in disability claims among all age groups over the three decades since disability was incorporated into CPP benefits, the overall pattern of incidence rates still holds, with more disabilities being reported at older ages and fewer being recorded at younger ages.

In 2007, CPP disability incidence rates were:

Disability incidence rates by age (per 1,000 lives)

Age	Male	Female
20	0.1	0.0
25	0.4	0.4
30	0.6	1.1
35	1.0	1.5
40	1.7	2.4
45	2.2	3.6
50	3.5	4.8
55	6.3	6.6
60	9.2	9.0
64	13.9	10.3

(From: *Canada Pension Plan Experience Study of Disability Beneficiaries, Actuarial Study No.9*)

Termination of benefits

CPP data may not apply directly to all group disability plans. However, the actuarial report does highlight some disturbing trends regarding termination of benefits. While the reasons for the terminations have remained relatively constant throughout the years, with attainment of age 65 accounting for approximately 60 per cent of terminations; death of members approximately 30 per cent; and recovery from the illness the remainder, termination data itself varies widely by disorder.

For example, the CPP report indicates that neoplasms accounted for 44 per cent of deaths. That compares to only three per cent of deaths among those disabled as a result of poisoning or injury. By contrast, those with musculoskeletal disabilities accounted for 35 per cent of terminations at age 65 compared to only five per cent with neoplasms. In other words the rates of mortality, recovery and attainment of age 65 are more dependent on the nature of the disability itself than other factors. The following table illustrates this:

Distribution of terminated benefits by reason and cause of disability (2007)

Cause of disability	Died	Recovered	Attainment of 65
Musculoskeletal	8%	18%	35%
Circulatory	10	7	16
Mental disorders	11	28	18
Neoplasms	44	19	5
Other	15	15	11
Nervous system	8	7	9
Injury/poisoning	3	6	6

(From: *Canada Pension Plan Experience Study of Disability Beneficiaries, Actuarial Study No.9*)

Mortality data follows a similar pattern, with neoplasms dominating, regardless of the duration of the disability.

Deaths by cause of disability and duration (2007)
Duration of benefit in years

	1-2 years	3-5 years	6+ years	Total	Per cent
Musculoskeletal	78	169	558	805	8%
Circulatory	137	232	550	919	10%
Mental disorders	91	213	778	1,082	11%
Neoplasms	3,006	886	313	4,205	44%
Other	340	382	743	1,465	15%
Nervous system	103	148	527	778	8%
Injury/poisoning	31	35	172	238	3%

(From: *Canada Pension Plan Experience Study of Disability Beneficiaries, Actuarial Study No.9*)

The CPP chief actuary's report provides a solid base of data that plan sponsors and administrators could use as a basic tool to compare their own organization's experience against a national average. Copies of *Canada Pension Plan Experience Study of Disability Beneficiaries, Actuarial Study No.9* have been posted on the web site of the Office of the Superintendent of Financial Institutions at www.osfi-bsif.gc.ca ❧

Pension solvency ratios drop to 68 per cent

Sponsors of defined benefit (DB) pension plans may have to double their contributions in 2012 in order to maintain plan solvency.

According to studies published by Aon Hewitt, the median pension solvency ratio has dropped from 83 per cent at the beginning of 2011 to 68 per cent today. Plans undergoing actuarial valuations in 2012 should expect to be required to provide extra funding to their pension plans, the group says.

With interest rates at historic lows and equity markets facing more uncertainty due to the Eurozone debt crisis, pension plan sponsors should expect to see continued weakness in their pensions' performance and overall funding. ❧

Trend factors reduce to 11.5 per cent

It's a case of good news-bad news when it comes to health care trend factors.

The good news: health care trend factors published by the insurance industry suggest that the cost of medical goods and services is expected to decline in 2012 to 11.5 per cent, down from previous years' levels of 13 to 15 per cent.

The bad news: at 11.5 per cent, plan sponsors may still face rate increases or cost containment pressures, depending on their claims experience.

Increased competition among insurers scrambling to maintain or grow their market share in today's tough economic environment accounts for some of the decrease in trends. However, a six to eight per cent inflation level in the medical sector, an aging population and increased use of drugs and medical services are still placing extraordinary pressures on medical costs. ❧

Free trade with Europe could add $2.8 billion to drug costs

The Canadian Generic Pharmaceutical Association (CGPA) warns that the possible free trade agreement between the European Economic Community and Canada could drive Canadian drug costs up by $2.8 billion annually.

According to the Association, Europe has proposed extending the drug patent protection period for brand name drugs by 3.5 years, thereby adding to Canada's overall drug costs.

Of the additional $2.8 billion, it is estimated that $1.3 billion will be covered by provincial health care plans while $1.5 billion will be borne privately by consumers and employer drug plans. ❧

Scrap MPs' "platinum-plated pensions," taxpayer group says

The Canadian Taxpayers' Federation has called on federal parliamentarians to kill their "platinum-plated" pension plan.

According to the advocacy group, Canada's MPs have the best-funded pension plan in the world. The best part for them: Taxpayers foot the bill for most of it.

The Federation urges the government to adopt a new optional defined contribution pension plan where member contributions may be matched on a dollar-for-dollar basis.

"If it's good enough for Canadians, it should be good enough for our MPs," says Federation director Gregory Thomas.

Currently, taxpayers contribute $23.30 for every $1 invested by members of parliament. As well, MPs only have to serve six years in office to qualify for their defined benefit pension, compared to the 30 or 35 year service requirement of many defined benefit pension plans. MPs can collect benefits as early as age 55. ❧

Second cancer victim denied EI sickness benefits during maternity

For the second time in three months, a woman on maternity leave has been denied sickness benefits from the Employment Insurance program after she was diagnosed with breast cancer.

The newest case involves a 34-year-old Calgary woman who was diagnosed with early-stage breast cancer eight months into her maternity leave. Since the woman also carries a gene that makes her highly susceptible to aggressive and often fatal forms of breast cancer, she opted to have a double mastectomy.

When told that she would need six weeks to recover from the surgery, she applied for Employment Insurance sickness benefits. Her application was denied because she was on maternity leave and not available for work.

The Calgary woman's case mirrors an earlier case involving a 39-year-old woman who was also denied EI sickness benefits following a diagnosis of stage 3 breast cancer for the same reason.
In that case, the woman appealled the ruling to the Employment Insurance umpire, an independent arbitrator for EI claims disputes. To back her case, she cited a 2002 Employment Insurance Act provision allowing pregnant women and new mothers who become ill to receive EI sickness benefits in addition to the 50 weeks of maternity and parental benefits.

The umpire backed that woman's claim, stating that the provision of EI sickness benefits to women *"before, during and after receiving maternity benefits"* conformed to the spirit and intent of the 2002 EI legislation. The umpire suggested that EI use *"a more liberal interpretation"* of the Act in its rulings.

The Employment Insurance Commission accepted the first woman's claim after the umpire's ruling.

The Calgary woman has hired the same lawyer as the one used by the first woman to appeal her claim to the EI umpire. She has also voiced her concerns to her local member of parliament. In her case, that person is Prime Minister Stephen Harper.

Employment Insurance sickness benefits amount to a maximum of $485 per week. ❧

Cancer rates rising steadily Statistics Canada reports

Plan sponsors should expect to receive increased claims activity involving cancer, based on data published by Statistics Canada.

According to a new report published by the government agency, five-year prevalence rates for all cancers increased by 2.1 per cent per year from 1997 to 2008 to 1,490 cases per 100,000 of population.

The largest increases occurred with liver cancer, which recorded incidence rate increases of 8.3 per cent annually. Thyroid cancers followed close behind with 7.9 per cent annual increases.

The strong increase in liver cancers is attributed to increased immigration from countries where hepatitis B and C infections are common, increased intravenous drug use and sharing of needles, increased rates of type 2 diabetes and improved methods of cancer detection.

Despite the jump in liver cancer rates, it is still one of the least prevalent cancers, with only 6.2 cases per 100,000 of population.

Prostate cancer was the most common form of cancer reported in the study, with 610 cases per 100,000. Prevalence rates for that disease rose by three per cent annually during the 1997-2008 period, Statistics Canada says.

Breast cancer was the second most common form, afflicting 263 people out of 100,000. The prevalence rate for that cancer rose by an average of 1.3 per cent per year during the study period.

The only declines in cancer prevalence rates occurred with larynx and cervix cancers, which declined annually by 1.9 per cent and 1.5 per cent respectively.

An aging population and improved screening techniques are attributed to approximately half of the increase in the overall cancer rate, the Statistics Canada report says. ❧

Debt concerns driving employees to use EAPs

A study of EAP usage in 2010 by Morneau Shepell says that employee debt and/or credit problems are driving more people to seek credit counselling and related support services.

According to its report entitled *Financial Crisis on EAP Usage from 2009-2010,* Morneau Shepell says that debt and credit issues accounted for 63.2 per cent of all financial related accesses to EAP programs in 2010. Divorce-related financial issues followed far behind at 8.7 per cent; bankruptcy at 7.4 per cent; retirement issues at 5.7 per cent; and taxes at 4.6 per cent.

"In 2010, EAP access for debt and credit counselling definitely went up," says Morneau Shepell Executive Vice-President Karen Seward. *"This indicates that the fallout from the financial crisis was continuing as employees tried to work their way out of debt. We expect this to continue."*

With continued economic uncertainty, the accessing EAPs by employees for debt concerns over other financial issues will likely continue, Ms. Seward says. ❧

Fast facts

- Call it *the pension that ate the Twinkies.* Hostess Brands Inc., the maker of Twinkies, Wonder Bread and other baked goods, has filed for bankruptcy protection. In its filing, the company lists the Bakery & Confectionary Union and Industry International Pension Fund as its largest unsecured creditor. It owes the pension plan $944.2 million. Hostess estimates its total assets at between $500 million and $1 billion. Its total liabilities top the $1 billion mark.

- A Harris/Decima poll conducted for CIBC indicates that, on average, Canadians expect to retire at age 63. Only 22 per cent feel that they may retire with debts. More than one-third of those surveyed – 37 per cent – believe they will accumulate enough savings to choose their retirement date.

- Could inflammatory arthritis be affecting you're organization's productivity? An Abbott Canada survey of 3,000 Canadians with rheumatoid arthritis says that 42 per cent of those surveyed report that the illness affects their abilities to do daily activities at home and at work. A separate survey by Astra Zeneca and Morneau Shepell says that 35 per cent of working Canadians have taken sick days from work as a result of pain from the condition. Arthritis affects 4.5 million Canadians.

- US health care costs are expected to reach $10,475 per employee in 2012, according to estimates published by Aon Hewitt. That amount represents a seven per cent increase from 2011.

- Canadian employers say that work-related stress is the most important health risk facing employees, according to the 2011 Buffet National Wellness Survey. A total of 56 per cent of employers surveyed by the employee wellness advisor identified stress as their primary health concern. Smoking, mental health issues and high blood pressure followed.

- Despite market volatility and economic downturns in Europe and the United States, two-thirds of Canadians plan to contribute the same amount or more to their registered retirement savings plans (RRSPs) in 2012, according to a study published by the Bank of Montreal. On average, RRSP owners contributed $4,700 to their retirement plans in 2011, the bank says.

- Despite efforts by countries around the world to raise their retirement ages, Canadians across generational lines continue to expect to retire well before age 65, the TD bank says. According to the *TD Age of Retirement Report*, the expected age of retirement for baby boomers, Generation X and Generation Y is 61. The only problem: money. Approximately 60 per cent of those surveyed by the bank report having total household financial assets of less than $100,000.

- CP Rail has issued $500 million in debt securities to help pay down the deficit in its defined benefit pension plan. The company employs more than 15,000 people.

- China's social security programs are gradually beginning to mirror those of developed countries. The Chinese government has passed legislation requiring foreign companies and their employees to contribute to that country's national social security program. According to reports, employers will have to contribute 37 per cent of each employee's salary to the plan. Employee contributions will be in the 11 per cent range. Contributions will be capped at $187 per month for employees and $672 for employers. ❧

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