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AT A GLANCE ...

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Ontario tables new provincial pension plan

The Ontario government has tabled legislation to launch its own pension plan beginning January 1, 2017.

The tabling of the proposed structure and rules governing the new pension plan follows years of dispute between the province and the federal government on how to handle the pending wave of baby boomer retirements, many of whom have not saved enough to support themselves after they leave the workforce. (See the November 2013 edition of the *Coughlin Courier* for background.)

Initially, Ontario's government favoured a more robust Canada Pension Plan (CPP) that expanded its combined employee-employer contribution rates from the current 9.9 per cent of pensionable income to 12.1 per cent. In return, pensioners would receive approximately $6,000 of additional pension income each year. Instead of receiving the current benefit of $12,780 per year, retirees would earn roughly $18,000 annually from the federal government's universal pension plan.

That idea received a cool reception from the federal government. It favours its pooled registered pension plan (PRPP), a voluntary defined contribution pension supplement. The PRPP is designed to allow self-employed individuals and those working for smaller companies to contribute to a national defined contribution plan administered through accredited financial institutions. (See the December 2010 and January 2011 editions of the *Coughlin Courier* for background.)

With no resolution in sight, the province upped the ante by meeting its promise to launch its own pension plan.

"The Canada Pension Plan, Old Age Security, the Guaranteed Income Supplement and Ontario Guaranteed Annual Income System do not provide enough income replacement for many Ontario workers to ensure they are able to maintain a similar standard of living after retirement," an Ontario government media release stated. *"A significant number of today's workers will be stretched to save enough to ensure they can maintain their standard of living throughout their retirement years."*

Under the new legislation, the new Ontario Retirement Pension Plan (ORPP) would provide a defined benefit for life based on replacing 15 per cent of an individual's yearly maximum pensionable earnings (YMPE). The YMPE for 2015 is $53,600. Based on that assumption, the ORPP would provide a maximum income of $8,040 per year.

The CPP is designed to provide an income based on replacing a maximum of 25 per cent of the YMPE. In 2015, the maximum CPP income is $12,780. Together, the two pensions would provide a maximum pension income of $20,820.

However, the ORPP will not come cheaply. Borrowing liberally from the CPP's contribution structure, both employers and employees will be required to contribute 1.9 per cent each to a maximum pensionable annual earnings threshold of $90,000.

The CPP requires a joint employer-employee contribution of 9.9 per cent, or 4.95 each to the YMPE maximum.

For an Ontario worker, the introduction of the ORPP will result in a total pension deduction of 6.85 per cent from each pay.

continued on page 2

...continued from cover

Ontario tables new provincial pension plan

Employers will also be required to make the same contributions on behalf of each of their employees.

For many employers, the ORPP amounts to another payroll tax that will stifle employment and investment.

"Business owners tell us the main reasons for not offering a pension plan are high costs and administrative complexities," says Canadian Federation of Independent Business Ontario Vice-President Plamen Petkov.

His views were echoed by federal Minister of State for Finance Kevin Sorenson.

"Canadians don't want higher payroll taxes," he says. *"Half of the small businesses surveyed do not feel their businesses can remain at their current capacity with this payroll tax hike."*

Under the ORPP, only groups with a defined benefit or target benefit pension plan will be able to opt-out of the new provincial pension plan. All others, including groups with defined contribution pensions, group registered retirement savings plans (RRSPs), pooled retirement pension plans (PRPPs), deferred profit sharing plans (DPSPs) and the self-employed will be required to participate in the new pension program.

Exemption levels for low income earners are still to be established.

With the tabling of the ORPP legislation, the Ontario government plans to consult with various business, labour and community groups, beginning in early 2015. As a result, details of the new pension's rules and requirements may change in the coming months. However, the withdrawal of the proposal does not seem likely at this point.

For Ontario plan sponsors and plan members, the ORPP will likely become a priority issue in the coming months. Watch the *Coughlin Courier* for more information as it becomes available. ❧

Asbestos still a leading cause of health and death claims

While many consider it a relic from the 1950s, asbestos continues to be one of the largest sources of workplace death claims.

According to data compiled by the Association of Workers' Compensation Boards of Canada and published in the December 15, 2014 edition of the *Globe and Mail,* 368 deaths in the last year can be attributed to asbestos exposure in the workplace. More than 5,000 asbestos-related death claims were approved from 1996 to 2013, making it the leading source of workplace deaths in Canada.

For decades, Canada was one of the world's leading producers of the mineral, which was used widely in household insulation and siding, brake linings, moulding clay, cement, fire resistant clothing and other items.

Both Canada and the United States still continue to import and export the material for use in pipes, tiles and other construction products. It has been banned in Australia, Britain, Japan, Sweden and other countries. It has never been banned in Canada.

Asbestos has been linked to lung diseases such as mesothelioma and asbestosis. It has also been classed as carcinogenic by the International Agency for Research on Cancer and the World Health Organization.

Those assessments are disputed by Health Canada. According to a background article published on its website *"If asbestos fibres are enclosed or tightly bound in a product, for example in asbestos siding or asbestos floor tiles, there are no significant health risks."* However, significant exposure to or inhalation of loose asbestos fibres can cause asbestosis, mesothelioma and lung cancer, it concedes.

The long latency period associated with asbestos-related diseases has meant that mortality and morbidity rates associated with the product are actually increasing, despite the fact that its use has declined dramatically in recent decades.

For example, despite its ban of the product in 2003, Australia is still reporting increases in asbestos-related illnesses.

This could be sobering news for Canadian plan sponsors with workforces that could be exposed to asbestos in construction or demolition sites, shipping or manufacturing facilities using asbestos-based materials.

"The indications are that we can expect the increase in asbestos-related diseases to continue for at least another decade. That's assuming we as a nation ban it now," says University of Alberta epidemiologist and professor–emeritus Dr. Colin Soskolne. *"If we don't do that, we can expect it to continue to rise indefinitely but perhaps at a lower rate."* ❧

Members' wishes override internal procedures, court says

A Saskatchewan court has upheld a pension plan member's right to designate beneficiaries even when the member does so in a way that violates a plan's administrative procedures.

The case involves a member of a Saskatchewan health care sector pension plan that had designated his daughter as beneficiary under the plan in 2000.

However, in 2009, the member changed the beneficiary designation to his four nieces and nephews using the plan's official beneficiary change form. In doing so, the member also provided witnessed documentation that he was estranged from his daughter and did not want her to receive the pension benefits on his death.

Shortly after providing the documentation, the plan administrator noted that he had not stated his relationship with the new beneficiaries. As well, it said, he was supposed to list the fourth beneficiary on the second page of the beneficiary change form. (The member listed all four beneficiaries on a single page.) As a result, the administrator asked him to re-submit the designation forms. When no response was received, it sent two follow-up letters to the member. Again, no response was received.

After the member's death in 2012, it was discovered that he had destroyed the letters he received from the plan administrator.

While the pension plan's administrator originally advised the nieces and nephews that they were the member's designated beneficiaries, it later reversed that decision, citing that the member had not followed procedures when he listed the four beneficiaries on one page. They then awarded the benefits to his daughter.

The case then went to litigation.

In their submission, the nieces and nephews argued that, despite not following the plan's administrative procedures, they were the member's lawful beneficiaries as the 2009 signed beneficiary change form *"gave legal effect"* to his intentions.

In contrast, the pension plan argued that its plan documents gave the plan administrator unfettered discretion to establish and administer plan policies, including interpreting beneficiary designations. To support their position, they also presented a policy adopted by the plan in 2012 stating that all forms received prior to that year must strictly conform to their administrative procedures. As a result, it said, the listing by the member of four instead of three beneficiaries on one form invalidated the 2009 beneficiary designations.

In addition to that position, the deceased member's daughter also argued that by destroying the 2009 beneficiary designation when it was returned to him, the member had effectively revoked his intentions, thereby upholding the original designation of 2000.

In reviewing the case, the court cited Saskatchewan's Pension Benefits Act, which affirmed that a member may change or revoke a beneficiary *"only in the manner specified in the plan."*

In reviewing the plan documents, the judge found that while the plan allowed for the changing of beneficiaries, the only requirement listed in the plan documents was that the beneficiary change be in writing on a prescribed form.

"Although the plan had rejected the form, the concerns raised by the plan did not affect the validity, clarity or reliability of the plan member's wishes," the court said.

It also stressed that administrative policies should not impede pension plan administrators from acting on plan members' directions or wishes.

"The overriding purpose of those policies is to ensure that the wishes of plan members are clearly identified and acted upon," the court stressed. *"While the administrator's discretion is a broad one, it may not demand irrelevant information or require compliance with formalities that may serve only to impede, rather than achieve its objectives."*

As a result, it said, the plan member had a right to designate the new beneficiaries on the form prepared for that purpose, which he did. The fact that he did so on one page instead of two pages was irrelevant.

The court then ruled that the 2009 beneficiary designation to be valid.

The Saskatchewan case should serve as a lesson in customer service for pension plan administrators. While pension legislation provides them with a large degree of discretionary power to ensure the effective and consistent administration of a pension plan, they still must do so in a way that gives priority to the wishes of plan members over dictates of internal administrative procedures. ❧

Health groups condemn CLHIA policy on genetic testing

The Canadian Life and Health Insurance Association (CLHIA) has issued a controversial code to regulate the use of genetic testing in life insurance underwriting.

In its September 2014 paper entitled *Genetic testing information for insurance underwriting,* the association representing Canada's largest life and health insurers says it will not require or initiate genetic testing for those who apply for life or health insurance coverage. However, with a few exceptions, the group will still require those who have undergone genetic tests to reveal the results to potential insurance underwriters.

"Insurers will not, in any circumstances, encourage an applicant to undergo a genetic test," the CLHIA policy says. However, it notes: *"Where an individual has voluntarily and independently undergone genetic testing, insurers may consider those results as part of their risk assessment."*

The results of such assessments could generate higher or lower insurance premiums or affect the insurability of an applicant, the organization notes.

As part of its genetic testing protocol, the CLHIA also made the following commitments:

- if an applicant has requested not to know the results of a genetic test, insurers will continue to respect the applicant's right to remain unaware of the test results;
- insurers will not require or request applicants to reveal genetic test results when they have participated in genetic testing for research purposes and did not receive the results of the tests;
- insurers will not ask for genetic test results from applicants when they have had a genetic test performed and they and their physician will not receive the results prior to the insurance being issued;
- genetic test results may only be obtained with the written consent of the individual;
- insurers will not require any person other than the applicant to reveal the results of a genetic test; and
- access to test results will be restricted to the insurer and its reinsurers. Written consent of the tested individual will be required to release the information to third parties.

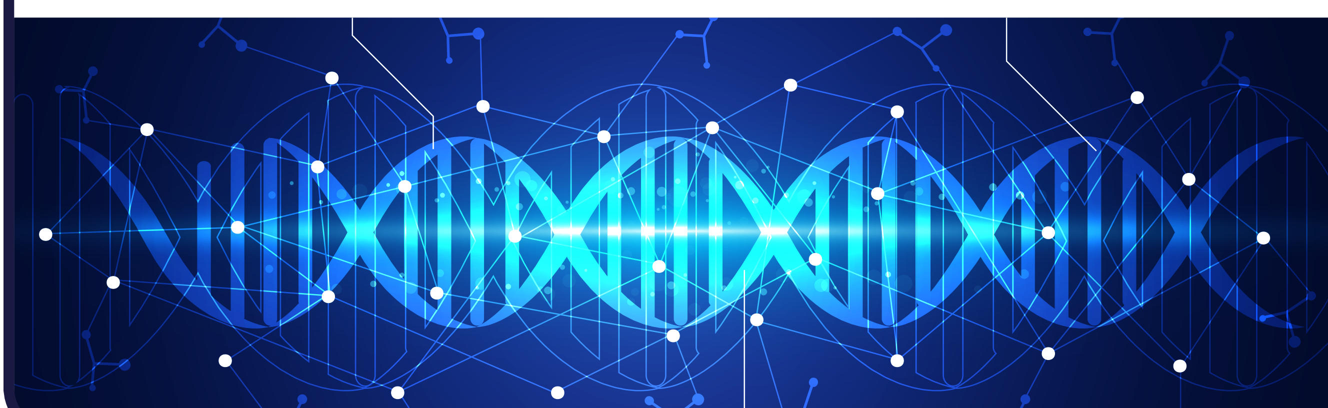
The CLHIA policy statement was condemned by the Coalition for Genetic Fairness, an association of 16 different health information organizations including the Huntington Society of Canada, Alzheimer Society of Canada, the Kidney Foundation, the Multiple Sclerosis Society and others.

"This new industry code does not address the concerns of Canadians who fear discrimination by insurance companies due to their genetic make-up," the group said in a September 26, 2014 media release. *"Genetic information can help individuals make informed decisions. It is unacceptable that Canadians risk discrimination by insurance companies if they wish to obtain their personal genetic information. This stands in the way of Canadians being pro-active about their own health."*

There are more than 3,000 genetic tests available to Canadians but there are no provisions to protect individuals' personal genetic information, the Coalition notes.

"Canada is the only G7 country that does not protect its citizens against this form of discrimination," it says.

Private members' bills have been introduced in the federal House of Commons to outlaw the use of genetic testing in insurance underwriting. None have been passed. ❧



Google's latest employee benefit: genetic testing

While the Canadian life insurance industry is in the process of defining its rules on genetic testing, Google has announced that it will offer genetic testing as an employee benefit.

Effective this past January, the high tech company will cover the costs of DNA tests for employees and their family members suffering from cancer.

The benefit will cover two DNA tests: one that reviews an individual's potential for solid tumours, the second tests for blood or pediatric cancers.

The tests are provided by Foundation Medicine, an organization specializing in commercially available DNA tests.

Costs of the tests range from $5,800 US to $7,200 US.

It is unclear whether employees' test results could be used to change the pricing of Google's employee benefits plan. However, Google's home state of California has already passed stringent laws to prevent genetic-based discrimination.

Also unclear is whether the company will offer employee assistance programs (EAPs) or other services to help employees who discover they have a genetic predisposition for certain types of cancer.

Google employs more than 47,000 people. ❧

Three pension giants unite to oppose new regulator

Three of Ontario's largest public sector pension plans say they will oppose proposals to create a national securities regulator.

The Healthcare of Ontario Pension Plan (HOOPP), the Ontario Municipal Employees Retirement System (OMERS) and the Ontario Teachers' Pension Plan (OTPP) have issued a joint statement to federal Finance Minister Joe Oliver urging him to remove pensions from the Capital Markets Stability Act, the draft legislation creating a single securities regulator for the country.

The three pension plans represent more than 900,000 active and retired plan members and manage more than $150 billion in assets.

According to HOOPP Chief Executive Officer Jim Keohane, the proposed law will give the new regulator unprecedented powers, including the power to stop pensions from trading securities.

"This act gives the regulator unbelievable powers," he says. *"It can force us not to trade securities. The regulator can, at its discretion, order us to do anything it deems necessary to address systemic risk. It's completely open-ended."*

If adopted, the new law will allow the national regulator to designate an organization as *"systemically important."* If the regulator feels the organization's activities may pose a systemic risk to markets, it could force the organization to sell securities, increase capital, abandon mergers, wind-up operations or terminate business activities or *"do anything else necessary to address the risk."*

Violators of the act could face fines of up to $25 million.

Such powers could result in pension plans being forced to buy or sell assets to prop-up failing financial institutions or provide liquidity to markets during financial crises, Mr. Keohane warns.

"This thing says they can tell us to do anything," he says.

The legislation would apply to key organizations involved in Canadian capital markets including pension plans, stock exchanges, clearing houses, credit rating agencies, brokerage firms, investment funds and others.

According to the HOOPP executive, the nature of pension plans should exclude them from the proposed law. Since their primary purpose is to pay benefits to members, pensions already operate under strict and highly conservative investment regulations.

A national regulator should be more concerned about the organizations that issue risky investments such as subprime loans and non-bank commercial paper, not the organizations that hold them in good faith, he says.

"We believe that there is no evidence showing that pension entities are potential sources of systemic risk" he stressed. *"On the contrary, pensions are typically seen as buffers against systemic risk. Those entities that could cause systemic instability should be watched. But we're not one of them"*

Today, Canada's securities regulations are controlled by the provinces. Canada is the only developed country that does not have a unified regulatory system to monitor or control its capital markets.

Ontario, New Brunswick, Saskatchewan and British Columbia support the plan to develop a national securities regulator. Quebec and Alberta oppose the plan. ❧

PPN update

- **IDA Rideau Medical Pharmacy**, at 580 Rideau Street in Ottawa, has joined the Coughlin & Associates Ltd. Preferred Provider Network (PPN.) They can be reached at 613-789-1151.
- **Bells Corners Pharmacy**, at 14-2006 Robertson Road in Nepean, has joined the Coughlin PPN. Phone 613-680-5599.
- **St. Laurent Medical Centre Pharmacy,** located at 968 St. Laurent Blvd in Ottawa, has joined the Coughlin PPN. Call 613-680-7666.
- **The Food Basics Pharmacy**, of 1465 Merivale Road, Ottawa, is no longer a functioning pharmacy.

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One way we can help our children is to preserve forests by reducing our paper consumption.

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Enrol in Coughlin's Pre-Authorized Deposit plan today. Go to www.coughlin.ca for details.

**Source: www.rainforestmaker.org*

Fast facts

- Effective January 1, 2015, Canada Pension Plan (CPP) benefits increased by 1.8 per cent. The maximum CPP retirement benefit at age 65 is now $1,065 per month.
- Old Age Security (OAS) benefits increased by 0.9 per cent on January 1, 2015 to $563.74.
- The maximum pensionable earnings for the Quebec Pension Plan (QPP) increased January 1, 2015 to $53,600, up from $52,500 last year. Joint employer-employee contribution rates have increased to 5.25 per cent each, or to 10.50 per cent for self-employed individuals. The maximum employer and employee contribution will be $2,630.25. For the self-employed, the maximum contribution level will be $4,260.50.
- Annual contribution limits for tax-free savings accounts (TFSAs) will remain at $5,500, the Canada Revenue Agency says.
- Contribution limits for registered retirement savings plans (RRSPs) for 2015 will be 18 per cent of earned income to a maximum of $24,930. Earned income includes wages, alimony and rental income. It does not include investment or pension income.
- Premium tax rates in the province of Quebec increased from 2.3 per cent to 3.48 per cent effective December 3, 2014. The premium tax is built into the rates charged for insured benefit plans. As a result, plan sponsors with an insured plan will not see an immediate impact. However, self-funded health and dental plans, administrative services only (ASO) arrangements and health care spending accounts will be impacted immediately.
- One in seven Canadians is currently disabled, according to an RBC Insurance survey. One in three will experience a disability lasting 90 days or longer at some point in their working lives, the report says.
- The value of Canadian pension plans increased to $1.4 trillion at the end of the second quarter of 2014, Statistics Canada reports. It was the fourth consecutive quarterly increase. More than 6.2 million Canadians belong to a registered pension plan.
- If just 10 per cent of Canadian adults moved more and sat less, Canada's health care costs would reduce by $2.6 billion and generate an additional $7.5 billion for the economy, the Conference Board of Canada says. According to its *Moving Ahead* study, walking more and sitting less would result in 222,000 fewer cases of hypertension, 120,000 fewer cases of diabetes and 170,000 fewer cases of heart disease over the next 25 years. The reduction in deaths and disabilities would reduce the strain on the health care system, it says.
- A total of 39 per cent of Canadian small businesses hired an employee with a disability in 2013, a BMO Financial study says, a jump from the 29 per cent reported in 2010.
- The federal tax court has ruled that medical marijuana is subject to federal goods and services tax (GST), similar to over-the-counter medications. According to British Columbia Justice Campbell Miller, the lack of controls over the drug *"make it more akin to an over-the-counter drug than a drug acquired by a prescription"* and therefore, is not exempt from taxation. As a result, plan administrators should expect to see the GST applied to benefit claims involving medical marijuana.
- The US Equal Employment Opportunity Commission has filed a lawsuit against the Honeywell Corporation, alleging that the company is imposing up to $4,000 in penalties against employees who fail to take biometric tests to identify smoking, diabetes, high blood pressure, obesity and other health issues. The company says the screening program is designed to encourage employees to live more healthy lives, thereby reducing health care costs for both them and the company.
- The US Society of Actuaries has revised its mortality tables. For men age 65, life expectancy increased to age 86.6, up from 84.6 in 2000. Women the same age can now expect to live to age 88.8, an increase from the 86.4 reported in 2000. ❧

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