COUGHLIN employee benefits specialists

COURIER

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AT A GLANCE ...

COUGHLIN employee benefits specialists

Supreme Court to rule on public service pension surplus

The Supreme Court of Canada has agreed to hear a case that will decide who has the right to control and access pension surpluses: employers or pension plan members and their representatives.

At stake: the $30 billion surplus of the federal public service, Royal Canadian Mounted Police (RCMP) and military pension plans.

The case dates to 1999 when the federal government passed bill C-78, effectively allowing it to appropriate the accumulated surplus in the three public service pension plans to pay down the federal deficit.

The government's action was opposed by 18 different public service unions, associations and allied groups who initiated court action to either prevent the appropriation or, at least, receive recognition for the 42 per cent "equitable interest" the employees have in the surplus as a result of their contributions to the three major pension plans.

Earlier litigation efforts by the unions were overruled by the Ontario Superior Court and, in 2010, by Ontario Court of Appeal, which said that the federal employees were not entitled to any of the plans' accumulated surpluses.

In their submissions, the federal employees' unions argue that the government violated its fiduciary duty by using the surplus funds for a purpose that was not in the best interests of the federal public sector employees and retirees. The government action also violated the terms of the public sector workers' contract, the employee representatives say.

In contrast, the federal government maintains that the surpluses amounted to nothing more than "legislated ledgers" that tracked contributions and deductions from a general account that ultimately fed into the government's consolidated revenue fund. Since the surplus did not contain or invest in equities, properties, savings vehicles or other securities, there were no hard assets requiring traditional fiduciary governance. In other words, the surplus was nothing more than an accounting entry in the overall government ledger.

With more than 700,000 public servants and retirees dependent on the three federal pensions in question, the Supreme Court's ultimate ruling will be felt from coast to coast.

Politically, the ruling will come at a difficult time for both the government and the union groups. With so much attention now being focused on the generous benefits provided by the public service defined benefits pension plans, the union groups may find it difficult to position their case when many less generous private sector pension plans are facing severe financial strain.

On the other hand, the government could find itself in a position where it appears to be attacking the country's largest public pension plans at a time when it is trying to position itself as a defender of such plans. In addition, many members of the current government, including eight key cabinet ministers, went on record as strongly opposing the government's appropriation of the pension surplus when they sat in the House of Commons as members of the opposition.

Complicating the problem: should the government be required to return the $30 billion to the three pension plans, it would face a substantial liability at a time when it is attempting to cut expenses and reduce its debt.

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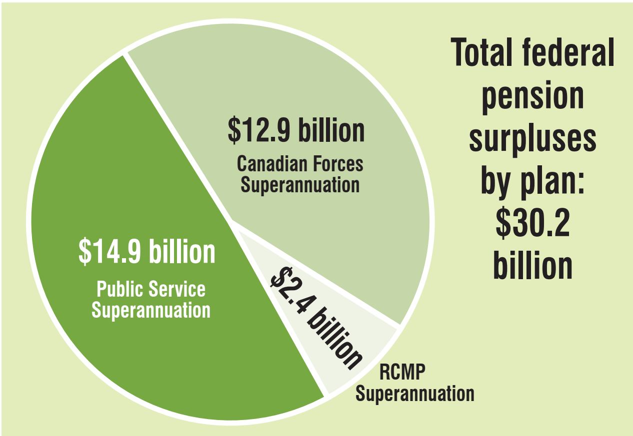
Supreme Court to rule on public service pension surplus

The Supreme Court will hear arguments from both sides from March through to mid-May 2012.

A decision is not expected until late 2012 or early 2013.



Groups opposing the pension surplus appropriation

- Association of Canadian Financial Officers
- Canadian Air Traffic Control Association (CAW Local 5454)
- Canadian Association of Professional Employees, Canadian Auto Workers (Local 2182)
- Canadian Federal Pilots Association
- Canadian Merchant Service Guild
- Canadian Military Colleges Faculty Association
- Communications, Energy and Paperworkers Union of Canada
- Federal Dockyard Chargehands Association
- Federal Government Dockyard Trades and Labour Council (East)
- Federal Government Dockyard Trades and Labour Council (West)
- Federal Superannuates National Association
- International Brotherhood of Electrical Workers (Local 2228)
- Professional Association of Foreign Service Officers
- Professional Institute of the Public Service of Canada
- Public Service Alliance of Canada
- Research Council Employees' Association
- Union of Canadian Correctional Officers ❧

Ontario restricts Oxycontin and Oxyneo

The Ontario government has placed restrictions on the distribution of drugs containing oxycodone, the painkiller used in Oxycontin and its replacement, Oxyneo.

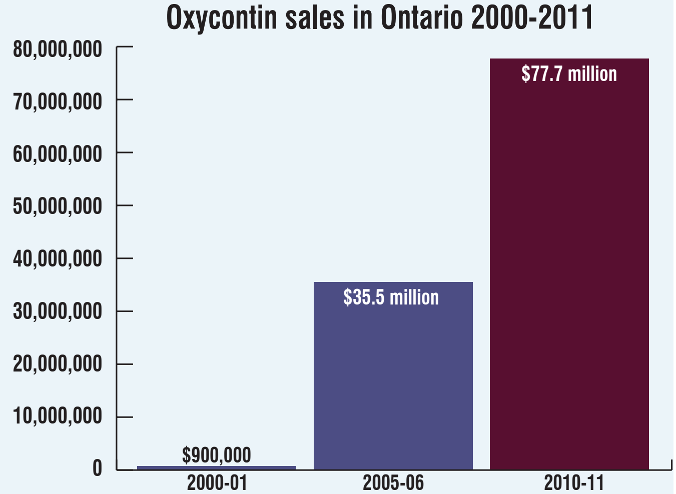
Effective February 29, 2012, all new prescriptions containing oxycodone will have to be first approved through the Ontario Exceptional Access Program. That program requires physicians to provide a compelling reason for prescribing the medication before patients may receive the drug.

Under the new monitoring regime, all Oxycontin prescriptions will be grandfathered until April 2, 2012. After that, patients will be able to receive Oxyneo for one year. After that time, doctors will be required to prove that they tried alternative treatments to the two drugs before the medications may be dispensed.

Oxycontin is the fastest growing cause of addiction in Canada. Meanwhile, Ontario has the highest rate of addiction to the drug in the country. Remote communities and First Nations' reserves have been hit particularly hard by Oxycontin addiction.

Purdue Pharmaceuticals, the manufacturer of Oxycontin, is voluntarily withdrawing the drug from the market and replacing it with Oxyneo, a less powerful medication that is less able to be crushed, snorted or injected. ❧

Oxycontin sales in Ontario 2000-2011



(Source: *The Globe & Mail*, February 29, 2012 edition)

Drummond report takes hard look at Ontario's health care and pensions

Ontario's debt level will increase from 35 per cent of its gross domestic product (GDP) to 50 per cent by 2018, unless it drastically changes the way it manages and delivers its services, according to a special report written by former TD Bank Chief Economist Don Drummond.

The February 2012 report contained 360 different recommendations, the plurality of which focused on health care delivery and pensions.

While Mr. Drummond's report was designed to provide the Ontario government with strategic guidelines to steer the province away from fiscal crises in the coming years, experts across the country have noted that many of its recommendations could be applied to other provinces.

If implemented, the Drummond report has potential to change benefit plan administration, collective agreements and, ultimately, claim reimbursements. Among its recommendations are:

For health care

- Develop a patient-centred health care plan covering the next 20+ years.
- *"Recognize changes and challenges in both demographics and lifestyles"* by putting more emphasis on chronic care rather than acute care.
- Develop evidence-based policies and guidelines to establish which procedures, drugs and devices should receive public funding.
- Increase attention on preventative health.
- Encourage the sharing of patient health data and decisions among health care professionals and providers.
- Divert patients not requiring acute care to more appropriate, less expensive institutions.
- Increase use of home-based care.
- Cap government health spending increases at 2.5 per cent per year from 2012-18.
- Increase funding for community-based health care to take pressure off acute care hospitals.
- Do not apply the same level of fiscal restraint across the board. Some areas, such as mental health and community health services, will need to grow more rapidly than other services in the coming years.
- Consolidate or reduce the number of health service agencies or boards.
- Shift health service to lower-cost providers.
- Increase the use of nurse practitioners.
- Increase the use of personal support workers and integrate them into teams with nurse practitioners and registered nurses.
- Permit pharmacists to administer routine injections and inhalations, including immunization.
- Discourage hospitals from extending out-of-hospital services for outpatients. Hospitals should be encouraged to confine their services to within hospitals. Outpatient services should be provided by community care access centres and the private sector.
- Avoid building more long-term care facilities for the aged until government can assess what can be done by emphasizing greater use of cheaper home care services.
- Tie compensation for CEOs and senior executives in the health care system to health outcomes achieved rather than interventions performed.
- Allow primary caregivers to "quarterback" the tracking of patients as they move through the healthcare system.
- Reduce mortality, hospitalizations and costs by connecting those with serious chronic health problems with ongoing monitoring and support through expanded use of telehealth services.
- Develop co-ordinating bodies to centralize the leadership of chronic illness management including mental health, heart and stroke and renal disease.
- Compensate physicians using a 70 per cent salary, 30 per cent fee for service model.
- Provide better after hours care. Telephone and internet services should direct patients to the most appropriate and convenient care givers.
- Physicians should begin discussions with middle age patients about their end-of-life care.
- Upload public health services to the provincial level.
- Have doctors address diet and health issues first before prescribing drugs to those with cardiovascular disease, Type-2 diabetes and other illnesses.
- Link the Ontario Drug Benefit (ODB) plan benefits to income.

For pensions

- Consolidate Ontario's 29 university and college pension plans under one plan administrator. Look for similar opportunities in the energy sector.
- Cap employer contributions on government pension plans at current rates.
- Wind-up the Ontario Pension Benefits Guarantee Fund, or transfer its 1,600 pension plans to the private sector.
- Significantly increase Ontario Pension Benefits Guarantee Fund assessments to insulate the fund from catastrophic claims.
- Use more conservative assumptions for funding pension deficits.
- Eliminate lump-sum bonuses paid to teachers on their retirement.
- Reduce deficits on Ontario government pensions by reducing benefits rather than raising member contributions.

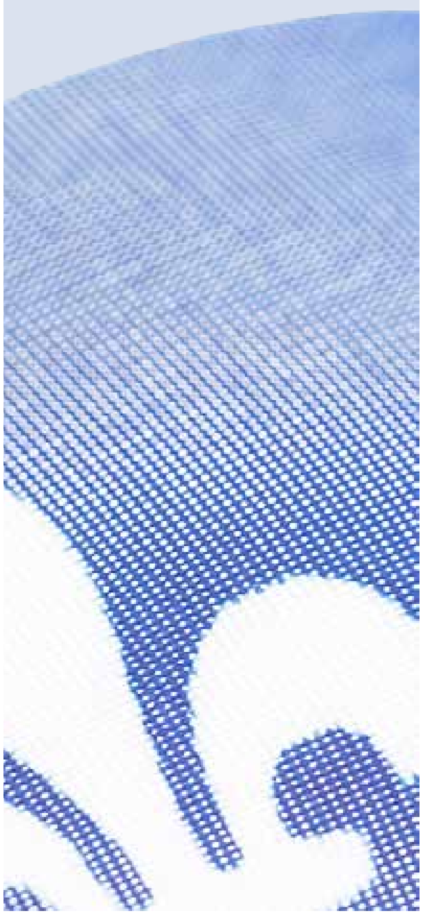
For the full report, go to www.fin.gov.on.ca and click on the link entitled *Commission on the reform of Ontario's public services.* ❧

QPP changes

Effective January 2012, Quebec workers were allowed to collect Quebec Pension Plan (QPP) benefits as early as age 60 without ceasing employment or reducing their employment earnings.

The move follows similar adjustments made in 2011 to the Canada Pension Plan (see the January 2011 and May 2011 editions of the *Coughlin Courier* for details.)

In addition, the amount payable to children of deceased contributors will increase to $224.62 per month. ❧



Supreme Court to revisit asset division for Quebec common-law partners

The Supreme Court of Canada will be asked to reverse a 2002 ruling and compel Quebec to allow common-law spouses to receive the same rights to spousal assets on separation as married spouses.

The case involves a prominent couple that had three children during their seven-year common-law relationship. However, under Quebec law, common-law spouses are independent, equal entities that reject the formal ties and obligations of marriage. As a result, they are not entitled to share in the growth of assets that may occur during their relationship.

In this case, the assets of the male partner are estimated to be in the multi-billion dollar range.

Lawyers representing the woman partner argue that the current situation in Quebec actually encourages the financially more powerful spouse in a common-law relationship to avoid the formal responsibilities of marriage including important items such as child support and asset division on separation or relationship breakdown.

However, the Supreme Court's traditional reluctance to reverse its earlier decisions may impede the woman's case.

Quebec is the only province that does not recognize the right of common-law spouses to obtain benefits or share assets on relationship breakdown. The degree of support available to common-law partners varies considerably by province in the rest of the country. ❧

ODB fee changes

Effective April 1, 2012, dispensing fees for prescriptions paid through the Ontario Drug Benefit (ODB) plan will change as follows:

Type of pharmacy	Current rate per prescription	New rate effective April 1, 2012
Category 1	$8.20	$8.40
Category 2	$9.22	$9.45
Category 3	$10.25	$11.55
Category 4	$11.28	$12.61

Under the province's drug regulations, category 2, 3 and 4 pharmacies tend to be located in rural or remote areas.

In addition, the price of generic drugs sold in the province will be set at 25 per cent of the original brand name drug price. That price regime applies to the ODB plan, private drug plans and individuals. ❧

Plan sponsors expect a pension crisis this year

Plan sponsors expect to face a pension crisis within the next 12 months, according to a recent survey conducted by Towers Watson.

According to its study, 65 per cent of 115 organizations with pension plans report they are facing a "long-lasting pension crisis" that is likely to worsen in the next 12 months. That number compares to 56 per cent last year and only 34 per cent in 2008, prior to the market crash.

The sobering report suggests that plan sponsors are finding it increasingly challenging to make up funding shortfalls in their pension plans. Recent reports indicate that the median solvency ratio of pension plans now stands at 68 per cent. In other words, the plans now have 68 cents for every $1 of pension obligations they have on their books. That ratio represents a decline of 15 per cent from early 2011.

Continued market volatility and historically low interest rates have reduced the potential for a quick return to solvency through aggressive investment returns. Compounding the problem is the fact that the leading edge of the baby boom generation is beginning to retire. As more boomers retire, more strain will be placed on already stretched pension budgets.

According to Towers Watson, the pension reform most favoured by plan sponsors is the permanent granting of extensions to pay back their funding shortfalls. Also favoured is the buying of long-term bonds that match plan sponsor pension liabilities. That option, which 56 per cent of plan sponsors said they would be willing to consider, would lower investment returns while reducing portfolio risk. However, the best time to implement that strategy was in the 2006-07 period as the economy peaked and interest rates were higher.

Far down on the list of alternatives was conversion of pensions from defined benefit to defined contribution. Only eight per cent of plan sponsors reported that they were considering that option. ❧

Duty to accommodate includes assistive devices

A labour arbitrator has ruled that the duty to accommodate disabled employees extends to reimbursement for assistive devices such as hearing aids.

The ruling involves a Thunder Bay, Ontario teacher that suffered progressive hearing loss beginning in the early 1990s. At that time, she purchased a standard analogue hearing aid to alleviate her problem. However, her condition worsened to the extent that she had difficulty communicating.

In 2008, her audiologist suggested that she could benefit from high technology digital hearing aids. After she purchased the new hearing aids, her employer refused her claim.

The teacher and her union then filed a grievance, stating that the superior hearing aids were a required measure to accommodate a personal disability.

In its submission to the arbitrator, the employer maintained that assistive bodily devices such as eyeglasses, hearing aids and prosthetics that are calibrated and integrated to person's body should not be considered part of an employer's duty to accommodate a disability. Since the cost of such items were part of an employee's everyday living expenses, an employer's liability should be limited to the terms of the group benefits plan, most of which limit reimbursements to basic needs rather than individualized requirements.

In addition, it noted, it had already accommodated her hearing loss by modifying her workspace to reduce excess noise levels, providing a special phone for the hearing impaired and reducing her teaching responsibilities to smaller groups of students.

The teacher and her union countered that she still needed the digital hearing device to perform her duties adequately.

The arbitrator agreed with the teacher and ordered the parties to establish an exact degree of reimbursement based on the percentage of time the digital device was used at work. In this case, the award amounted to 17.5 per cent of the claim. Her initial claim totalled $400.

In his review, Arbitrator Gordon Luborsky cited an earlier Supreme Court of Canada decision stating that individualized nature of accommodation means that employers cannot apply rigid rules to limit the scope of how a person with a disability may be accommodated. By not considering the assistive bodily devices as a form of accommodation, the employer contradicted human rights legislation, he said.

"With changes in technology that may interface intimately with the individual's body, what might have been a 'bright line' between the world of the employer and that of the employee in the search for appropriate accommodation has become blurred," Mr. Luborsky noted.

With the Luborsky ruling, plan sponsors should expect to be asked to consider reimbursing employees for some or all of the cost of more expensive, high-tech personal assistive devices when accommodating personal disabilities. ❧

New CPI will mean smaller wage and pension increases

The annual inflation adjustments pensioners and others receive as part of their compensation may soon decline, according to a Statistics Canada study.

Statistics Canada announced this February that it is reviewing the formula it uses to calculate the Consumer Price Index (CPI.) According to the government agency, the CPI measure contains a statistical bias that overestimates the annual rate of inflation by 0.2 per cent. As a result, it notes, a reported inflation rate of 2.0 per cent really should be 1.8 per cent.

The CPI is used to calculate annual increases in Canada Pension Plan, Quebec Pension Plan, Old Age Security and some private pension benefits. It is also used as a key benchmark in collective bargaining and wage negotiations. If a new CPI measure is adopted, it could mean that pension plan members and those whose compensation increases are based on the CPI will see smaller increases in the coming years.

In determining the Consumer Price Index, Statistics Canada measures the price increases of 600 different goods and services. However, the make-up and weighting of the 600 items in its measurement "basket" have not kept pace with the changing spending habits of consumers. As a result, some items may be given more or less weight than they deserve when the inflation rate is calculated.

The agency has spent 18 months on the CPI update so far. The entire review is not expected to be completed until 2015.

The adjustment to the CPI measure will have a significant impact on government spending. For example, the federal government now spends $36 billion annually on Old Age Security payments. Reducing the inflation rate by 0.2 per cent will generate an extra $72 million in savings in the first year and as much as $216 million in the third year following its introduction.

Plan sponsors may also pay out less in annual wage increases.

The reduction in the inflation measure may even be greater than 0.2 per cent. According to some Bank of Canada economists, the measurement bias amounts to 0.6 per cent, which would mean that today's inflation rate of 2.0 per cent is really 1.4 per cent.

While some may complain about lower compensation or pension payments that may result from a revised CPI, such reductions should be put into context, says former Finance Canada and TD Bank Chief Economist Don Drummond.

"You're just losing what was never yours," he suggests. *"You were being paid for inflation that never occurred."* ❧

Coughlin board appointments

Coughlin & Associates Ltd. President Brian Bockstael is pleased to announce that Consultants **Brett Becker** and **Michel Quenneville** have been appointed to the company's board of directors.

Mr. Becker joined Coughlin in 1994 after serving in an administrative capacity with a large Winnipeg-based investment group and fund manager for a number of years.

Mr. Becker received a Bachelor of Commerce (Honours) degree from the University of Manitoba in 1992 and his accreditation as a Chartered Financial Analyst (CFA) in 1997.

He is a member of the CFA Institute and is a former board member of the CFA Winnipeg (formerly Winnipeg Society of Financial Analysts), the Canadian Pension and Benefits Institute (Manitoba Region) and the Certificate in Employee Benefits Services (CEBS) Advisory Committee of Manitoba.

Mr. Becker is licensed to provide life insurance services in the provinces of Manitoba, Saskatchewan and British Columbia.

Mr. Quenneville, joined Coughlin & Associates Ltd. in 1997 as manager of its Group Administration department following seven years as office manager and finance officer for a national association promoting the export of Canadian books.

He transferred to Coughlin's Ottawa consulting team in 2003, where he specializes in group voluntary life insurance, affinity programs and client relations. He is also responsible for servicing a number of large public service union and hospital sector clients.

Mr. Quenneville has a diploma in Business Administration from Ottawa's Algonquin College and, in 2003, attained his Certified Employee Benefits Specialist (CEBS) designation.

He is licensed to provide life insurance services in the provinces of Ontario and Quebec. ❧

Fast facts

- The latest data from Statistics Canada indicates that the average number of hours worked by non-farm employees declined in 2011 by 0.7 hours to 32.8. The average weekly income amounted to $888.26, or $46,189 per year.
- The Ontario Teachers Pension Plan reports that its annualized rate of return for the four-year period from 2007-2010 was 2.6 per cent. However, that conservative return disguises the considerable volatility in equity markets at that time. Its returns by year during that period were: 4.5 per cent in 2007; -18 per cent in 2008; 13 per cent in 2009; and 14.3 per cent in 2010. The Teachers Plan has more than $110 billion in assets and provides pensions to 178,000 members.
- Pensions are not considered a priority by job seekers, a report by the BMO Retirement Institute says. According to the Institute, only seven per cent of those evaluating job opportunities consider pensions to be the most important factor in selecting a job. Salary dominated preferences with 47 per cent listing that as the most important factor in job choice. Flexible work arrangements came second at 22 per cent.
- Effective January 1, 2012, the Ontario government changed its fee structure for the Pension Benefits Guarantee Fund. The cost for a minimum assessment will be $250 for each covered plan while the fee base per plan member will increase from $1 to $5. The maximum fee per plan member in underfunded plans jumps from $100 to $300.
- Canadian Pacific has asked for a federal mediator to intervene in its contract negotiations with its 4,800 railway workers and controllers. The company says that the legacy costs associated with its pension plans *"significantly impact CP's operating ratio and our ability to further fund investments..."* Over the past three years, the company has contributed $1.9 billion to its pension deficit.
- Only 46 per cent of unemployed Canadians qualify to receive Employment Insurance benefits. That number compares to 86 per cent in 1981, according to the Mowat Centre of the University of Toronto. The qualification minimums and length of benefit payout varies considerably across Canada based on the local unemployment rate.
- The pension deficits of selected cities across Canada:
  - Montreal: $130 million
  - Saint John: $163 million
  - Regina: $246 million
- Bill C-13, eliminating mandatory retirement in the public service and federally regulated workplaces, has received royal assent. Under the terms of the legislation, the new rules will not take effect until December 2012.
- The age-old battle between General Motors and Ford carries on, this time on the pension front. General Motors of Canada reports that the pension shortfall of its unionized pension plan totals $2.2 billion. Meanwhile, Ford Motor Company says it will contribute $3.8 billion to its various pension plans. Approximately, $2 billion of that amount will be directed to US pensions while the remainder will be channelled to its various other plans worldwide. That company's total pension deficit amounts to $9.4 billion worldwide.
- The composition of the Canadian labour force by demographics, according to Statistics Canada:
  - Mature/Second World War generation (born pre-1943): 436,000;
  - Baby boomers (born 1943-1960): 6,924,500;
  - Generation X (born 1961-1981): 6,005,500;
  - Generation Y/Millennials (born after 1982): 5,171,200.
- Men are more likely than women to contribute to a registered retirement savings plan, according

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Fast facts (continued)

to the 2012 BMO Post-RRSP Deadline study. According to the survey, 41 per cent of men contributed to the plans in 2012 compared to 34 per cent of women. The average annual contribution was $4,670.

- The number of baby boomers in the US that turn age 65 every day: 10,000. The percentage reporting that they do not have enough money for a comfortable retirement, according to the Employee Benefit Research Institute: 27.
- Generic drug prices in Nova Scotia were reduced to 40 per cent of their brand name equivalent on February 1, 2012. The rate reduces again to 35 per cent on July 1, 2012.
- American Airlines has announced that it will seek to eliminate its defined benefit pension plan as part of its restructuring program to avoid bankruptcy. The move will save the company more than $2 billion.
- The newest employee benefit: no company emails! Volkswagen has agreed to stop emailing its Brazilian employees within a half hour after the end of their shifts and not to resume emails until a half hour before their shift starts the next day. The move follows complaints by various groups expressing concern about the intrusion of work correspondence into leisure time. Brazil has passed laws allowing workers to charge overtime when answering after-hours emails.
- Swedish Prime Minister Fredrik Reinfeldt was criticised this February for suggesting that the retirement age in that country should be moved to age 75. The prime minister's remarks followed his earlier suggestion that attitudes toward work among those age 50 to 55 would be different if they knew they would have to work another 20 years before retiring.
- The government of Japan has announced that it will cut its public pension benefits by 0.3 per cent. The cut reflects the corresponding decrease in that country's consumer price index.
- The Irish Congress of Trade Unions has agreed not to press for extra pay for those who worked on February 29. Due to the extra day in February for leap year, workers in that country must work 252 days in 2012 instead of the normal 251 days. During the last leap year in 2008, unions across Ireland and the United Kingdom campaigned to have workers compensated for the extra work day in the year. The extra day of labour generates an additional €184 million for employers, the union group says. ❧

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