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AUGUST 2011

AT A GLANCE ...

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PRPP legislation "very close"

The federal government is on the verge of drafting new legislation that will make pooled registered pension plans (PRPPs) a reality, Minister of State (Finance) Ted Menzies says.

In a cross-country tour to meet his provincial counterparts and business owners, the federal minister says that he expects to table legislation to introduce the alternate pension plan before the end of 2011.

Each province also has to pass legislation to allow the PRPPs to be sold and administered within their province. Quebec and Saskatchewan already have such legislation in place.

If adopted nationally, the PRPPs will allow all workers, including self-employed individuals and those working for companies that do not offer pension plans, to contribute to a national defined contribution plan that would be administered by federally regulated financial institutions, such as banks and insurance companies.

Under the new pension scheme, all employers would be compelled to offer the PRPP. However, the plan itself would be administered by a third party organization such as a bank. In this sense, a PRPP would function similar to a multi-employer pension plan. Employees could contribute to the plan but would have the right to opt out of it. Meanwhile, employers would be freed from the administrative complexity and costs associated with running a pension plan. (See the January 2011 edition of the *Coughlin Courier* for background information.)

"We're very, very close to being able to draft legislation," Mr. Menzies asserted. *"Time is of the essence. We found that a goodly number of Canadians, probably over 60 per cent, do not have any type of workplace pension plan whatsoever."*

Despite Mr. Menzies' optimism about the supplementary universal pension plan, acceptance of it by some groups will not be forthcoming.

Already, the Canadian Labour Congress (CLC) has condemned the plan as a "lemon" that puts the interests of banks and other financial institutions ahead of the workers that will have to pay for the plan.

"Canadians are unlikely to opt into any workplace pension plan that doesn't guarantee employers will buy in, doesn't protect against inflation or future market turmoil and doesn't promise management fees charged by private sector brokers won't bleed away future earnings," says CLC President Ken Georgetti.

The CLC, as well as the province of Ontario, favour the expansion of the Canada Pension Plan over the development of secondary national pension plan.

"The Feds are just not interested," says Ontario Finance Minister Dwight Duncan. *"They cancelled the meeting we were supposed to have in June. There is less interest now than there was four or five months ago."*

According to the Ontario finance minister, there is more than $900 billion in unused RRSP contribution room in Canada, suggesting that many Canadians are either unwilling or unable to contribute more to a voluntary retirement savings plan. Offering another voluntary, defined contribution retirement plan is not likely to close the retirement savings gap, Mr. Duncan suggests.

Increasing the contribution levels and payouts of the mandatory, defined benefit Canada Pension Plan would help more people meet their financial obligations after retirement, he says.

Cancer victim allowed to claim EI sickness and maternity benefits

After a months of struggle with the Employment Insurance Commission, a 39-year-old cancer victim has been allowed to receive 15 weeks of sickness benefits in addition to her government-sponsored maternity benefits.

Acting as umpire for Employment Insurance (EI) appeals, Justice R.J. Marin ruled that women who receive maternity benefits through EI can also receive a maximum of 15 weeks of sickness benefits when they can prove that they have a serious illness *"immediately before, during or after receiving maternal/parental benefits."*

The case involved a woman who went on maternity leave in January 2009, the month her son was born. However, in January 2010, the time when she was scheduled to return to work, the woman was diagnosed with stage 3 breast cancer. She began a six-month treatment period for the illness, which included chemotherapy and a double mastectomy. At that time, she also applied for sickness benefits through EI, citing a 2002 provision allowing pregnant women and new mothers who become ill to receive the sickness benefits in addition to the 50 weeks of maternity and parental benefits.

The Employment Insurance Commission rejected her claim on the basis that she was not available for work.

She then appealled to the Employment Insurance umpire, who acts as an independent arbitrator in such disputes.

In her presentation to the umpire, the woman quoted speeches by former Secretary of State John McCallum and Senator Ann Cools, both of whom said in 2002 that the sickness provisions would enable women to receive EI sickness benefits before, during and after receiving maternity benefits.

"If the Employment Insurance Commission were to give a more liberal interpretation to the provisions of the Act in relation to women who are able to establish a serious illness at the end of their maternal/parental leave, its approach would be consistent with the will of the elected officials," Justice Marin said. *"It would certainly not open the floodgates to an extremely large number of claimants but would offer minimum comfort and solace to a small, hard-hit sector of society which already qualified for special benefits."*

Employment Insurance sickness benefits amount to a maximum of $468 per week.

The Employment Insurance Commission says it is examining the ruling to see if there are grounds for appeal. ❧

Ontario to tighten controls on Oxycontin

A coroner's inquest into a pair of deaths resulting from overdoses of the painkiller Oxycontin could change the way the drug is prescribed and monitored in Ontario.

The five-member jury examining the deaths of Dustin King and Donna Bertrand, both of Brockville, Ontario, has recommended that opioids including Oxycontin be more strictly controlled during and after their prescription. Among the jury's recommendations are halving the maximum potency of the medication, the registration of all patients receiving the drug and furthering the education of physicians about the drug.

The province is in the process of developing a narcotics strategy, part of which will include establishing an electronic database of every individual that receives the prescription medication.

Addiction to prescription drugs like Oxycontin is *"the most important drug safety problem we face today,"* says Dr. Dave Juurlink, member of the Committee to Evaluate Drugs, the province's advisory group on drug issues.

Both the province and its College of Physicians and Surgeons have been criticised for their slowness in adopting the recommendations tabled at the inquest.

Approximately 30 to 40 people in the province die every month from overdoses of prescription opioids, the Committee says, a number equal to deaths from motor vehicle accidents. ❧

Government OKs clinical trials for liberation therapy

The federal government has reversed an earlier decision and will now fund clinical trials of the controversial *liberation therapy* for multiple sclerosis.

Dr. Paolo Zamboni, developer of liberation therapy for multiple sclerosis.

Developed by Italian doctor Paolo Zamboni, *liberation therapy* involves widening of the veins in the necks of MS patients. Dr. Zamboni believes that the disease is caused by blocked or malformed veins and that its symptoms can be relieved by the widening of the veins through a procedure similar to a balloon angioplasty.

Dr. Zamboni's treatment has met with mixed results. Some MS sufferers report complete relief of symptoms while others have reported only temporary relief or no results. At least two Canadians have died from the treatment.

While not available in hospitals in Canada or the United States, the procedure is offered in Poland, Costa Rica, India and other countries.

Supporters of the procedure have lobbied aggressively for the clinical trials.

While the trials may offer hope for MS sufferers, it should be noted that it may be years before Dr. Zamboni's procedure receives Health Canada approval. ❧

Ontario changes pension division rules

The Ontario government has amended its rules regarding the division of pension assets on the break-up of spousal relationships.

The new regulations, which go into effect on January 1, 2012, change both the Pension Benefits Act and the Family Law Act and include the following:

- **The immediate payment of pension assets**. Under the new rules, a former spouse will be able to receive an *immediate* payment of his/her share of pension assets upon break-up, rather than waiting for the pension holder to retire, reach the plan's normal retirement age or die.

  A former spouse can elect to receive a lump sum transfer of the assets or a monthly pension payment. (However, he/she must be age 55 of older to receive the pension income.)

- **Plan administrator to calculate valuations**. The plan administrator will calculate the value of a pension's assets at separation. An independent valuation by an actuary will no longer be necessary. It should be noted that, under the new rules, plan administrators will be required to do the valuation calculations. They cannot decline to do so.

- **Applications to plan administrators required**. Separating spouses must apply directly to the plan administrator for the pension valuation. The plan administrator may charge a fee for that service.

- **Specific forms required**. The pension asset division must be done using specific forms developed by the Financial Services Commission of Ontario (FSCO).

- **Pension asset division not mandatory**. As under current regulations, the division of a specific pension asset between spouses is not mandatory. Under mutual agreement, spouses can elect not to divide a pension. However, pension assets must be included in family property for the ultimate calculation and division of their property.

  As is current practice, there is no requirement for common-law spouses to divide net family property on break-up of the spousal relationship.

Since the plurality of pensions in Canada are registered in Ontario, the new regulations will apply to the largest number of pension plan members in the country. ❧

Nortel pensioners face sharp income cuts

Despite the $7.6 billion liquidation of the company and the sell-off of $4.5 billion of its patents, Nortel Networks pensioners will likely face severe cutbacks in their pension benefits.

According to estimates released by the province of Ontario, former non-union employees of the bankrupt high-tech giant will face benefit reductions of at least 18 per cent. Those who worked outside the province will face pension income cuts of up to 31 per cent. Unionized retirees will see their pensions reduced by approximately 25 per cent.

The income reductions will affect 12,000 pensioners in Canada. The cutbacks will take effect on August 25, 2011.

The Nortel Retirees and Former Employees Protection Canada, the group representing affected Nortel pensioners, has urged plan administrator Morneau Shepell to delay the reductions until asset liquidation proceeds are fully distributed. However, that request was denied by Morneau Shepell as the distribution *"could take years."*

According to reports published by *The Globe and Mail,* Morneau Shepell expects that, on average, Ontario retirees will receive 70 per cent of their full pension entitlements while those who worked elsewhere will receive 59 per cent. Ontario workers are covered by the Ontario Pension Benefit Guarantee Fund, which will pay up to $12,000 per year of pension benefits to retirees of Ontario-based companies that are either under bankruptcy protection or have gone bankrupt. Ontario is the only province with a pension insurance fund.

According to the Nortel retirees' group, the average age of Nortel pensioners is 74, making the prospect of their supplementing their lost income through employment or other means unlikely.

Ontario Finance Minister Dwight Duncan has pledged that Nortel retirees will have an opportunity to opt-out of the Nortel plan and be able to invest their reduced pension assets in annuities.

However, that option may not result in the full recovery of pension incomes for all retirees.

Ironically, Nortel pensioners in the United States and Britain may ultimately find themselves in a better position than their Canadian colleagues. Both of those countries have pension insurance plans that cover up to $60,000 annual pension income following the bankruptcy of pension plan sponsors. ❧

CSA strengthens executive compensation disclosure rules

The compensation awarded to directors, executives and chief executive officers of publicly traded companies must be disclosed to shareholders beginning in October 2011, the Canadian Securities Administrators (CSA) says.

The CSA is the co-ordinating organization for Canada's 13 different provincial and territorial securities regulators.

Under the regulations, publicly traded companies must show they have considered the risk of how much they're paying their executives and the potential impact that compensation may have on their executives' decisions.

The new regulations mirror those of the Dodd-Frank Act, which was passed by the United States Congress in 2010. That legislation is designed to encourage greater oversight by shareholders and regulators of executive compensation and corporate governance practices. It is also designed to flag situations where executive compensation or incentives become misaligned with companies' long-term objectives.

"We have reviewed the issues discussed in the Dodd-Frank Act that we think are relevant to Canadian reporting issues. As a result, we are recommending amendments to improve the information companies provide investors about the key risks, governance and compensation matters. We think the proposed amendments will help investors make more informed voting and investment decisions," the CSA writes in its *Proposed Amendments to Form 51-102F6, Statement of Executive Compensation* document.

Under the new rules, publicly traded companies must disclose all compensation provided directly or indirectly to each executive officer and director. Those calculations must include the value of any defined benefit or defined contribution pension and any contributions made by a company to a personal registered retirement savings plan on behalf of an executive.

Firms are also required to disclose the benefit and contribution formulas, payment terms, interest calculations, eligibility standards, early retirement provisions and extra credited service available under any executive retirement plan.

However, contributions or premiums paid by a company for *"the Canada Pension Plan, similar government plans, and group life, health, hospitalization, medical reimbursement and relocation plans that do not discriminate in scope, terms or operation and are generally available to all salaried employees"* do not have to be reported, the CSA says. ❧

A beneficiary designation can overrule other agreements

A New Brunswick court has dismissed an action by a deceased's estate to claim the proceeds of a supplementary life insurance policy and pension plan that were awarded to a spouse he divorced more than 15 years ago.

The deceased became a member of the Public Service Pension Plan in 1977. Later, in 1978, he also purchased a supplementary life insurance policy through his employer. In both cases, he designated his then-spouse as beneficiary.

The couple separated in 1992 and divorced in 1995. Their separation agreement appeared to settle all issues between them and included a release of all interest by the former wife in the member's pension plan.

However, the member did not change the beneficiary designation of either the pension or the insurance policy. When he died in 2004, proceeds for both the pension and the insurance policy were awarded to the ex-spouse.

Acting on behalf of the deceased man's estate, his children then began litigation, arguing that the benefits could only be held by the ex-spouse as a "constructive trust" for the ultimate benefit of the estate. In their argument, they used the 1992 separation agreement as proof that the divorced couple no longer had any formal connection with each other and that the proceeds were never intended to go to the ex-spouse.

In reviewing the case, the court concluded that, despite the fact that the former couple's separation agreement absolved the former wife of any interest in the pension plan and insurance policy, the specific provisions of the law covering the revocation of beneficiaries overrule any beneficiary designations that may be made through a will or other agreement.

"The deceased had the right to remove his ex-wife as a beneficiary of the benefits but did not do so," the court noted. *"He may have intentionally left her as the beneficiary, or it may have been neglect or inadvertence. As a result, she was entitled to receive the benefits..."*

For plan members and administrators, the New Brunswick ruling re-iterates the importance of ensuring that all insurance, pension, retirement savings, benefits and other documents with beneficiary designations be updated *immediately* when a beneficiary change is required. Even when there may be evidence to the contrary, such as a separation agreement or other document, the courts will give precedence to the signed beneficiary designation of the policy or pension in question. ❧

Health system must "re-tool" to accommodate older patients

Canada's health care system will have to be "re-tooled" to meet the demands of a growing population of elderly patients, data released from the Canadian Institute for Health Information (CIHI) suggests.

According to the CIHI, 10 per cent of acute care beds are being occupied by elderly patients with nowhere else to go. A total of 1.7 million hospital days per year are dedicated to patients who no longer need acute care.

With hospital funding at a premium, the role of matching the needs of elderly patients with alternate care facilities is increasingly falling on local health care administrators. For many, that means establishing relationships with home care, long-term care, rehabilitation, hospital and other providers to ensure that elderly patients with long-term needs don't congest primary care centres.

"If you have one thing wrong with you we don't do a bad job," says the CEO of St. Joseph's Health System of Hamilton, Ontario's Dr. Kevin Smith. *"If you have complex, multiple issues, the system is not a system."*

Ultimately, he says, alternate care services like hospice or long-term care beds may have to be housed under one roof so that the various health care practitioners *"no longer operate in their own silos."*

St. Joseph's is one of the first hospitals to merge long-term and continuing care, rehabilitation and other services into a traditional acute care facility.

Only seven per cent of Ontario's hospital beds are designed to accommodate alternate levels of care outside of the traditional hospital concept. However, that still leads the nation. The other provinces only dedicate two to five per cent of their hospital beds to alternative care, the CIHI says.

In total, 14 per cent of the Canadian population is over the age of 65. That number is expected to rise to 23 per cent by 2025.

"A system that isn't more responsive to patients with multiple needs will not meet the needs of the future," Dr. Smith says.

Intentions of unique pension provisions must be documented

The need to have precise documentation on pension plan member entitlements was driven home to a Kitchener, Ontario company this year when it was forced to prove to the Superior Court that plan amendments it made in 1998 applied only to one individual, not an entire manufacturing facility.

The problem began in 1998, when the company's board of directors approved an amendment to its pension plan to provide an early unreduced pension to one long-service employee.

While the amendment was filed with the Financial Services Commission of Ontario (FSCO), the company operated under the assumption that no other employees were entitled to that early retirement provision. However, when the company closed its Kitchener manufacturing facility and declared a partial wind-up of its pension plan, the FSCO said that unreduced early retirement benefit provisions would have to be applied to the 145 pension plan members affected by the plant closure.

According to the FSCO, the wording of the 1998 amendment required early retirement benefits to be fully funded to "qualifying plan members." With 145 people now facing early retirement at partial wind-up, that left the company with a $5.7 million liability.

The company then had to apply to the Superior Court to rectify the plan's wording to conform to its original 1998 intentions.

To make the change, the company had to notify the 145 members of its intention to limit early retirement benefits. As well, the court also had to review various plan documents and communications to members from 1998 onwards to verify that the company only intended to pay unreduced early retirement benefits to one individual.

In its review, the court found no evidence to prove that the company paid an unreduced pension to other early retirees. As well, the pension plan's booklet made no reference to such an entitlement. Based on that, the Superior Court agreed that the company never intended to grant unreduced early retirement benefits to all plan members and that no employee was misled into believing the benefits were available to everybody.

As a result, the company was permitted to revise the plan documents to allow just one individual to receive the unreduced early retirement benefits.

For plan sponsors, this case demonstrates the importance of using clear and specific language in plan documents outlining member entitlements and qualifications, particularly if one class of employees has entitlements that differ from other employee classes. It also reinforces the need for plan sponsors to review their pension plan records on a regular basis to ensure that, as time passes, the language used in its supporting documentation continues to conform with the plan's long-term objectives. ❧

Holiday facts

Holiday time may be here, but will you take all the time-off to which you are entitled?

That depends on where you live.

The following lists the percentage of workers by country likely to use all their vacation time, according to a Reuters/Ipsos survey of 24,000 workers worldwide:

France	89 per cent
Argentina	80 per cent
Hungary	78 per cent
Britain	77 per cent
Spain	77 per cent
Germany	75 per cent
Belgium	74 per cent
Russia	67 per cent
Italy	66 per cent
China	65 per cent
Canada	**58 per cent**
United States	57 per cent
South Korea	53 per cent
Australia	47 per cent
Japan	33 per cent

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Fast facts

- The city of Saint John, New Brunswick has agreed to pay $8.7 million toward its pension plan deficit. The city's pension deficit now stands at $129 million.
- The Canadian Human Rights Tribunal has upheld Air Canada's right to force its pilots to retire at age 60. While the ruling was hailed by both the pilots' union and Air Canada, lawyers for three retired pilots contesting the company's mandatory retirement policy say they will appeal the ruling through the federal court.
- Biologic drugs now account for 14 to 16 per cent of drug claim expenses but only one per cent of total claims, according to research published by Telus Health Solutions. Similar trends have also been reported by Express Scripts Canada, which in its 2010 Drug Trend Report, projects that biologic medications will account for 33 per cent of drug costs by 2014.
- The number of workers in Ontario who died on the job increased by 16 per cent over the past year, the province's Ministry of Labour says. A total of 377 people died on the job or from occupational illnesses as of the fiscal year ending in March 2011, an increase of 53 from the previous year.
- Chicken pox is almost eliminated, according to the US Center for Disease Control in Atlanta. The Center reports that death rates from the disease have declined by 97 per cent among children and 88 per cent among adults since a vaccine for the illness was introduced in 1995. According to the Public Health Agency of Canada, 90 per cent of unvaccinated children will contract the illness by age 12.
- The Canada Pension Plan (CPP) Investment Board reports than CPP assets under management totalled $148.2 billion at the end of its most recent fiscal year, a new record. The public pension plan has generated an investment income of more than $31.7 billion in the past two fiscal years.
- The smoking cessation drugs Champix and Zyban have been added to the list of medications covered by the Ontario Drug Benefit (ODB) program. ODB coverage is available to people age 65 and older and to those receiving provincial social assistance.
- A 20-year Harvard Medical School study of 48,000 men indicates that drinking six or more eight-ounce cups of coffee per day can reduce the risk of prostate cancer by as much as 18 per cent. For the most lethal forms of prostate cancer, risk reductions of as much as 60 per cent were recorded among those that drank the most coffee compared to those who never drink it. The popular beverage has also been associated with lower incident rates of Type 2 diabetes, with reductions of 23 per cent reported among both men and women who drink at least three cups per day.
- Iceland is considering proposals that would require cigarettes to be purchased on a prescription-only basis, similar to narcotics or other addictive substances. Under the plan, cigarettes would no longer be available in supermarkets, kiosks and stores and would have to be purchased in pharmacies. Those unable to stop smoking through nicotine replacement medications or addiction therapy would be allowed to purchase cigarettes through a doctor's prescription. Iceland has the lowest smoker rate in Europe.
- The Federal Reserve Bank of San Francisco reports that the recession has cost each American more than $7,300 in lost consumption since it began in December 2007. While spending has decreased on a per capita basis, the savings rate has tripled in that time, from two per cent to six per cent.
- The Hungarian parliament has approved measures to use that country's pension fund assets to reduce the country's debt. The plan will reduce the nation's debt ratio to 77 per cent of the gross domestic product from the current level of 81 per cent.
- The Spanish parliament has passed legislation to gradually raise that country's retirement age to 67 from age 65. ❧

The Coughlin Courier is published by Coughlin & Associates Ltd.
Board of directors: Brian Bockstael, Kirby Watson, Mark Hogan, Brent Moore & Ken Kaitola
Editor: David Whitbread **Graphic designer:** Victor Lima