COUGHLIN employee benefits specialists

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AT A GLANCE ...

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CRA cracks down on high earning TFSAs

The Canada Revenue Agency (CRA) appears to be targeting individuals who earn too much money in their tax-free savings accounts (TFSAs).

The accounts were established by the federal government in 2009 to encourage people to save more for retirement. TFSAs allow individuals age 18 and older to direct up to $5,500 annually to the plans. This is an increase from the annual contribution limit of $5,000 for 2009 through 2012.

Under TFSA rules, money can be contributed to any investment vehicle and withdrawn later on a tax-free basis.

The problem for the CRA: some TFSA owners are making too much money.

According to reports published in the December 3, 2014 edition of the *National Post,* the government's tax agency is cracking down on those who have used TFSAs to establish self-directed investment brokerage accounts and have profited from the sharp rise in equity markets since 2009.

The reports suggest that extensive trading through a TFSA account could trigger a CRA audit. To the CRA, frequent trading indicates that the accounts are being used for business purposes rather than as savings vehicles. And business earnings are subject to taxation.

"There are many people, day traders, with online brokerage accounts that buy and sell securities. Maybe 10 or 15 times a day. The CRA says that means you are a trader in securities and carrying on a business," warns Calgary lawyer Tim Clarke. *"They assume that since the maximum contribution you could make up to 2013 was $31,000, if you've got $10 million in the account, you've done something wrong."*

On the contrary, investors are simply reaping the benefits of investing in higher risk securities that also have the potential to generate higher returns, Mr. Clarke asserts. Through his firm, Moodys Gartner Tax Law, LLP, the Calgary lawyer plans to challenge the CRA's interpretation.

There are no clear rules on how many security trades can be conducted within a tax-free savings account or on how much return on investment a plan holder can earn without triggering a tax liability.

To illustrate the issue, the *National Post* cites a case in which a Quebec resident earned $180,000 by making 200 trades within his TFSA account. Called a "pirate" by a CRA auditor, he is now facing a $35,000 federal tax liability as well as an additional tax levy from the province. He made his money by investing in high risk resource securities. He is neither a licensed stock broker nor a professional trader.

If CRA audits of tax-free savings account returns continue, it is likely that set rules on TFSA investment practices and/or returns will be established, either through legislation or case law.

More information will be provided as it becomes available.

Quebec pension changes spark province-wide protests

Proposed changes to Quebec's municipal defined benefit pension plans have sparked wide-spread and sometimes violent protests across the province.

Under the provincial government's Bill 3, unionized pension plan members would be required to contribute to their pension on a 50-50 basis with municipalities.

They will also be expected to cover half of the cost of making up any pension fund deficits. The total municipal pension deficit in the province exceeds $3.9 billion. However, some municipal plans are in better shape financially than others.

The bill, which was passed by the Quebec National Assembly on December 4, will also end annual indexing for retired pensioners.

The new law affects more than 170 municipal pension plans covering 122,000 active members and 50,000 retirees.

Responses from affected members have been far from subtle. Since June, Montreal's police, firefighters and other municipal workers have adopted casual dress instead of traditional uniforms. Strikers have also blocked city buses and access points to the city's port while police and firefighting vehicles have been decorated with protest stickers.

Demonstrations were also held in Quebec City, Laval, Sherbrooke, Saguenay and Gatineau.

On August 18, demonstrations turned violent when protestors stormed Montreal's city council chambers, setting small fires, vandalizing offices and forcing city councillors out of the area.

The number and depth of the protests prove that pensions are not a "sleeper" issue. On the surface, a change to a 50-50 contribution ratio appears to be relatively benign. For example, Montreal's blue collar workers currently work on a 45-55 contribution ratio. Its police force has a 24-76 arrangement. Yet, the 50-50 proposal has resulted in considerable disruption and lost work time.

While attacking pension deficits may be both responsible and realistic, without appropriate consultation beforehand, pension plan members and their representatives could perceive such measures to be attacks on their active and retired colleagues.

"If they want to steal our pension funds, we're going to make their lives miserable," warns municipal employees' union spokesperson Marc Ranger. *"It's outright theft. We must respect our retirees. They lit a fire. It's up to them to put it out."*

Union protests will continue, Mr. Ranger says. ❧

Newfoundland government and unions agree to pension update

The government of Newfoundland and Labrador has reached an agreement with its public service unions to make that province's public service pension plan more sustainable.

Under the agreement, the government will contribute \$2.7 billion over 30 years to the plan's unfunded liability. In turn, the unions have agreed to plan changes and contribution rate increases that will see the value of the pension increase by \$1.13 billion.

Contributions for all plan members will increase by 2.15 per cent.

While the agreement included revisions to early retirement qualifications, the availability of unreduced early retirement beginning at age 60 continues, provided members have a minimum of 10 years of service.

The agreement affects 27,000 active members and 17,000 pensioners. ❧

Ontario law takes the fire out of e-cigarette debate

The Ontario government has tabled legislation to ban electronic cigarettes (also known as e-cigarettes) in public places. It also plans to outlaw the sale of flavoured tobacco products, including menthol.

Under the proposed legislation, the sale and use of e-cigarettes will be regulated in the same manner as regular cigarettes. Sales will be restricted to those 19 years of age and older. Plus, their use in public places such as restaurants, bars and patios will be restricted in the same manner as regular cigarettes.

As well, flavoured tobacco products, including menthol cigarettes, which have been available in the province since the 1960s, will be phased out over a two-year period.

According to the Ontario Medical Association, flavoured tobacco products are marketed directly to children and teenagers. A recent government survey indicated that one-quarter of high school students have smoked a menthol cigarette in the past 30 days.

With the new restrictions placed on e-cigarettes, the province has sided with Health Canada, the World Health Organization and others that have taken the position that e-cigarettes have the same potential for nicotine addiction and related health problems as regular cigarettes.

Other groups, including some medical researchers in places such as New Zealand, have suggested that the devices could be used to help smokers to gradually wean themselves from the nicotine habit. They have also argued that since e-cigarettes do not contain tar, chemicals and other by-products, they are safer than traditional tobacco products.

Clinical trials in New Zealand have also indicated that e-cigarettes have a higher success ratio in stopping smoking than the nicotine patch or gum. (See the March 2014 of the *Coughlin Courier* for background.)

E-cigarettes are electronic inhalers that use heating elements to vaporize a liquid solution, usually composed of liquid nicotine, propylene glycol and flavouring. Powered by small batteries, the liquid solution is heated, creating a steam-like vapour, which is then inhaled, like a cigarette.

"Ontario's doctors welcome this legislation to protect our children from flavoured tobacco products and reduce the number of youth who start smoking," says Dr. Scott Wooder, past president of the Ontario Medical Association.

For plan sponsors in Ontario, the proposed law appears to quash any arguments that e-cigarettes should be considered smoking cessation products. Any claims involving them are likely to be declined. ❧

Quebec cuts in vitro fertilization coverage

The Quebec government has tabled legislation to cut certain fertility treatments from that province's public health care program.

Under the proposed legislation, medicare coverage for in vitro fertilization will be eliminated. The treatment has been fully covered without limits by the provincial plan since 2010. Quebec was the only province to cover the procedure in its public health care plan.

Only artificial insemination will be fully covered. The province will also cover fertility preservation, such as egg freezing, in special cases such as when a women is about to undergo cancer treatments.

The move has been widely criticised by some medical specialists and public interest groups.

"Quebec was really seen as one of the leaders in North America in terms of recognizing infertility as a medical condition," says Canadian Fertility and Andrology Society President Neal Mahutte. *"Quebec went from being the leader in North America in having the most comprehensive coverage to being at the back of the line."*

A particularly controversial measure in the bill is the banning of in vitro fertilization for all women under age 18 and over the age 42, even if they wish to pay for the procedure themselves. It would also prevent health care professionals from referring such patients to in vitro clinics in other provinces.

Mr. Mahutte called that rule *"preposterous."*

Since extending funding for the procedure in 2010, the cost of funding in vitro fertilization treatments in the province has risen from $16 million to $80 million in 2012-13.

For plan sponsors with Quebec employees, the elimination of provincial health care support for in vitro fertilization could result in an increase in fertility treatment claims. ❧

Non-adherence undermines drug plans

Non-adherence to prescriptions is costing Canada's health care system $4 billion per year, a Sun Life report says.

According to its report entitled *Take your pills – Gaining the benefits of improved drug adherence,* up to five per cent of hospital admissions and doctors' visits can be traced to improper use or neglect of prescription medications.

"Not taking medications as prescribed can be a major public health problem," says Sun Life Director of Pharmaceutical Benefits Jean-Michel Lavoie. *"Those who stop taking their medicine could face reduced health and wellbeing and, potentially, unnecessary hospitalization."*

For employers, prescription non-adherence can result in increased drug benefit costs as well as increased employee absenteeism and disability claims.

"There's no question that the health and wellbeing of patients could be positively affected if more people took their medication as prescribed," Mr. Lavoie says.

Those with mental illnesses such as depression or schizophrenia have a greater risk of relapse or medical complications when they fail to take medications as prescribed, the Sun Life report says.

Knowing why people go off their medications could ultimately improve patient outcomes, the report suggests. Negative side effects are the single largest reason for non-adherence. If a drug restricts a person's lifestyle or leads to other physical or mental health issues, patients are more likely to change their consumption patterns or stop taking the drug altogether. Complicated packaging or treatment patterns can also discourage appropriate drug adherence, the report says.

The nature of an illness can also change drug taking patterns, the report says. Illnesses that display few or no symptoms or have symptom-free periods or remissions can also result in patients changing their consumption patterns.

Knowing these and other variables at the time of prescription could result in improved drug adherence, the Sun Life report suggests.

"Over the long term, increased drug adherence can provide a significant benefit to patients, employers and the Canadian health care system," Mr. Lavoie says. *"Increasing engagement and education surrounding drug adherence will result in a reduction of many additional costs that benefits plans and employers may be absorbing."* ❧

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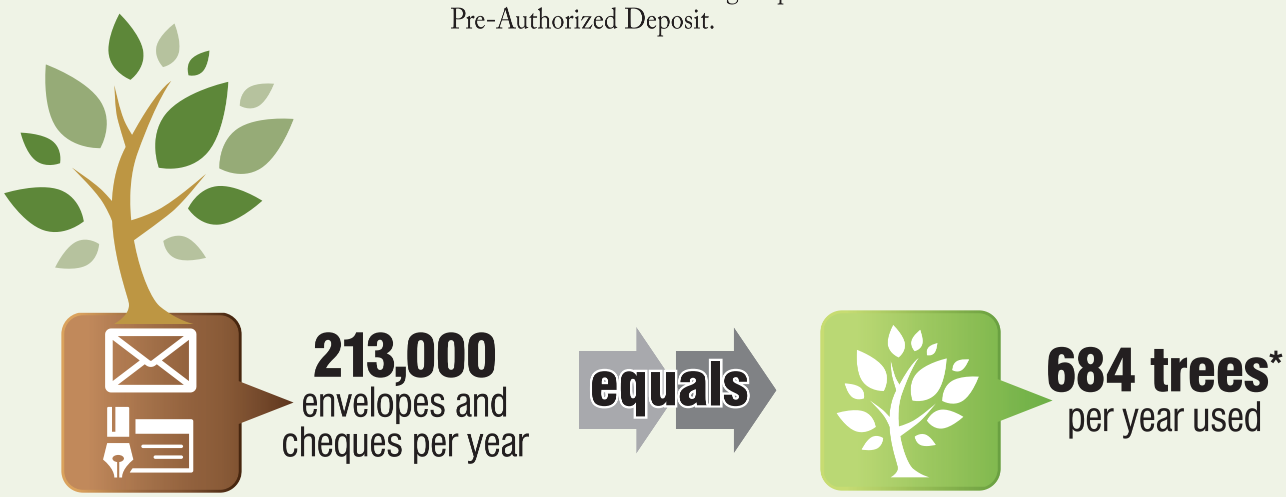

*Source: www.rainforestmaker.org

Disability payments to be taxed at source

Effective January 1, 2015, all those receiving short or long-term disability payments will have that income tax deducted at source.

The new procedure conforms to Canada Revenue Agency (CRA) requirements that income tax be deducted from all taxable disability benefit payments, regardless of when they are paid.

For those receiving disability income payments from disability plans administered by Coughlin, the required income tax payable on disability payments will be deducted and remitted directly to the Receiver General on their behalf.

The amount deducted will be based on government-approved tax tables.

Terminated LTD case leads to full reinstatement after 12 years

The Ontario Human Rights Tribunal and an Ontario court have ruled that a disabled woman should be reinstated to an equivalent position in her workplace after a 12-year absence.

The case involves a woman who worked for a large school board from 1988 to 2004 as a supervisor responsible for the removal of asbestos from the board's properties.

In 2001, she developed anxiety disorders and severe depression that she attributed to the stress of being held personally responsible under Ontario's Occupational Health and Safety Act for any damages resulting from the removal of asbestos from the workplace.

She went on disability leave in 2002. In 2004, the board's insurance carrier terminated the long-term disability payments after it concluded that she was capable of being gainfully employed. The board subsequently ended her employment, stating that due to the restrictions imposed on her by her disability, there were no suitable positions available for her.

She then filed a complaint with the Human Rights Commission and initiated proceedings with the Ontario Human Rights Tribunal in 2009.

The case was not heard by the Tribunal until 2012.

In reviewing the case, the Tribunal found that the board failed to find ways to accommodate the woman's disability *"actively, promptly and diligently."* It found that the board did not explore measures such as volunteer work or work-hardening to help the woman to transition back to the workplace. It also noted that it failed to provide her with documented proof of her essential duties of her job or to discuss return to work protocols with her. It also failed to seek expert medical opinions on possible restrictions to her work.

Further investigation revealed that the board did not disclose that two other suitable positions were available at the time she was terminated.

Based on that, the Tribunal ruled that the board was unwilling to even attempt to accommodate the woman's disability and that her later termination was a violation of the province's human rights code.

The Tribunal ordered that the woman be reinstated to a position equivalent to what she held at the time of her termination. It also allowed for a six-month training period. Financially, it ordered the reinstatement of her wages, Canada Pension Plan contributions and out-of-pocket medical and dental expenses retroactive to June 23, 2003. In addition, it awarded $30,000 in damages.

It total, her award amounted to more than $500,000, plus a return to her workplace after a 12-year absence.

The case was appealed to the Ontario Divisional Court, which sided with the Tribunal's ruling, noting that reinstatement is not unusual in human rights litigation. It also stressed that the Human Rights Tribunal can order whatever measures necessary to support the human rights code.

The board has appealed to the Ontario Court of Appeal.

For plan sponsors, this case should reinforce the requirement to strictly manage and document all aspects of disability cases, including measures taken to accommodate a disabled individual's condition. Support for the person, including reviewing their return to work requirements and restrictions, must occur promptly and be backed by appropriate medical advice.

As suggested in this case, an individual's disability should not be used as a tool to terminate their services. Court-ordered reinstatement to their former or an equivalent position is a real possibility even after an absence of a decade or longer.

Coughlin offers a full range of disability management services to plan sponsors. For more information, contact Coughlin Managed Care Consultant Joe Zadzora at 613-231-2266, Extension 4256, or email jzadzora@coughlin.ca ❧

PPN update

The following **Remedy's Rx pharmacies** have joined the Coughlin & Associates Ltd. Preferred Provider Network (PPN):

Remedy's Rx
(Your Independent Grocer)
401 Ottawa Street
Almonte, Ontario
613-256-6884

Remedy's Rx
274 Dundas Street East
Belleville, Ontario
613-966-4410

Remedy's Rx
222 Fairview Drive
Brantford, Ontario
519-759-3784

Remedy's Rx
(Your Independent Grocer)
753 Notre Dame Street
Embrun, Ontario
613-443-2357

Remedy's Rx
800 Centre Street
Espanola, Ontario
705-869-1860

Remedy's Rx
(Your Independent Grocer)
273 King Street West
Ingersoll, Ontario
519-425-2118

Remedy's Rx (Zehrs)
600 Mitchell Road
Listowel, Ontario
519-291-5311

Remedy's Rx
3635 Rivergate Way
Ottawa, Ontario
613-739-0950

Remedy's Rx
(Your Independent Grocer)
1893 Scugog Street
Port Perry, Ontario
905-985-3308

Remedy's Rx
(Your Independent Grocer)
150 Prescott Centre Drive
Prescott, Ontario
613-925-1630

Remedy's Rx
1122 Lasalle Boulevard
Sudbury, Ontario
705-560-7788

Remedy's Rx (Zehrs)
400 Simcoe Street
Tillsonburg, Ontario
519-842-2220

Remedy's Rx
3760 Sheppard Avenue East
Toronto, Ontario
416-609-1999

The following pharmacies have also joined the Coughlin PPN:

Eshmun Pharmacy
101-460 Hunt Club Road West
Ottawa, Ontario
613-737-3000

Option Pharmacy
879 Shefford Road
Gloucester, Ontario
613-741-7444.

Altabank Pharmacy
1405 Bank Street, Unit A
Ottawa, Ontario
613-526-4466

Kidcare Pharmacy
Room 2080
Children's Hospital of
Eastern Ontario
401 Smyth Road
Ottawa, Ontario
613-737-2316.

Bioscript Pharmacy
208-800 Princess Street
Kingston, Ontario
613-507-3784

Other changes include the following:

Canada Chemists has become the **Riverside Drug Store**. It is still located at 1919 Riverside Drive in Ottawa. Phone: 613-523-3066.

The former **Desjardins Pharmacy**, 298 Dalhousie Street in Ottawa, has become a **Shoppers Drug Mart** and is no longer a member of the Coughlin & Associates Ltd. PPN.

Metro Pharmacy, 10088 McLaughlin Road, Brampton, is no longer an active pharmacy.

Sobeys Pharmacy, 197 Front Street in Toronto, is no longer an active pharmacy. ❧

Fast facts

- Effective January 1, 2015, the maximum pensionable earnings for the Canada Pension Plan (CPP) will increase to $53,500 from $52,500. The joint employer-employee contribution rate remains unchanged at 9.9 per cent of pensionable earnings. The maximum contribution will be $2,479.95 each for employers and employees, or $4,959.90 for the self-employed.

- The maximum insurable earnings for the Employment Insurance (EI) program will increase to $49,500 on January 1, 2015, up from $48,600 in 2014.

- Old Age Security benefits increased by 0.9 per cent on October 1, 2014 to $563.74 per month.

- Members of the Quebec National Assembly voted to increase their co-payment on their pension contributions to 50 per cent from the previous level of 21 per cent. The new contribution level mirrors that required by the province's municipal employees.

- Canadians feel they need an average of $266,607 in life insurance to cover their last expenses, debts and other obligations after death, according to a BMO Insurance study. Those who were married or lived in common-law relationships that included children claimed the highest life insurance coverage needs at $320,974. Singles with children had the lowest life insurance requirements, $106,517.

- One-third of those between the ages of 55 and 70 do not know when they will retire, according to a study by the Life Insurance Market Research Association (LIMRA). Surprisingly, those in the 65 to 70 age segment were the most undecided about their future retirement date. One in 10 has no intention of retiring. Lack of funds is the main reason for the postponement of retirement, the LIMRA study suggests.

- Membership in registered pension plans increased by 1.2 per cent in 2012 to 6.1 million people, according to a Statistics Canada review of pension plans for that year. Membership in defined benefit pension plans amounted to 4.4 million employees, 71 per cent of those with a pension plan, the study noted. Defined contribution plan membership totalled slightly more than 1 million. Hybrid or composite plans accounted for the remaining balance.

- The number of high cost prescription drug claims channelled through the Canadian Drug Insurance Pooling Corporation (CDIPC) doubled over the past year to 4,000. The CDIPC allows Canadian insurers to pool costs of prescription drug claims that exceed $25,000 annually. Several claims exceeded the $500,000 level, the organization says. One claim breached the $1.2 million mark.

- *"Show me the money"* continues to be the primary phrase associated with employee retention, according to a study by the Robert Half staffing firm. Based on its survey of employee retention trends, 30 per cent of those surveyed indicated that poor compensation was the primary reason for changing jobs. Unhappiness with management followed closely behind at 25 per cent. Excessive workloads placed a distant third with 11 per cent citing that as the primary reason for leaving their job.

- The majority of Canadians, 52 per cent, have less than $10,000 in emergency savings, a BMO rainy day survey says. One-in-five have less than $1,000, it notes. One-quarter of those earning $100,000 or more have less than $5,000 set aside for emergencies.

- The governments of British Columbia, Saskatchewan, Ontario and New Brunswick have signed a memorandum of agreement with the federal government to establish a single capital markets regulator. Unlike most advanced economies, Canada does not have a unified regulatory system to monitor or control its capital markets. Alberta and Quebec still oppose the formation of a single regulator for the country.

- A Sun Life survey indicates that meeting health care costs is the biggest worry among those considering retirement. Two-thirds of those surveyed said that deteriorating health was the biggest worry going into old age. Only 22 per cent have set aside funds for unexpected health emergencies that may occur after retirement. ❧

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