



## Medicare goes to Supreme Court

*Is medicare constitutional, especially when it fails to deliver on its promise to provide immediate and effective health care?*

This question is now under consideration by the Supreme Court of Canada.

The Supreme Court is now hearing the case of a doctor and his patient who are challenging the provisions of the Quebec Hospital Insurance Act which prevent patients from buying private health insurance to cover services already provided by Quebec's public health care plan. (See July, 2003 edition of the *Coughlin Courier* for background.)

The case dates back to 1997 when patient George Zeliotis had to wait over a year to receive a hip replacement through the public health care system while, at the same time, his doctor, Jacques Chaouilli, was prevented from providing emergency services on a private basis. Both contend that the law prevented them from offering and receiving private care, which violated their constitutional right under the Charter of Rights and Freedoms to "life, liberty and security of the person." Mr. Zeliotis and Dr. Chaouilli contend that when patients are forced by the public health system

to endure prolonged periods of extreme pain and heightened risk of long-term illness, disability or death, then medicare effectively deprives them of their right to medical treatment.

Their position is backed by the Canadian Medical Association, which in a separate submission to the Court, argued that "Health care delayed is health care denied." Also backing them is Senator Michael Kirby, the author of the Kirby Report on Health Care, which among its many recommendations for the reform of the Canadian health

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## Disclose potential pension plan amendments, Court says

*Plan sponsors are expected to advise plan members when they consider making any changes to a pension plan, even if no change is ultimately made, says the Ontario Superior Court.*

In an April 2004 ruling, the Court ruled that boards of trustees have a special relationship with plan members and a fiduciary responsibility to advise them of any potential plan amendments.

The decision follows a suit by members of the Ontario Municipal

Employees Retirement Funds (OMERS) who retired during a 15-month period when the OMERS board of trustees was considering enhancing the plan's pension benefits. OMERS is one of the nation's largest pension plans.

The members' suit held that had the board accurately disclosed that the plan would be enhanced, they would not have terminated their employment and would have subsequently qualified for the improved pension benefits. The

court agreed, stating that, "given the high probability of government acceptance of the recommendation (to enhance the plan), the board had a duty to inform." It also stated that the board "breached its fiduciary obligation by failing to disclose the likely amendments to the plan."

The ruling went on to state that by failing to establish, implement and monitor a communication policy regarding the disclosure of the likely

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# Medicare goes to Supreme Court

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care system, called for guaranteed prescribed treatment times, failing which, individuals could seek and be reimbursed for using private health care services. (See November, 2003 edition of the *Coughlin Courier* for information on the Kirby report.)

"The government cannot have it both ways," Mr. Kirby submitted. "You cannot take responsibility for the provision of an essential service without meeting reasonable service standards."

The petitioners are also backed by several private health care clinics and organizations.

Opposing them are the federal and six provincial governments. They argue that waiting lists are an administrative or political issue, not a legal one, and that serious illnesses are being treated, as required under legislation.

Each group will be making submissions to the Court.

For plan sponsors, the Zeliotis-Chauuilli case has potential to shake employee benefit plans to their foundations. If the Court rules in their favour, Quebec's Hospital Insurance Act and other comparable acts in other provinces would be overturned and have to be re-written to accommodate individual opting for private health care services within the public system. That could mean employee benefit plans could be expected to pay for, or bridge finance, private health services now being covered by the public system. If so, funding formulae and claims experience would have to be re-examined, since most benefits are designed only to fund services not covered by medicare.

Watch for more news on this case as it develops. ■

## Disclose potential pension plan amendments, Court says

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plan amendments, OMERS failed in its duty to deal even-handedly with its members.

The court also criticized the inconsistent cheque processing by the plan's administrative staff that resulted in some members being treated differently from others. By allowing the plan's administrative staff to make transition decisions without an appropriate transition protocol, the board "*had been patronizing and condescending towards members and breached its fiduciary duty to act in good faith.*"

For plan sponsors, the ruling could have a major impact on the decision making processes used by boards of trustees. Until now, trustees had no obligation to disclose any potential amendments under consideration. This ruling now requires administrators to disclose potential amendments when they are proposed. Since the amendments may be revised several times before implementation, or rejected altogether years later, the need for a clear and consistent communication plan will be paramount if confusion or misunderstanding by members is to be avoided. This could involve regular newsletters or direct mailings to members outlining both real and potential plan changes. The Court did not provide detailed guidance on the amount of information to be provided or the timing of its publication.

The ruling has also made it clear that all members are to be treated equally in day-to-day administrative processes, regardless of their status. For example, employees who are shareholders of a company cannot be treated more favourably than non-shareholders.

While the OMERS Court decision could still be appealed to the provincial Court of Appeal, plan sponsors should be prepared to develop disclosure strategies when they consider amendments to their pension plans. ■

## Feds retreat from limiting investments in income trusts

*The federal government has withdrawn its proposals to limit the amount pension plans can invest in income trusts.*

Siting that continued investments in the trusts could have a significant impact on government revenues, the March 23, 2004 federal budget proposed capping pension fund investments in investment trusts to no more than one per cent of fund assets and five per cent of total trust units. (See the April 2004 edition of the *Coughlin Courier* for background information.)

The move was strongly opposed by some of the country's largest pension

plans, which maintained that the limitations discriminated against their members and reduced their opportunity to capitalize on this growing market. Income trusts now account for \$90 billion in new market capitalization.

The pension funds also criticized the federal government's exemption of the *Caisse de dépôt et placement de Québec* from the new regulations.

The suspension will allow federal officials to consult with pension funds and provincial governments, the Ministry of Finance says. ■

# Internet drug sales to US inject price hikes at home

*It's a case of good news-bad news for Canadians on the internet drug issue.*

The good news: an increasing number of American cities and states, along with their members of Congress, are breaking ranks with the Bush administration and endorsing their citizens' right to purchase prescription drugs through Canadian internet suppliers.

The bad news: it's working. Increased demand for prescription medications in Canada has resulted in a four per cent price hike in the past six months and is resulting in supply shortages.

To date, 16 US states and 22 major municipalities are either operating or endorsing websites to direct their employees or residents to on-line pharmacies in Canada. Plus, Congress is now considering a bill to allow imports of prescription medications to the US. The bill has received the support of US Health and Human Resources Secretary Tommy Thompson, who has recommended its passage to President George Bush.

But price pressure is growing. As reported in the December 2003 edition of the *Coughlin Courier*, US drug manufacturers are continuing to reduce or curtail supplies of certain drugs destined for Canada in an effort to equalize Canadian and American drug prices. (Canadian drug prices are 25 to 50 per cent lower than those in the US, largely due to currency differences and bulk buying by Canadian provinces.)

The next question: If drug imports become legal in the US, can Canadian

suppliers meet the demand? Not likely, says a study by the University of Texas. According to their estimates, Canada's entire prescription drug supply would be exhausted in only 38 days if all US residents began purchasing their medications in Canada. More realistically, it notes that, if only half of US seniors tapped into the Canadian prescription drug market through the internet, Canada would have to increase its entire drug supply by 250 per cent.

*"The expectation that the Canadian distribution chain can suddenly serve a population that is 10 times larger will inevitably lead to shortages in Canada,"* says the Coalition for Manitoba Pharmacy, a group opposed to internet drug sales.

For plan sponsors, that kind of demand can only mean one thing: dramatically increased drug costs.

Now, which side are we on again? ■

## Time to re-think CPP at 65, Dodge says

*Bank of Canada Governor David Dodge says that Canada Pension Plan (CPP) should be made more flexible to allow workers to stay in the workforce past age 65.*

In an address before the Senate Banking Committee, the Bank of Canada chief criticized the organizations that enforce mandatory retirement, calling it "a silly policy that doesn't make a lot of sense."

The 60-year-old governor also cautioned that, while the CPP is financially sound, its retirement age standard of 65 may have to be adjusted upwards over time.

*"It's something we are going to have to consider from a financing view,"* he said. Mr. Dodge warned that skilled workers are now preparing for retirement and that a skills

shortage could occur unless other solutions are found.

However, the bank head did not advocate an across-the-board increase in the retirement age. For example, he noted, retirement past age 65 may not be suitable for those involved in heavy manual labour. However, white collar professionals could be candidates for later retirement, he said.

Prime Minister Paul Martin, 65, and 78-year-old US Federal Reserve Chairman Alan Greenspan have expressed similar thoughts -- and a growing portion of the workforce mirrors their views.

According to a survey of 1,000 workers at or near retirement conducted by a major actuarial firm, one in three older workers would delay retirement if it featured

a phased schedule such as the gradual shortening of the work week or flex time.

The reason: people *like* to work. According to the survey, while 57 per cent are attracted by the prospect of more leisure time of a phased retirement program, 42 per cent indicated that they like their work and want to continue their career in some form. In fact, a third of those in phased retirement programs end up returning to work on a full-time basis. While extra income accounted for 40 per cent of those returning to the workforce from retirement, enjoyment followed closely behind, attracting 34 per cent of returnees.

*"Allow some flexibility,"* Mr. Dodge said when referring to the age 65 retirement standard. *"It's not an on-off switch."* ■

# Retiree benefits becoming a new flashpoint in labour relations

*Picture this: you're a retired senior with a health and dental benefits program that complements your pension. One day, you receive a letter from your former employer. Your benefits have been eliminated.*

Today, an increasing number of retirees are being told that the benefits promised to them at retirement will no longer be available.

With the cost of benefits doubling since 1990, many plan sponsors are taking a hard second look at their benefits costs. And, with the prospect of a wave of baby boomers entering retirement in the next few years, the paring of retiree benefits is becoming a flashpoint in labour relations. Already, one of the largest class actions suits in Canadian history has been filed on behalf of 60,000 former Ontario government employees -- many of whom took early retirement packages featuring generous benefits programs -- who have since faced benefits reductions.

Just over half of the country's 174 large employers offer post-retirement group medical, dental and life insurance coverage. However, according to the May 19, 2004 edition of the *Globe and Mail*, as many as 54 per cent of those employers plan to reduce or eliminate the benefits within the next three years. Thirteen per cent have already made such reductions and another 40 per cent have considered it but held off making the final announcement.

Retiree benefits cost an average \$1,000 to \$4,000 or more per retiree per year.

Ironically, one of the problems of these plans is age. Many were designed in an earlier era when the labour force was younger, mobile and healthy. With a relatively limited

number of retirees to support, benefit plans could be designed to fund the increased risks and claims experience associated with older individuals. Plan design did not change to accommodate the changing demographic of the workforce and the projected increase in the number retired workers. And, since many unions do not consider retirees to be active members, the issue fell off the radar of both management and staff sides during contract negotiations.

Some common plan design changes now being considered include:

- the elimination of non-medical benefits such as massage therapy, podiatry and other professional services;
- reducing or eliminating dental, drug or out-of-country medical coverage;
- adding deductibles and/or coverage maximums for specific benefits;
- providing health care spending accounts where each retiree receives an annual allotment to cover their health, dental or life insurance coverage; or
- providing retiring members with special stipends to buy private health care coverage.

Your Coughlin & Associates Ltd. consultant can help your organization develop custom-designed retiree benefits programs for your workforce. ■

## ASO disability benefits subject to EI deductions

*The federal Court of Appeal has ruled that disability payments under administrative services only (ASO) contracts are subject to Employment Insurance (EI) premiums.*

In a case involving Laval University, the federal Court ruled that where an employee-employer relationship exists, any benefits paid by or on behalf of an employer either by an insurer or a self-funding arrangement, are considered insurable for EI purposes.

The Laval University case was later confirmed in another ruling involving the National Bank. In that case, the Court said that ASO plans are to be considered as salary continuance plans. The fact that an insurer paid the claims did not abrogate the employer's obligation to make the appropriate deductions from the employee's disability payments.

The Court added that employers that fail to make the EI deductions from the disability payments will also be responsible for the employee's unremitted EI premiums. ■

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# Ontario budget imposes health premiums, service cuts

*Ontario's new government introduced major changes to its provincial health care plan.*

Starting July 1, 2004, Ontario will re-introduce health care insurance premiums to help fund the province's financially strapped public health care system. The new premiums will be based on individuals' taxable income, with individual premiums ranging from \$300 to \$900 per year. Those earning less than \$20,000 per year will be exempt from the new levy.

Alberta and British Columbia are the only other provinces that

charge premiums for their medicare programs.

The re-introduction of the premium also threatens to see the return of the "Who pays?" debate, especially among unionized workforces. Prior to the elimination of health care premiums 15 years ago, many collective agreements in the province contained provisions where some or all of their costs were met by employers. Whether these provisions would still be in effect after a decade and half of non-use is still to be determined. For example, the Canadian Union of

Public Employees (CUPE) estimates that up to 40 per cent of its 1,000 collective agreements may still have employer-pay clauses.

Plan sponsors in Ontario may have to address the issue in future contract negotiations.

The province's health care reforms also featured the expansion of some children's immunization programs and the elimination of government-funded chiropractic services, optometry exams for those between the ages of 20 and 65, and physiotherapy. +

## Alberta law protects auto insurers from injury awards

*The province of Alberta has passed the Alberta Insurance Amendment Act, which removes the right of subrogation for auto accident injury claims.*

The legislation removes the rights of those injured in an automobile accident from claiming medical or other expenses against the auto insurer of the negligent party. In effect, the financial responsibility for automobile injury claims will shift from negligent drivers to victims.

For plan sponsors with members in Alberta, the new law could result in higher expenses as their group extended health care plans will now be expected to bear the brunt of the expenses involving auto accident injury claims. +

## Quebec to have its own maternity plan

*The federal and Quebec governments have signed an agreement in principle that will allow the province to run its own maternity benefit program.*

Under the agreement, the Quebec maternity and parental benefit plans would offer the same benefits as those provided under the federal Employment Insurance program. Individuals will not be able to use both the federal and provincial plans at the same time.

The agreement also features inter-provincial mobility to ensure that individuals still qualify for the same government-sponsored maternity or parental benefits if they move to or from the province.

The final agreement between the federal and Quebec governments is expected to be signed on February 1, 2005. +

## PPN update

- , HMA Pharmacy, formerly of 1950 Merivale Road, has moved to 2948 Baseline Road, in Ottawa.
- , Sharbot Lake Pharmacy has joined the Coughlin & Associates Ltd. Preferred Provider Network. They are located at 1036 Elizabeth Street in Sharbot Lake, Ontario.

To find a PPN pharmacy near you, check the Coughlin & Associates Ltd website at [www.coughlin.ca](http://www.coughlin.ca) or call 613-231-2266. +

# FAST FACTS

An Avenir Healthcare survey conducted by Ipsos-Reid suggests that the majority of Canadian workers prefer benefits coverage to other forms of compensation such as cash in lieu of benefits or extra vacation. The survey of 1,503 plan members across the country indicated that 72 per cent favour benefits over cash while 84 per cent prefer would take benefits coverage over an extra week of vacation. Drug coverage, short and long-term disability and life insurance were the most popular benefits. The survey can be viewed at: [www.theaventishealthcaresurvey.com](http://www.theaventishealthcaresurvey.com). ■

Losing a job causes more long-term stress and mental damage than even divorce or widowhood, according to a study by a British university. A 15-year study of 24,000 unemployed workers in France, the US and Britain indicate that those who lose their job never return to the same level well-being they experienced prior to the job loss -- even when they rejoin the work force. "*The loss of a job, even briefly, scars a person for life,*" the study suggests. ■

The number of new cases of dementia is expected to increase by 22 per cent in British Columbia over the next seven years, the BC Medical Association says. The Association says the province has no strategy to deal the increased caseload. The disease is found mainly in seniors, the fastest rising segment of BC's population. Ontario, Manitoba and Alberta already have formal strategies in place to deal with the growing problem. ■

The province of Manitoba will change its Pharmacare program and reimburse only for the price of the lowest cost drug for a specific treatment. Similar programs are in place in Nova Scotia and Saskatchewan. The province also plans to accelerate the approval of cheaper generic drugs for Pharmacare coverage. Drug costs are the single fastest growing expense in the health care system, the province says. ■

The median family income 1980 (in 2002 dollars): \$49,700

The median family income 2002: \$53,400

Gain over 22 years: \$3,700. ■

Obesity rates among adults in selected OECD countries:

- US: 31%
- UK: 22%
- Australia: 21%
- Canada: 15%
- Spain: 13%
- France: 9%
- Italy: 9%
- Japan: 3%

Obesity is a leading cause of diabetes and heart disease. ■

Number of injuries per year to health care workers caused by needles and sharp objects: 70,000. Per cent involving nurses: 66. Per cent of those injuries resulting in exposure to high-risk blood or bodily fluids: 10. Number of new cases of HIV-AIDS and hepatitis C among health care workers per year: 300. Number of blood-borne pathogens that can be contracted from a needle: 33. ■

The Alberta Cancer Board has recommended that the province cover the cost of Rituximab for the treatment of non-Hodgkin's lymphoma for people under 60. Currently, the province's health plan only covers the drug for patients over age 60. ■

The C.D. Howe Institute suggests that the Canada Pension Plan (CPP) follow the lead of the Quebec Pension Plan (QPP) and remove disincentives from working to later ages. In December 2003, Quebec overhauled the Quebec Pension Plan and increased benefits for those retiring after age 65 to 0.7 per cent per month from 0.5 per cent, the level currently in place in the CPP. (See the December 2003 *Coughlin Courier* for more details about the QPP reforms.) ■

Statistics Canada reports that assets in trustee pension plans totalled \$584 billion as of the third quarter of 2003, a 3.1 per cent increase over the second quarter. Increased employer contributions and improved investment results appear to be reversing the pension asset losses reported in 2002. At their peak, prior to the collapse of the equity markets in 2001, pension fund assets exceeded \$614 billion. ■

Number of pension plans registered federally under the Pension Benefits Standards Act: 1,205.

Breakdown:

- defined benefit plans: 346
- defined contribution plans: 789
- combination plans: 70 ■