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# COURIER

JANUARY 2010

AT A GLANCE ...



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## Court overturns claim by man paralysed by sex with three women

The Supreme Court of Canada has overturned an accident insurance claim by a man who became paraplegic after having unprotected sex with three women.

The case involves a 40-year-old British Columbia man who contracted genital herpes in 2003. The disease attacked his spine, leaving him paralysed from the waist down. The individual filed a disability claim stating that his paralysis was an unexpected outcome from having unprotected sex.

The insurer contested the claim, stating that the contracting of a disease from engaging in a sexual act did not constitute an accident as defined by the policy's terms or case law. However, the BC Supreme Court and the BC Court of Appeal disagreed and sided with the claimant, providing him with an award of $200,000. The case was then appealed to the Supreme Court of Canada.

In considering the case, the Supreme Court ruled that the individual's paralysis was not caused by "external, violent and accidental means", as defined by his insurance policy. Further, the Court said that allowing the case to stand would "stretch the boundaries of an accident policy beyond the snapping point by effectively turning it into health insurance for disease sufferers [but] with lower premiums."

The two British Columbia courts supported the contention that the man did not engage in "inordinate risk" by having unprotected sex, and therefore qualified for payment under the accident definition. However, the Supreme Court maintained that the transmission of disease has never met the traditional definition of "accident."

"In this case, we are dealing with a disease transmitted in the ordinary course of having sex," ruled Justice Ian Binnie. "In ordinary speech, 'accident' does not include ailments that proceed from natural causes. It cannot be correct that passengers sitting in an airliner who catch the SARS virus through the externality of the plan's air circulation system, or riders on a bus who catch swine flu from an infected fellow passenger or people who contract any number of infectious diseases because of a failure to wash hands in disinfectant have valid claims under an accident policy."

While for plan sponsors and members, the Supreme Court ruling clarifies the distinction between an "accident" and a "naturally occurring disease", it also focuses the accident definition to a "triggering, unnatural calamity." According to the claimant's counsel, under the new rules defined by the Supreme Court, the man's case could have been successful had an unnatural event or calamity, such as a broken condom, triggered the onset of the disease.

If the claimant's lawyer is correct, watch for more disputes centring on the definition of "accident" in the future. ❧

# Ministers agree to agree on pension reform

The federal government and the provinces have agreed to develop a national consensus on pension reform.

Following two days of meetings in Whitehorse, Yukon, the nation's finance ministers agreed that they have enough information to begin negotiations to make Canada's retirement income system more stable.

According to federal Finance Minister Jim Flaherty, the various provinces, territories and the federal government intend to "drill down" on the various pension reform options to encourage Canadians to save more for retirement, especially those with no workplace pensions.

*"First, we have to make sure we do no harm,"* Mr. Flaherty said at the end of the December 18, 2009 meeting. *"Then, the second thing is [determine] what precisely, surgically, would be useful for Canadians' retirement incomes later on. We're going to try and narrow down in the next two months and then move forward on those particular aspects."*

The agreement follows 12 months of crisis in the pension field as pension plans across the country faced unprecedented solvency deficits and, in cases such as General Motors, Nortel and others, near bankruptcy. While some provinces such as Ontario, and the federal government itself, introduced measures to update their pension legislation (see pages 4 and 5), others such as Alberta and British Columbia, have gone a step further, threatening to introduce their own supplementary pension plan in early 2010.

The Whitehorse agreement gives everybody a chance to review the various options on the table and, for now, prevent a fragmentation of Canada's pension system.

*"The provinces said unanimously that no province gets ahead of the rest,"* said federal Parliamentary Secretary of Finance Ted Menzies. *"They all agreed that a pan-Canadian solution would be best."*

British Columbia Finance Minister Colin Hansen agreed.

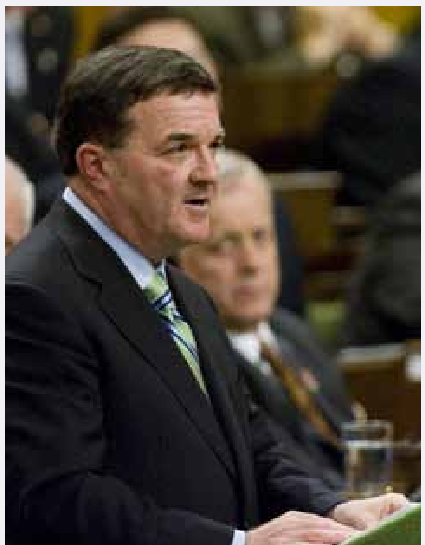

*Photo: federal Finance Minister Jim Flaherty.*

*"We're willing to work to engage the other provinces and build a pan-Canadian solution, so, we're better off to take the extra time,"* he said.

The various finance ministers will begin public consultations early this year and are expected to meet again in May to develop concrete reform proposals.

## The options on the table

Following are some of the pension reforms options under consideration:

1. Develop a supplementary program to the Canada/Quebec Pension Plan, similar to that proposed by British Columbia and Alberta. The joint provincial plan would encourage the enrolment of workers who do not have a workplace pension into a national (or provincial) voluntary defined contribution plan. At retirement, members would receive both C/QPP benefits and supplementary pension plan benefits. The governments of British Columbia and Alberta, the federal Liberal Party and some pension experts have endorsed this plan. The maritime provinces and others have expressed concern about its potential cost and the possible fragmentation of the country's pension structure.

2. Expanding the existing Canada/Quebec Pension Plan by increasing the maximum benefits from 25 per cent of the yearly maximum pensionable earnings to a higher level, such as 50 or 70 per cent. Premiums would increase correspondingly. Various labour organizations and the federal New Democratic Party have endorsed this plan.

3. Reform financial regulations to further encourage the establishment of group retirement savings programs. This approach has received the tacit encouragement of the federal government.

4. Educate the public about the retirement products, services and savings vehicles available to them through existing regulations. ❧

# Federal government releases pension rule changes

The federal government has proposed a series of reforms to update the rules governing federally regulated pension plans. The federal regulations control the pensions of Canada's banks, the federal public service, the military, RCMP and other national institutions. Approximately 10 per cent of Canadian pensions fall under federal jurisdiction.

Highlights of the federal reforms include the following:

- Prohibiting companies from taking contribution holidays, unless they have a minimum asset to liability ratio of 105 per cent.
- No benefit improvements may be made to pension plans when they are less than 85 per cent funded or when the improvement would reduce funding ratios to that level.
- Companies must fully fund pension plans when they voluntarily terminate a plan.
- Plan members and retirees must receive detailed annual statements outlining the financial health of their pension plan. The statements must include a listing of the plan's 10 largest investment holdings.
- Immediate vesting of all pension benefits, eliminating the two-year waiting period.
- Pension solvency calculations will be based on a three-year measure to reduce the impact of major changes to plan asset values in a single year.
- Companies may use letters of credit covering up to 15 per cent of plan assets to satisfy a plan's solvency requirements.
- Allow companies to accumulate surpluses of up to 125 per cent of plan liabilities, instead of today's cap of 110 per cent.
- The elimination of partial wind-ups of pension plans by plan sponsors.

The federal government also introduced proposals to clarify regulations for the administration of federally regulated defined contribution (DC) and negotiated contribution defined benefit (DB) plans. They include the following:

- Clarifying the responsibilities and accountabilities of the parties involved in the management and administration of defined contribution plans.
- Elimination of the requirement for DC plans to adopt statements of investment policies and procedures.
- Allowing members to receive life income fund (LIF)-style payments directly from DC plan accounts.
- Formalizing rules for employer contributions in DB plans in cases where the contributions are limited by a collective agreement.
- Establish rules to govern the composition of boards of trustees for negotiated contribution DB plans to ensure representation from plan stakeholders.
- Allow trustees of negotiated DB plans to reduce accrued benefits. ❧

# 2010 government benefits limits

Following are the maximum benefits or limits for selected government benefits for 2010:

| | |
|---|---|
| **Old Age Security (OAS)** | |
| Maximum pension income | $516.96 per month |
| **Canada/Quebec Pension Plan (C/QPP)** | |
| -Maximum pension income | $934.17 per month |
| -Yearly maximum pensionable earning (YMPE) | $47,200 |
| -Contribution rate: employee | 4.95 per cent |
| -Contribution rate: employer | 4.95 per cent |
| -Maximum annual contribution: employee | $2,163.15 |
| -Maximum annual contribution: employer | $2,163.15 |
| **Employment Insurance** | |
| -Maximum weekly benefit | $457.00 per week |
| -Maximum yearly insurable earnings | $43,200.00 |
| -Contribution rate: employee | 1.73 per cent (Quebec: 1.36 per cent) |
| -Contribution rate: employer | 1.40 per cent |
| -Maximum contribution: employee | $747.36 (Quebec: $587.52) |
| -Maximum contribution: employer | $1,046.30 (Quebec: $822.53) |
| **Registered retirement savings plan contributions** | Lesser of 18 per cent of income to a maximum of $22,000 per year. ❧ |

# Ontario updates its pension laws

The province of Ontario has introduced a number of measures to update its Pensions Benefits Act (PBA).

In the first major reform of the province's pension legislation in 20 years, the proposed legislation attempts to standardize benefits of members affected by lay-offs and pension wind-ups, facilitate restructuring of pensions when companies face re-organization and improve plan governance and administration.

The majority of non-federally regulated pension plans fall in the jurisdiction of the Ontario PBA. Highlights of the proposed changes include the following:

- The elimination of partial wind-ups of pensions, beginning January 1, 2012. No distribution of plan surpluses would occur, except on the full wind-up of a pension.
- Extending grow-in benefits to all eligible members whose employment is terminated, other than for cause, provided the member's age plus years of service total at least 55. Grow-in benefits provide older terminated plan members with additional early retirement benefits. This provision will also become effective on January 1, 2012. Multi-employer and jointly sponsored plans will be able to decline to provide grow-in benefits.
- The immediate vesting of all pension benefits, eliminating the two-year waiting period.
- Allowing the Superintendent of Financial Institutions to require plan sponsors to provide valuation or other reports, particularly when events, such as lay-offs or closings, significantly impact the membership of a pension plan.
- Simplify asset transfer rules for defined benefit plans while insuring that the commuted value of members' accrued benefits are not reduced.
- When a group of members are transferred from one employer's pension plan to another employer's plan, members should have the option of either transferring or not transferring to the successor plan. Union groups will also be able to have this choice on behalf of their members.
- Asset transfers between pension plans would continue to require the Superintendent's consent.
- On the full wind-up of a plan, any entitlement to the plan's surplus would remain, unless pension benefits are fully annuitized leaving no continuing obligation.
- Pension plans will be required to provide all members, including retirees, information about a plan's funding status at set times.
- Plan administrators and the regulator will be required to provide copies of specified documents upon request. Related fees must be no higher than those charged by the regulator.
- All pension plans will be required to provide members, retired members and former members with notice of all plan amendments before they are registered with the regulator.
- The Superintendent of Financial Institutions will be allowed to make interim orders concerning a pension when there is evidence that a plan is at risk.
- Clarify plan administration requirements including details such as which documents are required to be filed in specific circumstances.
- Under certain circumstances, members may be allowed to transfer certain pension money, such as excess contributions or small payouts, to other registered vehicles such as a registered retirement savings plan or a registered retirement income fund.
- Pension plans will be permitted to offer phased retirement where members could draw pension benefits while they continue to work.

Information on the pension reform legislation can be found on the Ontario Ministry of Finance website at: www.fin.gov.on.ca. ❧

# Ontario plan gets mixed reviews

Ontario's pension proposals have received mixed reviews from experts and some plan sponsors.

Negative reviews included criticism from some industry executives that extending grow-in benefits to all eligible members whose employment is terminated will make Ontario's pension regime even more out-of-step with the rest of the world. Ontario and Nova Scotia are the only jurisdictions that allow grow-in benefits.

Other pension actuaries and consultants have focused on the requirement that a member may not qualify for the benefits until his/her age plus years of service total at least 55.

*"What is so magical about having 55 points?"* asked James Pierrot of the Towers Perrin human resources and actuarial consulting firm. *"Why not have employees earn early retirement subsidies in proportion to their years of service? That would be much more fair than having a cut-off. Why should a person with 54.9 points not get it? It's silly."*

In addition, other pension actuaries have warned that the 55-point requirement would not necessarily add consistency to pension administration. Companies with a larger proportion of workers at or near the early retirement line would face higher pension costs during layoffs than organizations with a younger demographic profile.

However, other human resources and pension specialists praised the extension of grow-in benefits.

*"It is a very perverse thing when you terminate someone at 54 to deny them what they were going to get at 55,"* noted Mercer Human Resources actuary Malcolm Hamilton. *"You hold out a big promise and then snatch it away."*

Subject to praise from almost all quarters was Ontario's proposal to eliminate partial wind-ups of pensions along with distribution of plan surpluses, a costly source of confusion and litigation for plan members, unions and plan sponsors. ❧

# Pension trustees face sentencing

An Ontario judge has reprimanded the trustees of one of Canada's largest multi-employer pension plans for failing to control how its pension funds were being invested.

Justice Beverly Brown of the Ontario Court of Justice ruled that Canadian Commercial Workers Industry Pension Plan trustees *"totally failed to exercise care, diligence and skill"* by allowing excess funds to be invested in five Caribbean hotels and resorts controlled by one real estate entrepreneur and for *"doing nothing"* to limit the investments in the companies to 10 per cent or less of the book value of the plan's assets.

According Court filings, in 2002 and 2003, the pension plan channelled $20 million to save two Bahamian hotels facing financial difficulty. This followed an earlier investment of $92 million into the holding company that had a controlling interest in the two hotels, along with other resorts in the area. It is also alleged that the plan may have invested in a number of other companies and real estate developments without exercising appropriate due diligence. The pension plan never revealed the extent of its losses to its members.

The pension plan has assets exceeding $1.4 billion and provides benefits to approximately 380,000 members and retirees. However, the plan is now facing a funding deficit and may have to reduce its benefits payments.

*"The only inference that can be drawn from the record, in the face of the clear duty of the members of the board of trustees to prudently and reasonably supervise the investment committee members in this regard, is that they totally failed in their duty to supervise with respect to the qualitative limits,"* Justice Brown ruled.

In addition to chastising the 10-member joint board, the judge also criticized Crown prosecutors for failing to provide expert testimony relating to the propriety of how the investments were handled.

*"Potentially, this evidence could have also assisted the court as to how the actions or omissions of the defendants fell short of the standard of a fiduciary performing functions prudently,"* she said.

Board members could face fines of up to $100,000 each.

A sentencing date will be set later in January. ❧

# Is it a crisis or not?

Despite the continuing alarms regarding the solvency of Canada's pension system, many voices of credible contrarians can be heard. Their message: what crisis?

According to officials such as Finance Minister Jim Flaherty, former Bank of Canada Governor David Dodge, the Organization for Economic Co-operation and Development (OECD), as well as a federal government-commissioned study by University of Calgary Professor Jack Mintz, Canada has one of the safest and most credible retirement systems in the developed world.

Yet, others, such as the Canadian Institute of Actuaries, the Canadian Association of Retired Persons and the provinces of Alberta and British Columbia say our system faces serious challenges and is in danger of fragmentation.

Are we in crisis or not? The arguments of both sides follow:

### It's a crisis

- An Ontario government study by Ottawa pension consultant Bob Baldwin projects that "a significant minority" of middle and upper-income Canadians will experience significant declines in income at retirement. The impact of that income loss with be felt throughout the economy.
- Only 38 per cent of Canadian workers have a workplace pension plan, down from 46 per cent in 1977. That number becomes further skewed when the enrolment of public sector plan members is compared against enrolment levels in the private sector. Three quarters of private sector workers have no pension plan; that percentage is virtually reversed among public sector employees.
- The solvency levels of pension plans everywhere are still at historical lows, despite the fact that equity markets rose by 25 per cent in 2009.
- The baby boom generation is on the cusp of retirement. In the coming years, more than one-third of today's workforce will begin to claim pension benefits from financially strained pension plans.

### What problem?

- Both of Canada's universal pensions, the Canada Pension Plan (CPP) and the Old Age Security (OAS) benefit, are well-funded, with enough reserves to meet their obligations well into the 21st century. They form a sound platform for individuals to build their personal retirement incomes.
- At the end of 2008, one of the worst years on record, Canada's pension assets totalled $1.8 trillion. Between 1990 and 2008, those assets grew by 360 per cent. That asset growth will continue, particularly when world equity markets stabilize.
- Despite warnings about the pending poverty of retired baby boomers, the fact is that incomes of those over age 65 have increased substantially over the past 30 years, with real incomes increasing by 55 per cent. Today, only 4.8 per cent of seniors live below the official poverty line, a substantial change from only a generation ago.
- Are we dealing with *want* or *need?* While nobody looks forward to facing an income drop, individuals have faced such declines at retirement for generations — and managed to live by saving their money and tailoring their lifestyle needs, as opposed to their wants, to their income. Is the pension "crisis" merely an awakening by baby boomers to the economic realities of retirement? ❧

# PPN update

- The **Medical Arts Dispensaries** of Cornwall, Ontario have joined the Coughlin & Associates Ltd. Preferred Provider Network (PPN). Their addresses are:
  - 173 Montreal Road, Cornwall, Ontario. They can be reached at: 613-932-6501.
  - 30-13th Street, Cornwall, Ontario. The phone number is: 613-933-0670. ❧

# Prepare members for benefits termination

Did you realize that most group insurance benefits end at retirement or at age 65?

While many insurers are opting out of providing retiree benefits, Coughlin & Associates Ltd. provides individual health and dental benefits on a *guaranteed acceptance basis,* provided the member applies within 60 days of the last date of group coverage.

Premiums for this coverage are tax deductible.

Many group clients now recommend their retiring members contact Coughlin's Individual Financial Services department to obtain this valuable coverage.

According to the Canadian Institute for Health Information's *Drug Expenditure in Canada: 1985 to 2007* study published in May 2008, Canadian households paid more than $3.9 billion in out-of-pocket expenses for prescription medication in 2007.

As well, according to a Statistics Canada study, in 2006, the average Canadian household spent $1,250 on dental care, eye care, paramedical and other health care costs not covered by provincial health plans — a 10 per cent increase from 2005.

As demand outstrips funding, provinces have begun to limit the covered services and procedures.

A recent report by AON Consulting suggests that, to contain costs, more than half of Canadian employers are considering eliminating their post-retirement benefits.

For most retirees, that means that, at age 65, they could end up being dependent on their provincial health plan coverage for their health care, drug, vision and other benefits. Unfortunately, many provincial plans offer limited or no coverage for certain prescription drugs and extended health coverage, which makes having your own individual health and dental benefits plan a wise decision.

While coverage may vary by province, the following outlines some of the restrictions of the Ontario Health Insurance Plan (OHIP):

## Services provided by the Ontario Health Insurance Plan:

**Prescription drugs**

- Coverage under the Ontario Drug Benefit plan for seniors and social assistance recipients only. Covers drugs listed on the Ontario drug formulary. Seniors must pay the first $100 in prescription costs. Once this has been satisfied, they pay the first $6.11 for each prescription.

- Catastrophic coverage under the Trillium drug program after a deductible (paid in quarterly instalments) has been satisfied. The deductible is based on family net income. Once this has been satisfied, households must pay up to $2 for each prescription.

**Ambulance**

- Coverage for in-province land and air ambulance when deemed medically necessary. The patient is responsible for a $45 co-payment. Some exemptions apply.

**Dental benefits**

- No coverage for routine dental care.

- Coverage for some dental surgery, when it is done in hospital.

**Vision care services**

- Coverage for regular eye exam every 12 months for those aged 19 and under and seniors aged 65 and over.

- Coverage for regular eye exam every 12 months for those aged 20 to 64 with medical conditions affecting the eye.

**Hospitals**

- Coverage for standard ward rooms only.

**Paramedical**

- No coverage for chiropractor, psychologist, massage therapy or naturopath services.

- Coverage for podiatrist services to an annual maximum of $135. An additional $30 per plan year is available for X-rays.

- Coverage for speech therapy when performed in hospital only.

- Coverage for physiotherapy for seniors aged 65 and over, individuals age 19 and under and individuals of any age needing physiotherapy after being hospitalized.

**Hearing aids**

- The Assistive Devices Program (ADP) covers 75 per cent of the cost of one hearing aid to a maximum of $500, if eligible.

**Nursing and home care benefits**

- Some coverage based on need.

**Medical supplies**

- The ADP covers a portion of the cost of medical equipment or supplies for eligible individuals.

- Funding for insulin pumps to all adults with Type-1 diabetes that meet the clinical criteria for funding under the ADP.

**Out-of-country**

- Coverage for emergencies only. For in-patient services, the plan will pay up to $200 per day. If in-patient services are rendered in an operating room, coronary care unit, intensive care unit, neonatal or paediatric special care unit, then OHIP will pay a higher rate of $400 per day for hospital services.

For more information, contact jmoulton@coughlin.ca.

# Fast facts

- The federal government has introduced legislation to allow the self-employed to collect maternity and parental benefits through the Employment Insurance (EI) program. Under the legislation, self-employed individuals will be able to enrol in the EI program and pay only the employee's share of the premium. Premiums for 2010 are $1.73 per $100 of earnings to a maximum of $747.36 for the year. Claimants must be enrolled in the EI program for one year before collecting benefits.

- Quebec legislation has mandated that conversion maximums on all group life insurance policies now be $400,000 per insured person. The maximum in other jurisdictions is $200,000.

- Effective January 1, 2010, premiums for the British Columbia Medical Services Plan were increased to the following levels: single person, $57 per month; family of two, $102 per month; and family of three or more, $114 per month.

- Canada's retirement income system ranks fourth in the world for adequacy, sustainability and integrity, according to the Melbourne Centre for Financial Services and Mercer Human Resources. The 11-country survey measured 40 different indicators that are considered desirable in all retirement income systems. Leading the way were the retirement systems of the Netherlands, Australia and Sweden. The lowest ranking countries were Japan, China and Germany.

- The chief executives of the Ontario Teachers Pension Plan, the Canada Pension Plan Investment Board and the Ontario Municipal Employees Retirement System have joined the Toronto Financial Services Working Group's plan to make Toronto one of the two leading financial centres in North America. The Working Group is a coalition of banks, insurers, pension funds, investment firms and financial consultants. The organization also hopes to establish a global risk management institute in the city.

- A total of 62 per cent of Canadian retirees earn less than $20,000 per year, according to Desjardins Financial Security's *Rethink Retirement* survey of retired individuals. Despite their reported low income, 55 per cent of respondents indicated that they could still afford to cover their basic needs, plus a few extras.

- Mental illness costs the Canadian economy $51 billion annually, according to the Centre for Addiction and Mental Health. Among its costs: $5 billion in direct medical expenses; $9.3 billion in short-term disability costs; and $8.5 billion in long-term disability payouts. Mental illnesses such as clinical depression account for 40 per cent of all disability claims, the group says.

- According to Desjardins Financial Security's *Rethink Retirement* survey, one in four Canadian workers say that their standard of living actually improved during the 2009 recession. More than 20 per cent said their incomes increased through pay raises, overtime or changing jobs. Another 18 per cent reported they had paid off debts to improve their cash flow.

- Five Ohio-based pension funds are suing North America's three leading ratings agencies. According to the five funds, the Standard & Poor's, Moody's Investors Services and Fitch Ratings agencies are alleged to have traded favourable ratings on mortgage backed securities in return for kickbacks from the firms issuing the mortgage backed investments. The pension funds allege that three agencies issued AAA ratings while knowing that the investment funds were high risk.

- The December 2009 issue of *MoneySense* magazine reports that the defined benefit pensions of the 100 largest public companies in the US were underfunded by $50 billion. The pensions of 40 companies were classed as either *"in danger"* or *"on alert"*, with underfunding levels exceeding the 20 per cent range.

- Republican senators in the US failed in their bid to eliminate that country's Community Living Assistance and Service Supports (CLASS) program. The voluntary long-term care program provides disabled workers with up to $50 per day to pay for home care support, nursing home expenses or to defray the costs of home renovations following a disability. Workers pay a small monthly premium for the insurance coverage. Republicans and a minority of Democrats feel the program "adds another unaffordable commitment to a government already swamped with debt…"

- A Stockholm University study of 2,755 men indicates that men who stifle work-related frustrations are two to five times more likely to experience a heart attack or die from heart disease than those who openly vent their frustrations or anger. The Swedish study confirms earlier US research that reported similar findings.

- Japan Airlines reports that it plans to cut staff pensions by up to 30 per cent.

- The Netherlands has passed legislation to raise its legal retirement age from 65 to 66 in 2020 and to age 67 in 2025. ❧

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