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AT A GLANCE ...

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Voluntary supplement most feasible CPP/QPP reform

The establishment of an extra, voluntary component to the Canada and Quebec Pension Plans (CPP/QPP) appears to be emerging as the most likely way to enhance pension benefits of Canadians, says British Columbia Finance Minister Colin Hansen.

According to the BC minister, the new supplemental pension scheme would use the CPP as a base to provide a broad pan-Canadian pension plan to cover as many workers as possible.

The possibility of enhancing the CPP/QPP was one of four pension reform options considered by the country's finance ministers at their pension summit in Whitehorse, Yukon last December. (See the January 2010 edition of the *Coughlin Courier* for details.)

In a paper released on behalf of all the provinces, Mr. Hansen said the creation of a voluntary supplemental tier to the CPP/QPP as well as expanding the plan to make it more comprehensive would be the most workable solution to the growing gulf in pension coverage. Alternate proposals from the private sector were rejected.

"The first priority is to get as broad a pan-Canadian plan as possible," he said. *"If we can achieve that with a supplemental plan, then great."*

In media interviews, Mr. Hansen said he recognized that expanding the CPP/QPP will likely result in higher payroll taxes and place additional financial burdens on small or struggling companies.

"Those arguments lead to the conclusion that the voluntary plan would be more desirable," he said. *"If we were to try to implement this today, we would get great pushback from the private sector, who could not afford an increased payroll tax. If it's a voluntary program, then that helps mitigate that problem."*

While Mr. Hansen's approach has been endorsed by the provinces of Alberta and British Columbia, the federal Liberal Party and some pension experts, other groups, such as the federal New Democratic Party and some labour groups, have sought to simply increase the maximum payouts available under the current universal pension arrangement backed by correspondingly bigger contributions by members and plan sponsors. Boosting the CPP/QPP's benefits and rates would benefit all members equally while safeguarding members from market fluctuations. However, this approach has been criticised as being too interventionist by conservative elements.

In the shadow of Mr. Hansen's plan is the agreement of Alberta and British Columbia to develop their own supplementary defined contribution pension plan in early 2010 if the federal government did not address the pension issue.

"The pension problem is one that's looming," Mr. Hansen asserted. *"It's going to become a problem and, in fact, I believe if they don't act, it will become a crisis. If we ignore it for 10 years, it will be a problem that, at that stage, may not be solvable for the next generation of retirees. If we don't act now, then it will become that much more difficult to solve for those that follow us."*

Public consultations on the Hansen proposal will begin shortly. The country's finance ministers are expected to meet in May 2010 to develop concrete pension proposals based on public feedback. ❧

Caisse warns of weak earnings

The Caisse de dépôt et placement du Québec has warned Quebec residents and pension holders to expect weak returns on its pension funds for 2009.

In a letter published in newspapers throughout the province in early January 2010, Chief Executive Officer Michael Sabia announced that, due to its lack of exposure to equities, the Caisse will likely underperform when its results are compared to those of other pension fund managers. The fund controls the Quebec Pension Plan (QPP), as well as 25 of the largest public sector pensions in the province.

According to analysts and groups representing public sector retirees, funds managed by the Caisse will likely generate returns of six to seven per cent for 2009, compared to the industry average of 16 to 20 per cent. The lack of performance is a result of the fund's deliberate underexposure to equities following its near disastrous decisions in 2008 that resulted in losses of $40 billion and a decline of 25 per cent of its asset value.

"The Caisse has just lived through the most difficult time in its history," Mr. Sabia wrote. *"The economic and financial environment has changed radically. As a result, we have had to make important changes."*

Among the changes is the adoption of *"plain old common sense"* in its management and investment decisions, focusing more on assets that it understands and has mastered in the past.

The organization invested heavily in high risk US property ventures and asset based commercial paper prior to the 2008 market crash.

Mr. Sabia joined the Caisse after the collapse with a mandate to return the fund to a more solid financial footing. ❧

HST will have impact on Ontario and BC plans

Canada Day celebrations may be muted in British Columbia and Ontario this year as both provinces harmonize their provincial sales taxes with the federal Goods and Services Tax (GST) effective July 1.

While on the surface, the new Harmonized Sales Tax (HST) will impose an additional eight per cent levy on the price of goods and services in Ontario and seven per cent in British Columbia, exemptions and rebates may add complexity to the new tax regimes in both provinces.

While full details won't be released until March 2010, following are some of the anticipated impacts the new tax will have on selected financial services, pensions, and employee benefits as published in *Benefits Canada* magazine and the *Globe and Mail*.

- Since the five per cent GST is already applied to management fees on mutual funds, fundholders should expect the new HST to be levied against fees applied to their holdings. While the mutual fund industry has attempted to seek exemptions or rebates for their products, particularly registered retirement savings plans, their efforts to date have been unsuccessful. Since neither BC nor Ontario taxed mutual funds, fundholders should plan for management fee increases of seven and eight per cent, respectively.
- Multi-employer pension plans pay the GST on expenses such as management, custodial, consulting services and other professional fees. They can also claim a rebate of 33 per cent of the GST paid. Since provincial sales taxes were not applied to pensions, it is likely multi-employer pensions will now be subject to the full HST. Therefore, plan sponsors should prepare to pay higher taxes for these services. If the 33 per cent tax rebate continues, then the proportionate amount of the tax that plan sponsors can claim will also increase.
- Effective September 23, 2009, single employer pension plans also qualified for the 33 per cent rebate on the GST. As a result, single employer plans should also be able to claim an HST rebate for their eligible fund expenses.
- Since the GST was not applied to insurance premiums, and since both British Columbia and Ontario will continue to collect their own premium taxes on insurance products, no changes are anticipated on self-insured benefit plans.

More information will be provided as it becomes available. ❧

Bill 179 to radically change Ontario's health care services

Ontario is about to join Quebec, British Columbia and Alberta and allow pharmacists, dentists and paramedical practitioners to perform procedures and provide medical services that are currently only provided by physicians.

Under Bill 179, which was passed unanimously by the Ontario Legislature in December 2009, the availability of certain medical services will be widened considerably as patients will no longer have to use a physician for simple procedures, or to access certain drugs or prescriptions.

Medical professionals affected by this wide-ranging bill include the following:

Pharmacists: Will now be paid to *not* fill prescriptions when they feel that the prescription may be unsafe, interact negatively with other medications being used by a patient, or when drug abuse is suspected. The new legislation is expected to eliminate the drug allowances, or rebates, that are paid to pharmacists by drug companies to stock certain medications. In return, pharmacists will be allowed to charge higher dispensing fees.

They will be permitted to give vaccinations and prescribe some medications. They will also be allowed to perform simple procedures below the dermis.

Dentists: Will be able to sell or mix drugs. (They are already allowed to prescribe and dispense medications.)

Dental hygienists: Will be allowed to prescribe, dispense, sell or mix certain drugs.

Midwives: Under the order of a physician, they may administer any substance. They will also be able to communicate diagnoses, administer suppository drugs, take blood samples and place tubes in larynxes of newborns.

Nurse practitioners: Will be allowed to prescribe, dispense, sell or mix certain drugs. They will also be able to communicate a diagnosis to a patient, set or cast fractures or dislocations of joints and conduct diagnostic ultrasounds.

Physiotherapists: Can administer certain substances by inhalation as ordered by a qualified practitioner such as a physician. They may also communicate diagnoses to patients, treat wounds below the dermis under certain conditions, order diagnostic ultrasounds, and insert instruments, hands or fingers into certain body openings for assessment or rehabilitation of pelvic muscles.

Chiropodists and podiatrists: Will be able to give certain substances by inhalation.

Respiratory therapists: Will be able to give certain substances by inhalation.

Dieticians: May prick the skin to take blood readings.

Radiation technologists: Under the direction of a physician may: perform some procedures below the skin, such as administer needles; do tracheal suctioning of a tracheostomy; and insert instruments, hands or fingers into certain body openings, including artificial openings.

When proclaimed, the new law will require the professional colleges that govern the various medical professions to collaborate to establish uniform regulatory and professional standards for the various medical and paramedical groups. A "college supervisor" will also be appointed to co-ordinate the activities of various organizations.

For Ontario-based plan sponsors and administrators, Bill 179 will mean that they can expect to receive claim reports and other documentation that, until recently, were provided exclusively by physicians. As well, plan documentation, such as administrative services contracts and booklets, will also have to be updated to accommodate these changes. ❧

Smoking restrictions lead to arbitration ruling on disability

While smoking has been linked to higher mortality and morbidity levels for decades, aggressive anti-smoking policies that impose restrictions on smokers are discriminatory, a British Columbia labour arbitrator board has ruled.

The issue involved a large smelting company that implemented a policy to prohibit the use of tobacco anywhere on its property. While, on first glance, the corporate policy appeared to conform to the spirit of directives adopted by many smoke-free workplaces, the anti-smoking rule was challenged by its employees' union.

According to the union, the anti-smoking policy would mean that heavy smokers would be prevented from being able to smoke for approximately eight to 12 hours per day while they were on the smelter's property. For those addicted to nicotine, that could result in withdrawal symptoms such as depression, anxiety, irritability and loss of concentration. In effect, the union argued, the anti-smoking policy penalized nicotine addicts. Since addiction is considered a disability, the smelter's anti-smoking rule was a violation of BC's Human Rights Code, which prohibits discrimination against the disabled.

In reviewing the case, the arbitrator used both British Columbia's and Ontario's human rights legislation that mandate employers to accommodate individual disability *"to the point of undue hardship."* In reviewing expert medical evidence suggesting that heavily addicted smokers tend to need to smoke roughly every two hours and are unable to quit smoking despite nicotine replacement therapies, the arbitrator took the position that smokers did not have the *"right to smoke."* However, he did recognize that they had become addicted to nicotine to the point of physical and mental disability.

In this case, the union successfully focused the ruling on the issue of *disability,* rather than on the conditions or behaviour that led to the disability in the first place. And, under human rights law, it is the *condition of being disabled* that is protected.

For plan sponsors, the smelter's case presents some interesting challenges. While the promotion of a healthy workplace may be laudable, it cannot be done at the expense of human rights. For example, while it is possible to prohibit smoking in enclosed places in the workplace, an employer can neither directly ask an employee if he/she is a smoker nor refuse to hire a smoker. At the same time, an employer still has a duty to accommodate employees with disabling addictions, including nicotine. From an employee benefits perspective, accommodation could include addiction counselling programs, covering the costs of nicotine replacement products and similar initiatives. ❧

Facts about smoking and nicotine addiction*

Percentage of Canadians age 15 and over that smoke:	18.6%
Percentage of males that smoke:	20.3%
Percentage of females that smoke:	17.9%
Percentage of smokers that consume more than 25 cigarettes per day:	34.0%
Percentage of smokers that say they intend to try to quit smoking within the next 30 days:	32.5%
Percentage of smokers who made one or more attempts to quit smoking in the past year:	48.4%
Percentage of smokers who had seen a doctor about their smoking problem within the past year:	76.3%

Most popular cessation aids used to quit smoking:	
-Nicotine patch	32.1%
-Nicotine gum	21.2%
-Other pharmaceutical aids	13.8%

Main reason for beginning to smoke again:	
-Stress	33.6%
-Addiction/habit	25.2%
-Family/friends smoke	12.4%
-Going out (i.e., parties, bars, etc.)	5.4%
-Boredom	2.7%

*(From: *Smoking cessation: intentions, attempts and techniques.*
By Scott T. Leatherdale and Margot Shields, Statistics Canada, July 2009.) ❧

Age limits can be included in pensionable service

The federal Court of Appeal has ruled that it is not discriminatory to limit pensionable service based on age.

The case involved two members of a large defined benefit pension plan who were both age 71 and continued to work for their employer. Under the plan's rules, members could accumulate pensionable service for a maximum of 35 years, after which neither the member nor the employer could make further contributions to the plan.

In 1995, the employer added a provision that prevented employees and the employer from making further contributions once an employee attained age 71. The first employee had accumulated 32 years of pensionable service at that age while the second employee had registered 28 of years of service. Both wished to continue making contributions and to accumulate pensionable service but were denied. They then began litigation, stating they were victims of age discrimination.

In their submission, the two employees said that by limiting eligible pensionable service after age 71, the pension plan violated Section 15 of the Charter of Rights and Freedoms, which protects Canadians against discrimination based on age, sex, origin, race, religion or disability.

In considering the case, the Appeals Court judge agreed that they were being treated differently based on their age. However, he noted, the difference was only "temporal". According to the Court, the members' difficulties were only based on the fact that they had each joined the company at ages when it was impossible for them to accumulate 35 years of service prior to age 71. In other words, the Court asserted, it was only due to the fact they had each joined their employer in their 40s that prevented them from enjoying the full benefits of the pension plan, not a policy or behaviour designed to demean them or prevent them from receiving the plan's benefits.

When comparing their rights and treatment against their peer group of fellow employees, the Court found that the pension plan's restrictions *"did not perpetuate any adverse effect on persons over the age of 71 on the basis of any stereotyping of older people or, more importantly, older workers."*

In addition, the Court noted, the pension plan's contribution restriction at age 71 was no different than that found under Section 8502 of the Income Tax Act, which also prevents individuals from making contributions to pension plans and other retirement savings vehicles, such as RRSPs, at that age.

For plan sponsors, the federal Appeals Court ruling confirms that age-based distinctions can be included in pensionable service calculations provided they are "bona fide" and in conformity with human rights and other legislation. ❧

The leading cause of cancer deaths among women is…

If you're like most people, you likely inserted the words "breast cancer."

But, you would be wrong.

The leading cause of cancer deaths among women is *lung cancer.*

Every year, lung cancer kills as many women as breast cancer and colorectal cancer *combined,* according to the Canadian Cancer Society. In total, lung cancer claims the lives of 9,400 women each year, compared to 5,400 per year for breast cancer and 4,200 annually for colorectal cancer.

Despite a decline in smoking rates among women, incidence levels of lung cancer are actually increasing, the Society says, and nobody knows why. While hormones, a smaller body frame or greater vulnerability to carcinogens in tobacco have often been cited as additional risk factors, little empirical evidence has been found to explain why lung cancer rates among women continue to increase.

One possible cause may be detection techniques. Unlike men, who tend to have symptoms such as coughing blood, chest infections and persistent coughing, lung cancer tends to display few symptoms in women until the tumour is either very large or has spread to other parts of the body. In other words, once it is found in a woman, it may already be too late.

For plan members, the message from the Canadian Cancer Society is to be sure to take every advantage of early screening opportunities, including annual chest X-rays. For plan sponsors, the message is simple: women are not men even when it comes to lung cancer. Expect to find a different set of symptoms and treatment time frames when a female employee or plan member is diagnosed with the disease. ❧

TFSA rules tightened

The federal government has introduced measures to tighten controls on tax-free savings accounts (TFSAs).

Introduced at the beginning of 2009, TFSAs allow individuals to save up to $5,000 per year in registered savings. While contributions are not tax-deductible, any interest or investment earnings generated by the accounts are not subject to tax. Money can also be withdrawn from the accounts without tax implications.

While the program has been universally popular, some sophisticated investors have used the accounts as a way to channel cash, property and securities between various holding funds. Instead of using the TFSA as a personal savings vehicle, some investors have used the registered plans as a way to engage in "swap transactions", the transferring or converting of large amounts of money or other assets between registered and non-registered accounts, to avoid taxation.

Despite TFSAs having an overcontribution levy of one per cent per month, certain investors have also deliberately overcontributed to their plans in order to generate rates of return on investments that far outweigh the potential costs of the one per cent per month fine.

To crack down on plan abusers, the federal government plans to amend the Income Tax Act as follows:

- make any income attributable to deliberate overcontributions or prohibited investments subject to the Act's anti-avoidance rules and open to a tax of 100 per cent;
- non-qualified investments will be taxable at regular income tax rates;
- prohibit transfer transactions between TFSAs and other accounts; and
- ensure that withdrawals of overcontributions, swap transactions, non-qualified or prohibited investments do not create additional TFSA contribution room. ❧

Prosper and live long

While *"Live long and prosper"* may be a key philosophy on the *Star Trek* sci-fi series, *"Prosper and live long"* may be the signature phrase for Canadian actuaries, those responsible for calculating life expectancy.

According to data released by Statistics Canada, people in the highest income groups can expect to live longer lives and enjoy a longer disability-free lifestyle than those in the lowest income groups.

While, on average, a Canadian girl born today can expect to live to age 82 and a boy to age 77, those numbers become skewed when income data and its ultimate impact on things like personal housing, education, environment and health are factored into life expectancy.

According to Statistics Canada data published in the November 2009 issue of *Health Reports,* 74.6 per cent of men in the top 10 per cent of the income bracket can expect to live to age 75, compared to only 51.2 per cent of men in the lowest 10 per cent of income range, a difference of 23.4 per cent.

Similar results were recorded for women. A total of 84.4 per cent of upper income earners can expect to live to age 75, compared to 69.4 per cent of those in the lowest income levels, Statistics Canada says, a 15 per cent difference.

In terms of the actual number of years that being rich adds to a lifespan, the Statistics Canada report notes that, at age 25, a wealthy man can expect to live another 56 years (i.e. to age 81) while a poor man can expect to see another 48.6 years (or age 73.6.) In other words, being rich adds an average of 7.4 years to the male lifespan.

For women, upper income earners at age 25 can be expected to survive another 62 years (to age 87), while those in the lowest income bracket will live for another 56.5 years (to age 81.5.) The gap: 5.5 years.

Live long and prosper, indeed. ❧

Plant closures and LTD terminations don't mix

The British Columbia Human Rights Tribunal has ruled that an employer discriminated against four employees who were on long-term disability (LTD) when it terminated them months before it permanently closed their place of employment.

The case involved a large forestry company that began a program to terminate employees on long-term disability. As part of this program, it dismissed four employees who had been on LTD for periods ranging from four months to as many as 13 years. According to the evidence presented, when making its decision, the company considered information such as the length of time the employees had been away from the workplace, their ability to return to work and their LTD classification.

In April 2007, the company dismissed the employees on the grounds that they could no longer do the work for which they were hired and had little hope of rehabilitation. However, it still provided them with an opportunity to produce medical information to prove they were capable of returning to work, in which case, their terminations would be deferred. Assuming they "would be looked after", neither the employees nor their union exercised that option.

Later, in September 2007, the company announced the closure of the mill where the employees had worked. However, evidence was produced indicating that the company had planned to close the worksite as early as January 2007. Under the terms of the collective agreement, employees were to receive notice of the plant's shutdown. The union then filed a complaint on behalf of the four employees alleging that they had been terminated to avoid the paying of severance.

In reviewing the case, the Tribunal conceded that, while the closure of the plant constituted a legitimate employee termination program, it was clear that the plant's human resources manager was aware of the pending closure before terminating the employment of the four individuals. The Tribunal said it was also clear that even if the employees had produced the necessary medical information to prove they were capable of returning to work, their relationship with the employer would have ended in any event when their plant was closed. As a result, the Tribunal concluded that the employer had terminated the employees to avoid paying severance, thereby discriminating against them due to their disabilities.

In its judgement against the employer, the Tribunal ordered the reinstatement of the employees, the crediting of their service to the time of the plant closure, the payment of the appropriate severance to that time, along with additional payments for damages.

For plan sponsors, the lesson from this case appears to be to ensure that any program involving the termination of employees on disability be backed by regular follow-up and correspondence to ensure that all medical evidence is collected and all communications with the disabled employee are confirmed in writing. That way, all parties involved in the termination will be aware of the rationale and potential ramifications behind any decisions arising from the communications.

More importantly, it appears clear that regardless of an employee's medical condition or status, all employees be treated equally, particularly when factors such as layoffs, closures or re-organizations may have to be considered. ❧

Fast facts

- One in seven Canadians — 4.4 million people — now have a disability according to the 2009 Federal Disability Report released by the federal Ministry of Human Resources. Approximately 17.7 per cent of women and 15.4 per cent of men have a disability, the report says.
- The Winnipeg Police Association says it is seeking to allow its members to have 20 to 30 minutes of paid time per shift to workout in a gym. *"Let's not forget, some of our clientele are repeat offenders who are in jail and do nothing but workout all the time,"* says President Mike Sutherland.

  While Mr. Sutherland's recommendation received mixed reviews within the city of Winnipeg, police services in the cities of Victoria and Calgary offer the benefit to their members.
- The H1N1 flu virus kept 1.5 million people away from work in November 2009, according to Statistics Canada. Almost 29 million work hours were lost throughout Canada.
- Number of Canadians infected with HIV/AIDS, according to the Public Health Agency of Canada: 58,000. Estimated number that have the disease but don't know it: 15,000.
- Number of people that require hospital treatment for injuries each year: 2.2 million. Average number of people treated in hospital emergency rooms per minute: two.
- More than 78,000 seniors are hospitalized and more than 3,600 die each year from falls, according to the Insurance Bureau of Canada. The number of children age one to 14 years of age hospitalized by falls each year: 20,500. Number of deaths reported: 300.
- $1.1 billion: the amount spent on anti-cancer drugs in Canada in 2008, as reported by the Canadian Cancer Society. The average cost of treatment using newer cancer medications: $65,000. Number of provinces and territories that cover 100 per cent of the cost of cancer drugs: five (British Columbia, Alberta, Saskatchewan, Nunavut and Northwest Territories).
- A person with diabetes has the same risk of cardiovascular disease as a person 15 years older, according to data published in the British medical journal *The Lancet*. That means a 40-year-old diabetic has the same risk factors for heart attack or cardiovascular disease as a 55-year-old without diabetes. According to the journal, male diabetics move to the "high risk" category for cardiovascular disease at age 41 while women attain that level at age 48. ❧

PPN update

The former Medicine Shoppe pharmacy, located at 102-2555 St. Joseph Boulevard in Ottawa, is now a **Rexall Pharmacy**.

The CarePharma Mart, of 4-2 Lorry Greenberg Drive in Ottawa, is now a **First Care IDA**.

Green Street Pharmasave, of 16 Green Street in Ottawa, is no longer a member of the Coughlin & Associates Ltd. PPN. ❧

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