



Federal PBSA under the microscope

For the first time in 20 years, the federal Pension Benefits Standards Act (PBSA) will undergo a complete review by the Department of Finance.

Designed to strengthen and continue the viability of defined benefit pension plans, the study by the federal ministry will focus on a number of key pension issues including funding, surplus distribution on partial wind-up, dispute settlement mechanisms, solvency funding and alternative financing.

The PBSA governs 1,200 pension plans in Canada, 428 of which involve defined benefit arrangements.

Market downturns, low interest rates and complex administration have made defined benefit plans less viable, and less popular among plan sponsors, in recent years.

Areas under review include the following:

Surplus

While the PBSA has minimum funding requirements and encourages the plan sponsors to develop surpluses to cover market downturns, "income tax rules currently require that contributions cease once the amount of surplus in a plan exceeds a specified level," the Department notes. "The PBSA has the effect of requiring plan sponsors to share any surplus while remaining fully responsible for pension plan deficits. As a result, plan sponsors claim they are discouraged from contributing more than the required minimum."

The Finance Department says it plans to review disincentives preventing plan sponsors from adequately funding their pensions and building funding cushions against unexpected market downturns.

Dispute settlement

Noting that older plans are silent about who owns a pension plan's surplus, the federal government plans to study dispute settlement mechanisms for surplus distributions. The Finance Department says it intends to focus on plans that do not have the required two-thirds support from plan members for a surplus distribution but still have obtained support from a majority of eligible voters.

Distribution on partial termination

The Monsanto case, where the Supreme Court mandated that plan members be entitled to a portion of a plan's surplus on partial wind-up as if the plan was being fully wound-up, is also receiving attention from the government. (See the September 2004 edition of the *Coughlin Courier* for background.)

Currently, the Ontario-based Office of the Superintendent of Financial Institutions requires that surpluses being distributed to members affected by a partial wind-up be vested. (This is known as partial termination.) However, Quebec's more generous Supplemental Pension Plan Act allows all members of a pension, not just those affected by the partial wind-up, to receive vested pension benefits

during partial wind-up. The government plans to study both models to establish a national surplus distribution mechanism for plans covered by the PBSA.

Funding

Solvency requirements of pensions will also be reviewed by the federal study. Currently, plan sponsors are required to make special payments over a five-year period to ensure plan solvency when a valuation reveals a shortfall of plan assets to liabilities.

"...This has raised concerns that excessive levels of cash flow are being driven to pension funding rather than to expenditures that could benefit the growth of companies and the economy more generally. For financially vulnerable companies, these cash demands could have significant implications for their viability," the department asserts.

"Some plan sponsors have suggested relaxing the solvency funding requirements. They argue that the best security for pensions is a financially viable sponsor... However, it is important that any funding flexibility be balanced against benefit security for plan members."

To address this issue, the government is considering a number of options including:

- extending the solvency deficiency payment period from five years to 10 years;
- allowing letters of credit to be recognized as pension assets in solvency valuations; and

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- allowing the Superintendent of Financial Institutions to approve applications for relief from the solvency funding requirements, particularly in cases involving companies operating under the Companies' Creditors Arrangement Act or in bankruptcy.

Disclosure

While the current PBSA requires members to receive annual statements about their plan, the Department of Finance feels there should be greater disclosure of the financial health of pension plans by plan sponsors.

"Plan members should have timely and accurate information regarding the funded status of the pension plan and the financial condition of the plan sponsor," the department says. *"This could include knowing when their plan is underfunded and when the sponsor's financial condition may impair the ability of a company to fund or maintain the plan."*

According to the government, this could involve requiring plan sponsors to disclose their funding policies to members, including any contribution holidays.

Minimum prescribed solvency ratio

As part of its review, the government is proposing to develop regulations setting the solvency ratio of pension

plans at a minimum of 85 per cent. Plans below that ratio would be considered to be seriously underfunded and subject to restrictions or controls.

Funding on termination

The federal government is also considering introducing measures to require plan sponsors to pay on plan termination any amounts required to provide the full benefits promised to plan members.

"This requirement would mean that plan sponsors would not be able to terminate an underfunded defined benefit plan without addressing the plan's shortfall," the Finance Department reports. However, it concedes, *"For financially vulnerable plan sponsors, the obligation to make up a funding shortfall on plan termination could impact the ability of these sponsors to secure financing."*

Pension benefit guarantee fund

Borrowing from Ontario, the United Kingdom and the United States, the federal government says it is considering establishing a pension benefit guarantee fund (PBGF) to ensure that plan members and beneficiaries receive pensions following the bankruptcy of an employer.

While the fund would provide additional security for pensioners, *"it could provide a disincentive for employers in financial difficulty to properly manage their pension plans,"* it says. In addition, the government also concedes that, *"it would be difficult*

to spread the insurance risk at the federal level because federally registered pension plans account for only 10 per cent of the pension plan assets in Canada."

A long way to go

While the public consultation process for reforming the PBSA ended in September, it appears that the Department of Finance still has many issues to iron out before it is in a position to table a new PBSA for review by parliament. In the meantime, the issues raised in its public consultations are bound to emerge again for debate as pension plan sponsors, plan members and various public interest groups take their respective positions on the potential changes to the pension law.

Watch for more news on PBSA reform as it develops. ■

Pension plan facts: Federally regulated plans

Number of pension plans 2004-2005

Defined benefit	428
Defined contribution	855
Total	1,283

Plan membership 2004-2005

Defined benefit	569,111
Defined contribution	482,605

Plan assets

Defined benefit	\$90 billion
Defined contribution	\$2 billion

(Source: Department of Finance Canada)



PPN update

- The Drug Store Pharmacy of 4270 Innes Road in Ottawa, has joined the Coughlin & Associates Ltd. Preferred Provider Network. The phone number is 613-824-5448.
- The Drug Store Pharmacy located at 3777 Strandherd Drive, Nepean, has also become a member of the Coughlin PPN. They can be reached at 613-823-4633.
- The Wal-Mart Pharmacy, formerly at the Place D'Orleans shopping centre, has relocated to 3900 Innes Road in Orleans. ■

Alberta health reforms mean higher costs for plan sponsors

The province of Alberta has launched a series of sweeping changes to the way it delivers health care services.

Effective September 1, 2005, the maximum limits on semi-private and private hospital rooms will be eliminated. Plus, regulation of the hospital accommodation rates will be transferred from the province to each of its nine regional health authorities (RHAs).

Under the new regime, the nine RHAs will be able to set their own rates for semi-private and private hospital rooms. Room charges in the province's hospitals ranged from \$18 to \$24 per day for semi-private accommodation and \$24 to \$40 per day for private coverage. Prices are expected to jump considerably under the new plan and vary widely throughout the province, with high-demand areas like Edmonton and Calgary expected to have the highest charges.

Since many group benefit plans feature automatic room upgrades to semi-private and private accommodation, plan sponsors should expect to see significant increases in hospital charges after September 1, 2005.

Also effective September 1, Albertans will be able to pay for enhancements on health-related goods and services. While the provincial medicare plan will continue to cover medically necessary procedures and services, residents of that province will now have the option of purchasing non-essential enhancements. Plan administrators and plan sponsors can expect to receive questions or inquiries from members about their programs' coverage of such upgrades.

The Alberta reform package also mandates that supplementary health insurance plans may now cover chiropractic and podiatry services from first visit, instead of waiting until the Alberta Health Care maximum has been reached. While this reform doesn't apply automatically to all benefit plans, it does make the option available to plan sponsors that want to incorporate the first visit principle into their plans.

To reduce drug costs, the province plans to establish a western Canadian consortium to purchase prescription drugs. The province says that pooling

its resources with the other western provinces will lead to greater cost efficiencies and lower drug prices. The consortium may be operational as early as 2007. It also intends to consolidate the administration of its 28 colleges for health and paramedical practitioners by 2006. ■

Alberta extends invitation to private insurers

Alberta Premier Ralph Klein says his government will invite private insurers to submit proposals to cover a variety of medical treatments and services, including long-term care and hip and joint operations.

American insurers will also be welcome to submit proposals, he said.

The new arrangements will be tabled to the Alberta Cabinet on October 1, 2005. ■

Quebec pension changes mirror federal proposals

While the federal government reviews its pension act, the government of Quebec has passed legislation incorporating some of the key proposals under consideration by Ottawa.

Bill 102, which became effective this past June, allows plan sponsors with solvency deficiencies to amortize their deficit payments over a 10-year schedule provided:

- the employer is a municipality, university or university-level

- educational institution;
- it provides its pension committee with a guarantee such as a letter of credit; and
- the financing plan receives the endorsement of 70 per cent of plan members and beneficiaries.

Similar proposals are currently being studied by the federal government for inclusion in its Pension Benefits Standards Act. Alberta, Manitoba and Ontario are also reviewing their

pension legislation.

The new law makes Quebec the first Canadian jurisdiction to recognize letters of credit as assets against solvency deficiencies.

Under the new regulations, plan sponsors won't be able to take advantage of the more liberal deficit amortization schedule if they go into default or their funding guarantees fail to conform to the new act.

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Welcome to the \$100,000 prescription

We knew it was coming.

Like \$1.25 per litre gasoline, it was not hard to predict that, one day, the cost of certain prescription drugs would top the \$100,000 per year mark. With drug costs continuing to increase at double-digit rates every year, it was almost inevitable that new, specialized medications would be introduced with prices topping \$100,000 per year.

According to Green Shield Canada, new drugs have been introduced to treat Gaucher's Disease, Fabry's Disease and Hurler-Scheie Disease (rare genetic disorders) which have estimated annual costs exceeding \$100,000.

While these illnesses are uncommon, there are some close runners-up to the \$100,000 per medication hurdle that are used to treat common maladies such as diabetes, osteoporosis and arthritis. With overall drug price inflation ranging from 10 to 20 per cent annually, some of these drugs could join the \$100,000 club fairly shortly.

Brand name	Treatment	Est. cost per year*
Amevive	Psoriasis	\$10,000-\$30,000
Eloxatin	Cancer	\$17,000
Emend	Nausea (chemotherapy)	\$4,000 per 30 tablets
Forteo	Osteoporosis	\$10,000
Humira	Rheumatoid arthritis	\$20,000
Lantus insulin	Diabetes	\$70 per vial
Xolair	Asthma	\$10,000

*Source: Green Shield Canada

For some plan sponsors, the thought of \$100,000 prescriptions could be daunting. Generic substitution programs, the implementation of individual coverage limits at the \$25,000 or \$50,000 levels and/or joining Coughlin & Associates Ltd.'s Preferred Provider Network of 110 pharmacies in the eastern Ontario region could reduce or allay some of these expenses.

Contact your Coughlin & Associates Ltd. consultant for more information on drug cost management. ■

Vioxx spawns class action

A Canadian law firm is attempting to initiate a class action lawsuit against Merck & Co., the manufacturer of Vioxx. Merck voluntarily withdrew its popular arthritis medication from the market after it was linked to increased incidents of heart and stroke, particularly among the elderly. (See the December 2004, March 2005, April 2005 and June 2005 editions of the Coughlin Courier for background information.)

According to information alleged by Motley Rice LLC and Will Barristers: Morin & Miller, the law firms spearheading the suit, Vioxx was sold in Canada on the basis that it would provide more effective pain relief for arthritis sufferers than traditional pain medications, without the stomach bleeding and ulcers associated with older medications. Advertisements published by the law firms charge that there was no difference in the effectiveness of Vioxx compared to other medications and that the drug was sold at "a premium price" compared to medications such as ibuprofen.

The ad also alleges that Merck concealed information about potential side effects of the drug such as the increased risk of cardiovascular problems. The material published by the firms quotes data from the medical journal *The Lancet* linking the drug to as many as 140,000 heart attacks and 28,000 deaths.

Until it was withdrawn from the market, insurers and plan administrators accepted routine claims for Vioxx.

The lawsuit follows on the heels of a Texas judgement awarding \$253 million to the wife of a man who died suddenly after using the medication for eight months.

While class actions are rare in Canada, and court awards much smaller than those in the United States, the Merck case could set the stage for similar suits in the future.

Watch for more information on the case as it develops. ■

Quebec pension changes mirror federal proposals

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It should be noted that Bill 102 is designed to be a temporary measure until Quebec overhauls its legislation for defined benefit plans. Some proposals under consideration include:

- allowing the consolidation of all solvency deficits effective with the first actuarial valuation after December 30, 2009;
- allowing financial instruments, such as lines of credit, to be used to guarantee amortization

- payments for solvency deficits;
- basing the costs of plan amendments or enhancements on the solvency of plan. (Increased benefits that exceed plan solvency requirements will be considered unfunded actuarial liabilities and subject to deficit amortization);
- allowing parties to agree in advance on the allocation of fund surpluses;
- limiting contribution holidays to the year immediately prior to actuarial valuations; and
- increasing solvency deficit amortizations to 10 years. ■

The newest childhood disease: hypertension

Plan administrators may soon face a spate of medical and drug claims involving hypertension, or high blood pressure. However, the treatments and medicines may not be for plan members, but their children.

The *Globe and Mail* reports that cases of hypertension are now being reported among children as young as eight years old. Increasingly, blood pressure levels among children in the age 12 range are rivalling those of obese middle-aged adults.

According to reports published in the September 9, 2005 edition, average blood pressure readings of children have jumped from 104.6/58.4 in 1988 to 106/61.7 in 2000. The

degree of increase in both the systolic and diastolic blood pressure is alarming and "spells big trouble down the road," according to medical experts.

"The problem is moving so fast, it's alarming," the article quotes Dr. Angelo Simone of the Trillium Health Centre in Mississauga.

The Canadian Paediatric Society now recommends that doctors routinely test children for high blood pressure, beginning as early as age five. Increasingly, young children are being prescribed medications such as beta-blockers, calcium channel blockers, diuretics, angiotensin-converting enzyme (ACE) inhibitors and angiotensin receptor blockers to treat

the problem. The long-term impact of these medications on children is unknown. As well, with symptoms occurring at such young ages, experts are predicting a rash of heart attacks and strokes among this group when they reach their 30s and 40s.

Increasing rates of obesity, inactivity and higher salt consumption are blamed for the problem. Approximately 36 per cent of Canadian children are overweight and 10 per cent are obese, the Canadian Institute for Health Information says -- a five-fold increase since 1981. ■

Group urges socially responsible investment

A group of academics and labor representatives from Canada and the United Kingdom are urging pension trustees to publicly disclose their pensions' social and environmental policies as well as their positions on proxy voting.

The Social Investment Organization (SIO), says that as much as \$640 billion of defined benefit pension capital "could be invested more productively" in ventures designed to provide "longer-term social returns."

The group feels that pension funds have a duty to take the social and environmental records of the companies in which they invest into account. The SIO also says that companies should vote their holdings on behalf of their beneficiaries first.

"There is a growing consensus that social and environmental analysis is an important tool in reducing long-term risk and increasing long-term value," SIO Executive Director Eugene Ellmen says. "The traditional view that these issues are unimportant is quickly becoming

outdated... Pension funds are opening themselves to liability by ignoring these issues."

According to Mr. Ellmen, there is mounting evidence to suggest that corporations with strong social platforms and clean environmental records offer superior stock performance over the long term.

The SIO also criticises many pension funds for "routinely supporting management on shareholder resolutions" at the expense of plan beneficiaries or smaller shareholders.

"The corporate scandals of the last few years have underlined the importance of vigorous proxy voting by institutional investors," the SIO notes. "Greater public scrutiny of investment policies and voting may not have prevented abuses like Enron and WorldCom but it would have made them much less likely by making pension funds and other institutional investors more conscious of their investment and voting practices."

The SIO involves representatives of 17 labour unions and eight universities throughout the UK, the US and Canada. More information on their recommendations can be found at www.pensionsatwork.ca, under *Research*. ■

The Coughlin Courier is published by Coughlin & Associates Ltd.

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FAST FACTS

More than half of employers surveyed by a shareholder rights organization withheld pension contributions and used plan surpluses to cover their financial obligations to their pensions. According to the Shareholder Association for Research and Education (SHARE), 60 per cent of employers surveyed held back contributions between 1994 and 2003. SHARE also reports that, of 42 pension plans considered significantly or extremely underfunded at their most recent valuation, almost half would have eliminated their current actuarial deficit had the employer not taken contribution holidays. ■

Effective September 30, 2005, Health Canada will withdraw thioridazine, an anti-psychotic medication for schizophrenia, from the Canadian market. The federal regulator states that the drug could cause potentially deadly changes to heart rhythm. The medication will continue to be dispensed by pharmacies on a temporary basis after that date to allow patients to consult with their physician to find alternative treatments. ■

The Supreme Court of Canada has granted a one-year stay in its ruling allowing private health insurance in the province of Quebec (see the June 2005 edition of the *Coughlin Courier* for background.) The delay is designed to give the province time to make necessary preparations for the emergence of a mixed public-private health insurance system. ■

Five New Brunswick unions have joined forces to call for a probe into the management of that province's public pension plan. According to the New Brunswick Union of Public and Private Employees, the performance of the plan managed by the New Brunswick Investment Management Corporation "*has not performed well when you compare it to other plans.*" Joining that union's call for review are the Canadian Union of Public Employees (CUPE), the International Brotherhood of Electrical Workers (IBEW), the National Union of Public and General Employees (NUPGE) and the New Brunswick Nurses Union. The New Brunswick provincial plan covers 20,000 members. ■

Adderall XR, a medication to treat attention deficit disorder has been reinstated on the Canadian market following a review by Health Canada. The medication was withdrawn in February this year in response to concerns about its safety. ■

The province of Alberta reports that the number of injuries in the workplace has reached a 14-year low. Lost-time injury claims in the province totalled 2.6 per 100 full-time jobs this August, the lowest since 1991. ■

The annual cost of lost work time due to stress, as reported by Statistics Canada: \$12 billion. ■

Health insurance is now the most expensive employee benefit in the United States, according to the US Employment Policy Foundation. Health insurance now accounts for 33 per cent of employee benefit costs, compared to 32 per cent for vacation and sick leave. The Foundation says costs for the benefit have skyrocketed by 70 per cent since 2000. ■

Total number of Canadians age 25-64 with a physical or mental disability or serious health problem, according to Statistics Canada: 1.8 million. Total number employed: 780,000 (45 per cent.) Percentage of complaints to the Ontario Human Rights Commission that involve charges of workplace discrimination based on disability: 55 per cent. Number of disabled working age Canadians by 2010, as predicted by the Royal Bank: 7 million. ■

The retirees of Simpsons Ltd., once one of Canada's premier retailers, have launched a class action suit against the Hudson's Bay Company (HBC.) The suit alleges that HBC used the \$76 million surplus of the Simpsons pension plan to cover employer contributions for the Zellers Inc. and K-Mart Canada pension plans. The Hudson's Bay Company took over Simpsons -- and its pension plan -- in 1979. K-Mart Canada and Zellers were acquired later. ■