

## Legislative Update

### Hennig v. Clarica Life Insurance Co.

On March 19, 2003, the Alberta Court of Appeals published a very pertinent court ruling entitled "Hennig v. Clarica Life Insurance Co. (now owned by SunLife). This case will have significant repercussions on all Canadian LTD Plans and many existing LTD claimants – it sets an important precedent. We caution that as this case was just publicly released, we just started actively investigating its implications with our clients and all major insurers. However, it is something all LTD plan sponsors need to know.

### The Facts to Date

This case concerns an LTD claimant whose benefit is directly reduced by CPP disability benefits and the coverage also includes an 85% "All Source" limitation. The All Source limitation includes among other sources of income, the dependent's CPP/QPP benefits. Note that dependent's CPP/QPP benefits are payable directly to the children (if under 18 years, then in trust to the person with custody of the child) as the result of a parent's total disability that resulted in payment of CPP/QPP benefits.

The case ruling comes from the Alberta Court of Appeal. The claimant stated that while she did not object to the direct offset of her CPP benefits, she did object to the inclusion of the dependent's CPP benefit in the All Source limitation. The reduction of her LTD benefits by the dependent's CPP benefit reduced her LTD payment to under \$10.00 per

month, a coverage that she had cost her approximately \$16.00 per month premium. While the dollar value is not pertinent to the case, it is important to note that it was the basis for her legal complaint – something Human Resources professionals should take note of.

The judge found that the dependent's CPP benefit could not be deducted from the LTD benefit and ordered the reinstatement of the higher payment. The reasons:

1. Unlikely that persons of low income would purchase a contract of insurance that pays little or no benefits after CPP deductions.
2. The contra referendum rule that requires that ambiguities in insurance contracts should be resolved in favour of the insured person.
3. In using the word "income" in the application of the All Source maximum, there can only be one meaning, being

"income belonging to the insured".

The court found that it would be unreasonable to conduct an income test (comparing all named sources of disability income against a person's pre-disability income) on a disabled person using an All Source limitation that included income that is clearly not the insured's. The CPP/QPP dependent benefit is paid to the child, and is technically the child's income regardless of the fact that, if a minor, it is paid in trust to their guardian. Under tax laws, the CPP/QPP benefit is taxable income in the hands of the recipient child and cannot be taxed in the hands of the LTD claimant. It is upon this basis that the court found against the insurer and in favour of the claimant.

The appeal was heard by the court on February 26, 2003 and published on March 6, 2003.

# The Possible Impact on Your LTD Plan(s)

The effect of a case such as this likely has national ramifications and will impact a great number of Canadian LTD plans and LTD claims. If your LTD plans include dependent CPP/QPP benefits as a direct offset or in the All Source limitation, you need to actively pursue whether the ruling will result in a significant change to your plans. If there is an impact, you also need to get involved in the active management of the results.

The insurance industry is aware of this case and is meeting through the Canadian Life & Health Insurance Association (CLHIA) to determine a global approach to its management.

## The potential implications to Canadian LTD Plans are:

1. Contract language revision and plan amendment removing dependent CPP/QPP benefits from all offset provisions;
2. Where unions are involved, careful management of a legal revision such as this and its implications to the current collective agreement;
3. Financial implications to the cost of the coverage resulting from higher benefit payouts;
4. Communication and education issues to existing LTD claimants, including the management of claims held by your current and former insurers; and
5. Revisions to employee booklet and plan information materials.

## Lessons Learned

In our opinion, the most important caution lies with the management of such issues as they affect your active employees and disabled persons. The lesson learned from a case such as this is that employees can find fault within the plan from reasons that are simplistic in nature versus technically complex. In this case, the claimant found fault with the level of the benefit payment versus their premium cost. While this was not the major factor that influenced the finding of the courts, it is clearly how the case got there in the first place.

While you can manage an issue such as this

purely technically by amending contracts and revising costs, it is the content of the material supplied to your employees that is dangerously overlooked. Remember the words of the court – if a person cannot reasonably understand something, then you must err in their favour. Do not forget how important employee booklets and communication materials are! Do not forget the message of the courts. Your job is not done until the message is clear and technically accurate right down to the disabled claimant. Get involved in this issue and we are very confident that you will be glad that you did.

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