

1985 BILL 79

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Third Session, 20th Legislature, 34 Elizabeth II

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THE LEGISLATIVE ASSEMBLY OF ALBERTA

# **BILL 79**

## **EMPLOYMENT PENSION PLANS ACT**

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THE MINISTER OF LABOUR

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First Reading .....  
Second Reading .....  
Committee of the Whole .....  
Third Reading .....  
Royal Assent .....

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## BILL 79

1985

### EMPLOYMENT PENSION PLANS ACT

(Assented to , 1985)

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HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Alberta, enacts as follows:

#### **Interpretation**

##### **1(1) In this Act,**

- (a) “benefit” means a pension or any other benefit, including a return of contributions, payable to a person under a pension plan;
- (b) “commuted value” means, in relation to benefits that a person has a present or future right to receive, the value, determined in the prescribed manner and as of the time in question, of those benefits;
- (c) “designated province” means a province of Canada, other than Alberta, that is prescribed to be a province in which there is in force legislation substantially similar to this Act;
- (d) “employee” means an individual employed in Alberta or in a designated province for remuneration, and includes a former employee;
- (e) “employer” means, in relation to an employee, the person from whom the employee receives or received his remuneration;
- (f) “former Act” means the *Pension Benefits Act*;

- (g) “initial qualification date” means
- (i) in respect of service in Alberta, January 1, 1967, and
  - (ii) in respect of service in a designated province, the date from which, under the law of that province, a pension plan’s qualification for registration was required to be maintained;
- (h) “member” means an employee who has made a contribution to a pension plan or on whose behalf his employer is or was required by the plan to contribute to or under the plan and who retains a present or future right to receive any benefit payment under the plan;
- (i) “multi-employer pension plan” means a pension plan established under a written trust instrument and organized and administered for employees of 2 or more employers, but does not include a plan in which all of those employers are affiliates within the meaning of the *Business Corporations Act*;
- (j) “pension” means an annuity that continues for the life of the annuitant, whether or not it is thereafter continued to any other person;
- (k) “pension plan” or “plan” means 1 of the following types of pension plan organized and administered to provide pensions for employees, namely
- (i) a unit benefit plan under which pensions are determined by reference to the remuneration of an employee for each year of pensionable service or for a selected number of years of pensionable service,
  - (ii) a money purchase plan under which pensions are determined by reference to the accumulated amount of the aggregate contributions paid by or for the credit of the employee with interest,
  - (iii) a flat benefit plan under which pensions are expressed either as a fixed amount in respect of each year of pensionable service or as a fixed periodic amount,
  - (iv) a profit sharing pension plan other than a profit sharing plan as defined in sections 144 and 147 of the *Income Tax Act* (Canada), or
  - (v) a combination of 2 or more of the types of plan referred to in subclauses (i) to (iv)
- and under which, except in the case of a supplemental pension plan, the employer is required to make contributions to the plan;
- (l) “pensionable age” means, in relation to a pension plan, the age or the reaching of the date referred to in section 30(1);
- (m) “prescribed” means prescribed by the regulations;
- (n) “registration” means registration of a pension plan under Part 2, and includes registration under the former Act;
- (o) “retirement” means the event or the final event giving rise to the commencement of a member’s pension;

- (p) “retirement pension” means a pension payable under a pension plan in accordance with section 18, 19 or 20;
- (q) “service” means work performed for remuneration by an employee for an employer;
- (r) “service for a continuous period”, except where an actual termination of employment has occurred, means employment for a period of time without regard to any period
- (i) not exceeding 52 consecutive weeks during which a person who immediately before the period was employed by the employer is not performing duties as an employee of the employer and after the expiry of which the person is again employed by the employer, or
  - (ii) when the employer’s business, undertaking or other activity or part of it is being sold, leased, transferred or merged;
- (s) “spouse” means
- (i) a person who, at the relevant time, was married to a member and was not judicially separated from the member, or
  - (ii) if there is no person to whom subclause (i) applies, a person of the opposite sex who lived with the member for the 3-year period immediately preceding the relevant time and was, during that period, held out by the member in the community in which they lived as the member’s consort;
- (t) “Superintendent” means the Superintendent of Pensions;
- (u) “supplemental pension plan” means a pension plan membership in which depends by way of condition precedent on membership in another plan;
- (v) “termination of membership” means
- (i) in the case of a multi-employer pension plan, the end of any period of 2 consecutive fiscal years of the plan in which a member has not completed at least 350 hours of service with 1 or more of the employers,
  - (ii) in the case of a supplemental pension plan, the termination of the member’s membership in the plan to which it is supplemental, or
  - (iii) in the case of any other plan, the cessation by a member of the performance of service for which the employer is required by the pension plan to contribute to or under the plan on the member’s behalf;
- (w) “this Act” means this Act and the regulations;
- (x) “voluntary additional contributions” means contributions by a member to a pension plan that are additional to those that he is required to make to attain his pension, except contributions whose payment, under the terms of the plan, imposes on the employer an obligation to make concurrent additional contributions to or under the plan on the member’s behalf.

(2) For the purposes of this Act, a person shall be deemed to be employed in the province in which the establishment of his employer to which he reports for work is situated and if the employee is not required to report for work at any establishment of his employer, he shall be deemed to be employed in the province in which the establishment of his employer from which his remuneration is paid is situated.

(3) For the purposes of this Act, a benefit vests in a person when he acquires a right to receive the benefit, whether at the present or in the future, that is not contingent on the member's continued service or membership or on any other condition.

(4) Notwithstanding subsection (1)(v)(i), a member of a multi-employer pension plan shall be deemed to have terminated his membership in the plan in the province where he last ceased to be employed by any of the employers in the plan.

Application

**2** In relation to a multi-employer pension plan, references to an employer

(a) in sections 8, 10, 11, 12, 13, 14, 15, 27(4), 38, 49, 50 and 51(1)(a), shall be deemed to mean, and

(b) in sections 6 and 9, shall be deemed to include

references to the persons who under the written declaration of trust are the trustees of that plan.

## **PART 1**

### **ADMINISTRATION**

Definition

**3** In this Part, "records" includes

(a) accounts, books, files, returns, statements, reports, financial documents or other memoranda of financial or non-financial information, whether in writing or in electronic form or represented or reproduced by any other means, and

(b) the results of the recording of details of electronic data processing systems and programs to illustrate what the systems and programs do and how they operate.

Appointment of  
Superintendent

**4** In accordance with the *Public Service Act* there may be appointed a Superintendent of Pensions who is charged with the administration of this Act.

Duties of the  
Superintendent

**5** The Superintendent shall administer and enforce this Act and shall endeavour to promote the establishment, extension and improvement of pension plans throughout Alberta.

Enforcement  
powers

**6** The Superintendent or a person appointed under the *Public Service Act* and designated by the Superintendent in writing as his authorized representative may, at any reasonable time,

(a) inspect the records respecting a pension plan kept by an employer or any other person, and

	(b) require an employer or any other person to furnish, in a form acceptable to the Superintendent, any information that the Superintendent considers necessary for the purpose of ascertaining whether this Act has been or is being complied with.
Reciprocal agreements	<p><b>7(1)</b> The Superintendent may, with the prior approval of the Lieutenant Governor in Council,</p> <p>(a) enter into an agreement with the authorized representative of a designated province or the Government of Canada to provide for the reciprocal registration, audit and inspection of pension plans and the reciprocal enforcement of the laws affecting those plans, and</p> <p>(b) delegate to the government of a designated province or of Canada any of the functions, powers and duties under this Act that the Superintendent considers appropriate.</p> <p>(2) The Superintendent may accept a delegation from the government of a designated province or of Canada of a function, power or duty under the laws governing pension plans of that jurisdiction.</p>
Return by employers	<b>8</b> An employer shall file with the Superintendent before the prescribed date in each year a return in the form required by the Superintendent and containing the prescribed information in respect of each pension plan covering his employees.
Retention of records	<p><b>9</b> An employer shall retain records relating to a pension plan for a period of at least 3 years after</p> <p>(a) in the case of records affecting a person who received a benefit, the date when the benefit was paid or ceased to be paid, and</p> <p>(b) in the case of other records, the date when they ceased to be operative.</p>

## PART 2

### REGISTRATION AND AMENDMENT OF PENSION PLANS

Registration of plans	<p><b>10(1)</b> An employer of employees covered by a pension plan established before January 1, 1987 shall ensure that a copy of the plan has been filed with the Superintendent for registration of the plan before March 2, 1987.</p> <p>(2) An employer who establishes a pension plan for employees shall file a copy of the plan with the Superintendent for registration of the plan within 60 days after the establishment of the plan.</p> <p>(3) The Superintendent shall register and issue a certificate of registration in respect of each plan filed with him for registration that in his opinion complies with this Act and in respect of which the employer has complied with this Act.</p>
Compliance of filed plans with law	<b>11</b> An employer who has filed a pension plan for registration shall, while the plan is in force, ensure that it continues to comply with this Act.
Amendment of filed plans	<b>12(1)</b> An employer referred to in section 10(1) shall ensure that a copy of all pension plan amendments made before January 1, 1987

have been filed with the Superintendent before March 2, 1987, and the amendments are not valid unless they have been so filed and have received the written approval of the Superintendent.

(2) An amendment of a pension plan filed for registration must be filed with the Superintendent forthwith after it is made and is not valid unless it has received the written approval of the Superintendent.

(3) An amendment approved by the Superintendent is part of the plan that it amends.

(4) Where an existing plan is or purports to be re-written, the Superintendent may treat the re-writing as an amendment of the existing plan if he considers that the existing plan is not terminated and that the re-written plan is in substance a continuation of the existing one, whether in the same or a different form.

Cancellation of  
registration

**13** The Superintendent may cancel the registration of a registered pension plan

(a) that does not comply with this Act, or

(b) in respect of which the employer has contravened or failed to comply with this Act.

Objection to  
refusal or  
cancellation of  
registration

**14(1)** If the Superintendent refuses to register a pension plan filed for registration, cancels a registration or refuses to approve an amendment of a plan, he shall forthwith notify the employer by registered mail of that fact.

(2) The employer may, within 60 days of the mailing of the notification of the refusal or cancellation, serve on the Superintendent a notice of objection setting out the reasons for the objection and all relevant facts.

(3) On receipt of the notice of objection, the Superintendent shall forthwith reconsider the refusal or cancellation and vary or confirm his original decision, and he shall thereupon notify the employer of his subsequent decision by registered mail.

Appeal to the  
Court of Appeal

**15(1)** Where an employer has served a notice of objection under section 14 and the Superintendent has subsequently notified him that the Superintendent will not register the plan, reinstate the registration or approve the amendment, as the case may be, the employer may, within 30 days of the mailing of the notification or such longer period as the Court allows, appeal to the Court of Queen's Bench for an order requiring the Superintendent to register the plan, reinstate the registration or approve the amendment.

(2) The procedure in the appeal shall be the same as that provided in the Alberta Rules of Court for applications by originating notice.

(3) The Court may dispose of an appeal by dismissing it, by referring the matters in issue back to the Superintendent for reconsideration, by allowing the appeal or by making any other order that it considers appropriate.



### PART 3

#### CONTRACTUAL PROVISIONS IN PENSION PLANS

Contractual  
requirements of  
pension plan

**16(1)** Except where a provision of this Part indicates that the inclusion of the provision in question in a pension plan is optional or otherwise indicates or unless the Superintendent gives his written permission, a pension plan must contractually provide for the benefits, contributions and other rights and obligations provided for by this Part or for benefits, contributions and rights and obligations that in the opinion of the Superintendent are more favourable, having regard to the intent of this Act, for the members covered and their spouses, beneficiaries or estates than those provided for by this Part.

(2) To the extent that the plan does not make a contractual provision required by subsection (1) in any respect, the plan shall be deemed to make such provision in that respect as would make it comply with those requirements.

(3) For the purposes of this section, section 1 shall be deemed to be included in this Part.

Entitlement of  
employees to join  
pension plan

**17(1)** Where a pension plan is in effect for a prescribed class of employees of an employer, each employee in that class who has been employed by the employer in 2 consecutive calendar years in each of which he has earned not less than 35% of the year's maximum pensionable earnings for that calendar year under the *Canada Pension Plan* (Canada) is entitled to become a member of the plan after the expiration of the minimum eligibility period of service, if any, stipulated in the plan.

(2) The minimum eligibility period of service referred to in subsection (1) must not exceed 2 years of service for a continuous period.

(3) Where a group of employees is in a prescribed class of employees covered by a plan but is employed only for part of the period of time that is standard for that class, the employer may establish for that group a separate plan which, in the opinion of the Superintendent, is comparable to the plan covering the class.

(4) Nothing in subsection (1) prevents an employer and an employee from agreeing that the employee must become a member as part of the terms and conditions of his employment.

Vesting on  
termination of  
membership

**18(1)** Where a member of a pension plan has been in the service of an employer for a continuous period of 10 years and has attained the age of 45 years, there immediately vests in him, on the termination in Alberta of his membership in the plan, a right to receive a pension in accordance with the terms of the plan as they were on the date of that termination.

(2) Where a member has been in the service of an employer for a continuous period of 5 years, there immediately vests in him, on the termination in Alberta of his membership in the plan, a right to receive such pension in respect of his being a member on or after January 1, 1987 as, subject to section 21(3), is in accordance with the terms of the plan as they were on the date of that termination.

(3) In section 17(2) and this section, for the purposes of a multi-employer pension plan, years of service with an employer for a con-

	<p>tinuous period means fiscal years of the plan in each of which the member has completed at least 350 hours of service with any 1 or more of the employers.</p>
Vesting at pensionable age	<p><b>19</b> Where a member has attained pensionable age, there immediately vests in him, on the termination in Alberta of his membership in the plan, a right to receive such pension in respect of his being a member on or after January 1, 1987 as, subject to section 21(3), is in accordance with the terms of the plan as they were on the date of that termination.</p>
Vesting on termination of plan	<p><b>20</b> Where a member has not terminated his membership in the plan and, on termination of the plan, a right would not vest in him in accordance with section 18 or 19, then, on the termination of the plan, a pension based on his completed service to the date of that termination vests in him.</p>
Amount of pension vested	<p><b>21(1)</b> The pension payable under section 18(1), other than the portion accruing from voluntary additional contributions, must not be less than the pension in respect of service as an employee in Alberta or a designated province</p> <p>(a) under the terms of the plan at the date of termination of membership in respect of service on or after the initial qualification date, and</p> <p>(b) under the terms of an amendment of the terms of the plan made on or after the initial qualification date in respect of service prior to that date.</p> <p>(2) Notwithstanding subsection (1), where</p> <p>(a) a pension vests in a member on the termination in Alberta of his membership in a plan, and</p> <p>(b) the commuted value of the pension is less than the value of his contributions, with interest, made to the plan towards the pension,</p> <p>the commuted value shall be increased to an amount not less than the value of his contributions with interest.</p> <p>(3) The pension payable under section 18(2) or 19, other than the portion accruing from voluntary additional contributions, must not be less than the pension in respect of service as an employee in Alberta or a designated province</p> <p>(a) under the terms of the plan at the date of termination of membership in respect of service on or after January 1, 1987, and</p> <p>(b) under the terms of an amendment of the terms of the plan made on or after January 1, 1987 in respect of service prior to that date.</p> <p>(4) The pension payable under section 20, other than the portion accruing from voluntary additional contributions, must not be less than the pension payable under subsections (1) to (3).</p> <p>(5) A pension must commence before the date when the pensioner attains the age of 71 years.</p>

Locking in

**22(1)** Subject to section 24(2), a member in whom a right to receive a retirement pension has become vested is not entitled to withdraw from the pension plan

(a) any part of his own contributions or interest on them, except voluntary additional contributions with interest, or

(b) the commuted value of his retirement pension,

in respect of service in Alberta or in a designated province on or after the initial qualification date.

(2) Contributions with interest and the commuted value locked into the plan under subsection (1) shall be applied under the terms of the plan toward the provision of the member's retirement pension.

(3) A member in whom a right to receive a retirement pension has not vested is not entitled to withdraw any part of his contributions, except voluntary additional contributions, paid to the plan in respect of service in Alberta or in a designated province on or after the initial qualification date or interest thereon, other than after

(a) the termination of his membership in the plan, or

(b) the termination or winding-up of the plan.

(4) Pension plans may provide that where a member in whom a right to receive a retirement pension has not vested terminates his membership in one plan due to his becoming a member of another plan of the employer, the member may not withdraw any part of his contributions until he terminates his service.

(5) Subject to subsection (6) and section 26(3), there may not be surrendered or commuted during the lifetime

(a) of a member, a retirement pension or any interest therein, or

(b) of his spouse, the pension payable to a spouse under section 26 or 27,

and any transaction purporting to effect such a surrender or commutation is void.

(6) A plan may provide that a member in whom a retirement pension is vested in accordance with section 20 may have his pension commuted.

(7) The pension provided under a plan in respect of service on or after the initial qualification date is not, on or after the commencement of the payment of a pension, payable in any other form during the lifetime of the member or his spouse.

Interest on  
employee  
contributions

**23** A pension plan that requires a member to make contributions must provide for interest to be applied to his contributions account at the rate and times and calculated in the manner prescribed.

Minimum  
employer  
contributions  
to funding  
of pension

**24(1)** Not less than  $\frac{1}{2}$  of the commuted value of a member's retirement pension payable in accordance with section 18(2) or 19 or, in respect of his being a member on or after January 1, 1987, section 20 shall be provided by contributions to or under the pension plan by the employer.

(2) Where the value of a member's contributions with accumulated interest on the termination in Alberta of his membership in the plan exceeds  $\frac{1}{2}$  of the commuted value of the retirement pension payable in accordance with section 18(2) or 19 or, in respect of his being a member on or after January 1, 1987, section 20 the amount of the difference shall, at the option of the member, be

- (a) refunded to the member,
- (b) transferred to another pension plan or to a registered retirement savings plan, or
- (c) only if the plan so provides, used to increase the amount of the pension.

(3) For the purposes of this section, contributions to or under a supplemental pension plan may be aggregated with those made to or under the plan to which it is supplemental.

Portability of  
commuted value  
of benefits

**25(1)** On the termination in Alberta of his membership in a pension plan on or after January 1, 1987, otherwise than at his retirement, a member has the right to transfer, in the manner and to the extent prescribed, the commuted value of his retirement pension under the plan accruing on or after the initial qualification date to

- (a) the pension plan of his new employer, if and to the extent that that plan permits the transfer, or
- (b) a registered retirement savings plan,

but if the pension payments that would be payable to a member on or after pensionable age are less than the prescribed amount or if that commuted value does not exceed the prescribed amount the plan may provide that the member is to make the transfer, regardless of whether he wishes to or not.

(2) A member of a multi-employer pension plan who has not completed at least 350 hours of service with any 1 or more of the employers in any period of 3 consecutive fiscal years of the plan has a right, subject to subsection (1), to make the transfer referred to in that subsection.

(3) Pension plans may provide that where a member terminates his membership in one plan due to his becoming a member of another plan of the employer, otherwise than where the plan has been terminated or wound up, the member may not transfer the commuted value of his pension under subsection (1) until he terminates his service.

Pre-retirement  
survivor benefits

**26(1)** Where a member of a pension plan who has not commenced to receive a pension or transferred the commuted value of his pension under section 25(1) dies, benefits are payable

- (a) by way of a pension to his surviving spouse, or
- (b) if there is no surviving spouse, by way of a lump sum to his designated beneficiary or, if there is no valid designation of beneficiary, to his estate.

(2) The commuted value of the pension or the lump sum payable under subsection (1) shall be not less than the sum of

(a) the value of the member's contributions made prior to January 1, 1987, with interest, and

(b) the greater of

(i) if the member had a surviving spouse and the retirement pension payable under section 18(2) or 19 would have vested in him had he terminated in Alberta his membership in the plan immediately prior to his death, 60% of the commuted value of the pension so payable plus that value of the member's contributions to the plan on or after January 1, 1987 with interest that is in excess of  $\frac{1}{2}$  of the commuted value of the pension, or

(ii) the member's contributions to the plan on or after January 1, 1987, with interest.

(3) If the retirement pension would not have vested in the member as mentioned in subsection (2)(b)(i), the surviving spouse may have the pension payable under subsection (1) commuted.

(4) A surviving spouse to whom a pension is payable under subsection (1) has the right to transfer, in the manner and to the extent prescribed, the commuted value of the pension to

(a) the pension plan of the spouse's employer if and to the extent that that plan permits the transfer, or

(b) a registered retirement savings plan,

but the plan may provide that the spouse must transfer out of the plan the full commuted value of the pension.

(5) The spouse has the same rights in relation to the excess contributions and interest referred to in section 24(2) as the deceased would have had under that subsection.

Post-retirement  
survivor benefits

**27(1)** The pension payable to a member who has a spouse at the member's retirement is to be a joint pension payable during the lives of the member and his spouse.

(2) The joint pension may decrease by not more than 40% on the death of either the member or the spouse.

(3) The joint pension may be actuarially equivalent to the pension that would have been payable to the member if the member had not had a spouse at his retirement.

(4) Subject to any prescribed conditions, a pension plan may provide for a retiring member to receive a pension that does not comply with this section if the employer receives a declaration in the prescribed form by the spouse that

(a) contains a statement indicating that the spouse is aware of the spousal rights under this section and waiving those rights, and

(b) is signed by the spouse in the presence of the person before whom the declaration is administered and outside the immediate presence of the member.

Continuation  
of pension on  
surviving  
spouse's change  
in status

**28** A pension payable to the surviving spouse of a deceased member does not terminate on the occurrence of an event which, if the spouse were a member, would result in the spouse's having a new spouse.

Prohibition  
against O.A.S.  
reduction

**29** Subject to section 32(4), the pension that a member is eligible to receive from a pension plan from pensionable age in respect of service on or after January 1, 1987 shall not be reduced by reason of his receiving a benefit under the *Old Age Security Act* (Canada).

Age provisions in  
pension plans

**30(1)** A pension plan must provide for

- (a) a specific age, or
- (b) a date by reference to a specific age,

at which members are eligible to receive a pension under the plan without adjustment.

(2) If a member's service continues beyond pensionable age he is entitled to

- (a) a continuation of his participation in the plan with further accrual of his retirement pension on the basis that applied immediately before his attaining pensionable age,
- (b) an actuarial adjustment of the retirement pension when the actual retirement occurs, or
- (c) payment of a retirement pension from pensionable age.

(3) A member in whom a retirement pension has vested has the right, on his retiring at any time on or after the date 5 years prior to his attaining pensionable age, to receive an actuarially adjusted retirement pension as of the date of his retirement.

Refund  
requirements

**31(1)** Where a person becomes entitled to have contributions to a pension plan paid to him by reason of the termination of his membership in the plan or of the death of a member, the payment shall be made within 90 days after the termination or death or the completion and filing of all documents required to authorize the making of the refund, whichever is the later.

(2) The payment must include interest at the rate and calculated in the manner prescribed.

Permitted  
variations in  
benefits

**32(1)** Notwithstanding anything in this Act, a pension plan may provide for payment to a member of an amount equal to the commuted value of a retirement pension which the member is entitled to commence to receive if the pension payments that would be payable to the member on or after pensionable age are less than the prescribed amount or if that commuted value does not exceed the prescribed amount.

(2) If a plan so provides, a member may receive in partial discharge of his rights to a retirement pension payable under section 18(1) on or after termination of his membership prior to his attaining pensionable age a lump sum amount that in total does not exceed 25% of the commuted value of the retirement pension.

(3) If a plan so provides, a member in whom a pension has vested may, before the commencement of payment of the pension, elect to receive

	<p>(a) a pension the amount of which is reduced or increased</p> <p>(i) by reason of early or deferred retirement,</p> <p>(ii) by provision for the payment of an optional pension to a survivor or to the estate of the member, or</p> <p>(iii) by variation of the terms of payment of the pension to any person after the member's death, and</p> <p>(b) a payment or series of payments accruing by reason of a mental or physical disability that is likely to shorten considerably the member's life expectancy</p> <p>partly or wholly instead of the pension otherwise payable.</p> <p>(4) If a plan so provides, a member may, on or before his retirement, elect to receive a pension the amount of which is varied by reference to benefits payable under the <i>Old Age Security Act</i> (Canada) or the <i>Canada Pension Plan</i>.</p>
Calculation of contributions and benefits	<b>33</b> A pension plan must provide for contributions and benefits computed in the prescribed manner.
Funding, solvency and investment requirements	<p><b>34</b> A pension plan must provide for</p> <p>(a) funding, in accordance with the prescribed tests for solvency, that is adequate to provide for payment of all payable benefits, and</p> <p>(b) the investment of pension plan money in the securities or loans prescribed.</p>
Prohibition against assignment, etc.	<b>35</b> A pension plan must provide that money payable under the plan is not to be assigned, charged, alienated or anticipated.
Contractual termination and winding-up provisions	<p><b>36</b> A pension plan must provide for</p> <p>(a) the distribution of any surplus assets on the termination or winding-up of the plan, and</p> <p>(b) the method of allocation, the priorities for determining the full or partial benefits of members and the method of distribution of the assets of the plan in accordance with the prescribed criteria.</p>

#### PART 4

##### TERMINATION, WINDING-UP AND AMENDMENT OF PLANS

Events constituting termination	<p><b>37(1)</b> The cancellation of a registration of a pension plan constitutes a termination of the plan.</p> <p>(2) Except as provided in subsection (3) or where a surplus or experience gain is used to provide contributions, the suspension or cessation of employer contributions to a pension plan</p> <p>(a) in respect of all members, constitutes a termination of the whole plan, or</p> <p>(b) in respect of a prescribed class or an identifiable category of members, constitutes a termination of the part of the plan that is applicable to that class or category.</p>
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	<p>(3) Where employer contributions to a plan cease as a result of the adoption of a new plan, the original plan or the part of it referred to in subsection (2)(b) shall be deemed not to have been terminated or wound up for the purposes of this Act and the benefits of the original plan shall be deemed to be benefits associated with the new plan in whole or in part in respect of service prior to the establishment of the new plan, whether or not the assets and liabilities of the original plan have been consolidated with those of the new plan.</p>
Notification of termination	<p><b>38</b> On the termination of a pension plan or of part of a plan the employer shall notify the Superintendent immediately of that fact.</p>
Powers of Superintendent to wind up on discontinuation of business, etc.	<p><b>39(1)</b> Where the Superintendent considers that an employer has discontinued or is in the process of discontinuing a part or all of his business operations in which a substantial number of his employees who are members of a pension plan are employed, the Superintendent may declare the plan to be wound up in whole or in part for the purposes of this Act on the date that the Superintendent considers that those business operations are discontinued.</p> <p>(2) Where the Superintendent declares a plan to be wound up in whole or in part under subsection (1), sections 14 and 15 apply in respect of that declaration as if the Superintendent were cancelling a registration.</p>
Payment in to meet solvency requirements	<p><b>40</b> On the termination or winding-up of a pension plan the employer shall pay into the plan all amounts that would otherwise have been required to be paid to meet the tests for solvency referred to in section 34(a) and, without limiting the generality of the foregoing, shall pay</p> <p>(a) an amount equal to</p> <p>(i) the current service cost, and</p> <p>(ii) the prescribed special payments,</p> <p>that have accrued to the date of the termination or winding-up but under the terms of the plan or the regulations are not due on that date, and</p> <p>(b) all other payments that, by the terms of the plan or the regulations, are due from the employer to the plan but have not been paid at the date of the termination or winding-up.</p>
Effect of termination or winding-up on assets	<p><b>41(1)</b> Where a pension plan or a part of a plan is terminated or wound up, no part of the assets of the plan shall revert to the benefit of the employer until provision has been made for all benefits payable in respect of service up to the date of the termination or winding-up to all members and their spouses, beneficiaries and estates.</p> <p>(2) Where a plan is terminated or wound up, all funds held for the purposes of providing benefits continue to be subject to this Act.</p>
Reduction of additional benefits from amendment	<p><b>42</b> Notwithstanding anything in this Act, on the termination or winding-up of a pension plan where</p> <p>(a) the benefits arising from the retirement pensions include additional benefits provided by an amendment to the terms of the</p>



plan made on or after the initial qualification date or by the creation of a plan on or after the initial qualification date, in respect of service prior to the amendment or creation, and

(b) the funding of the additional benefits, as required by the regulations, has not been completed,

the amount of the additional benefit may be reduced in the manner and to the extent prescribed.

Benefits on  
termination or  
winding-up

**43(1)** On the termination or winding-up of a pension plan or part of a plan, the administrator of the plan shall file with the Superintendent a report prepared by a person having the prescribed qualifications setting out the nature of the benefits to be provided under the plan and the description of the methods of allocation and distribution and the priorities for determining the full or partial benefits of the members.

(2) Assets of the plan may not be applied towards the provision of any benefits until the Superintendent has approved the report required by subsection (1), except that the administrator of the plan may, in respect of occurrences prior to the date of termination or winding-up of the plan or part of the plan, pay as they fall due any pension payments to persons entitled to them and may pay any refunds of the employee contributions and interest to persons entitled to them.

(3) Where a plan has been terminated and the Superintendent considers that no or insufficient action has been taken to wind up the plan, he may require the administrator of the plan to allocate and distribute the assets of the plan on the prescribed basis.

(4) Where a plan is terminated or wound up and the plan does not provide for payment of the costs incurred in winding up, then notwithstanding the terms of the plan, those costs that the Superintendent considers reasonable in the circumstances may be paid out of the plan in priority to benefits.

(5) On the termination of a plan all contributions made after the initial qualification date in respect of a retirement pension shall be applied, to the extent not already applied, towards the provision of the retirement pension.

Partial  
termination

**44** Where a plan is terminated or wound up in part, the rights of members affected shall not be less than those to which those members would have been entitled if the whole of the plan had been terminated or wound up on the same date as the partial termination or winding-up.

Effect of sale  
or disposal of  
business

**45(1)** Where an employer who is bound by or is a party to a pension plan sells, assigns or otherwise disposes of all or part of his business or undertaking or all or part of the assets of his business or undertaking, and

(a) in conjunction therewith, an employee of the employer becomes an employee of the person acquiring the business, undertaking or assets, in this section called the successor employer, and

(b) the successor employer does not assume responsibility for the accrued benefits of the employer's plan,

the employee continues to be entitled to the benefits provided under the employer's plan in respect of his service in Alberta or a designated province without further accrual.

(2) Where a transaction described in subsection (1) takes place, irrespective of whether the successor employer has or has not assumed responsibility for the accrued benefits of the employer's plan, then,

(a) for the purposes of the employer's plan, membership in the employer's plan of an employee referred to in subsection (1)(a) shall be deemed not to have been terminated by reason of the transaction, and

(b) for the purpose of

(i) determining whether an employee is entitled to a pension under a pension plan of the employer or successor employer, or

(ii) determining completed service with respect to any eligibility condition of a successor employer's pension plan,

the service of the employee shall be deemed to include his service with both the employer and the successor employer without any break in service, notwithstanding the change of employers referred to in subsection (1)(a).

Effect of plan amendment

**46(1)** An amendment of a pension plan may not adversely affect or be interpreted as adversely affecting

(a) a person's retirement pension in respect of remuneration, service or membership in the plan before the effective date of the amendment, or

(b) the commuted value of a person's benefits in respect of remuneration and service or membership in the plan prior to January 1, 1966 by reference to his Canada Pension Plan retirement pension.

(2) The amount of a benefit being paid under a plan as at January 1, 1987 or the payment of which begins after that date may not be reduced subsequently in respect of any change in the benefits being paid under the *Old Age Security Act* (Canada) or the *Canada Pension Plan* (Canada).

## PART 5

### MISCELLANEOUS

Prohibition against assignment, etc.

**47** Money payable under a pension plan or transferred under section 25(1) or 26(4) to a registered retirement savings plan may not be assigned, charged, alienated or anticipated and is exempt from execution, seizure or attachment, and any transaction purporting to assign, charge, alienate or anticipate money so payable is void.

Matrimonial property orders

**48** Subject to section 47, the right of any person to receive a benefit under a pension plan is subject to rights arising under a matrimonial

	property order within the meaning of the <i>Matrimonial Property Act</i> , or a similar order enforceable in Alberta of a court outside Alberta that affects the payment or distribution of a person's benefits.
Evidence of entitlement to benefit	<b>49</b> A person claiming to be entitled to receive a benefit under a pension plan has the onus of proving to the satisfaction of the employer that he is so entitled, and the employer may require the claimant to provide such evidence, including evidence by way of affidavit, statutory declaration or certificate, as the employer requires to have the claim established.
Disclosure	<b>50</b> An employer shall, at the times and in the manner prescribed, provide such information concerning the operation or administration of the pension plan to such persons and in such circumstances as are prescribed.
Regulations	<p><b>51(1)</b> The Lieutenant Governor in Council may make regulations</p> <ul style="list-style-type: none"> <li>(a) enabling the Superintendent to require employers to provide consolidated copies of plans with all amendments to date incorporated and respecting the execution and authentication of those consolidated copies;</li> <li>(b) requiring the furnishing of information to the Superintendent in respect of plans;</li> <li>(c) prescribing forms and providing for their use;</li> <li>(d) prescribing fees for registration and the annual supervision of plans;</li> <li>(e) respecting applications for registration;</li> <li>(f) respecting methods of computing benefits and contributions and the commuted values of pensions;</li> <li>(g) respecting the variation of benefits by reference to benefits payable under the <i>Old Age Security Act</i> (Canada) or the <i>Canada Pension Plan</i>;</li> <li>(h) prescribing approved contributions and benefit formulae in respect of plans required to be registered;</li> <li>(i) respecting the time by which contributions to the plan are required to be remitted by employers;</li> <li>(j) governing the making of investments and loans with pension plan money;</li> <li>(k) respecting tests and standards for solvency of pension plans and the filing with the Superintendent in the form required by the Superintendent of the results of the valuation of the plans;</li> <li>(l) prescribing the conditions under which, on termination of membership, on a member's death or on the termination or winding-up of a plan, the commuted value of a pension may be held in trust by the administrator, insurer or trustee of the plan or transferred to the administrator, insurer or trustee of another pension plan or to a registered retirement savings plan;</li> </ul>

(m) exempting any employees or plans or any class of them from the application of the whole or any part of this Act;

(n) prescribing any matter or thing that by this Act may or is to be prescribed.

(2) A regulation under or by reference to section 1(1)(b), 25(1) or 32(1), is, if so provided in the regulation, effective from a date prior to that on which it would otherwise have been effective.

Service of documents

**52** Anything that is required or permitted to be served under this Act may be served

(a) in the case of an individual

(i) personally or by leaving it for him at his last or most usual place of abode with some person there present who is apparently at least 16 years old, or

(ii) by mailing it to him by registered mail or certified mail to his last known post office address;

(b) in the case of a corporation

(i) personally on a director, manager or officer of the corporation, or

(ii) by leaving it at or by sending it by registered or certified mail to the registered office of a corporation or to the office of the attorney of an extra-provincial corporation.

Proof of service

**53** When it is necessary to prove service of anything in the course of any proceeding or prosecution under this Act,

(a) if service is effected personally, the actual date on which it is served is the date of service;

(b) if service is effected by registered mail or certified mail, service of it shall be deemed to have been made 5 days after the date of mailing;

(c) if service is effected by leaving it with a person apparently at least 16 years old, service of it shall be deemed to have been made on the date it was so left.

Offences and penalties

**54(1)** A person who contravenes this Act or who obstructs the Superintendent or a person designated as his authorized representative under section 6 in the performance of his duties is guilty of an offence and is liable to a fine of not more than \$10 000.

(2) An employer who is convicted of an offence under subsection (1) shall pay into the pension plan in respect of which the offence was committed all amounts that the employer has failed to pay in contravention of this Act.

(3) When a corporation is guilty of an offence against this Act, an officer, director or agent of the corporation who directed, authorized, assented to, acquiesced in or participated in the commission of the offence is a party to and guilty of the offence and is liable to the punishment provided for the offence whether or not the corporation has been prosecuted or convicted.

Limitation period for prosecution	<b>55</b> A prosecution under this Act may not be commenced more than 5 years after the time when the subject-matter of the prosecution arose.
Transitional	<b>56</b> <i>Notwithstanding section 7 or anything to the contrary in this Act, subsisting reciprocal agreements or delegations entered into or made under the former Act are valid according to their terms until rescinded in so far as they are not varied by a reciprocal agreement or delegation, as the case may be, under that section.</i>
Repeal	<b>57</b> <i>The former Act is repealed.</i>
Coming into force	<b>58</b> <i>This Act comes into force on January 1, 1987.</i>