

1986 BILL 15

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First Session, 21st Legislature, 35 Elizabeth II

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THE LEGISLATIVE ASSEMBLY OF ALBERTA

# BILL 15

**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 15

1986

### EMPLOYMENT PENSION PLANS ACT

(Assented to . 1986)

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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) "additional voluntary contributions" means contributions made 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, and includes compounded interest on those additional voluntary contributions;

- (b) “administrator” means
- (i) subject to subclause (ii), in relation to
    - (A) a multi-employer plan, the body referred to in section 5(1), or
    - (B) any other plan, the employer,
  - or
  - (ii) where a person has been appointed administrator of a plan by the Superintendent under section 53(1) or (2), that person;
- (c) “benefit” means a pension or any other benefit under a pension plan, and includes a return of contributions and any payment in a series of payments that constitutes a benefit;
- (d) “certified copy” means, in relation to a document, a copy of the document certified to be a true copy by a person authorized so to certify it;
- (e) “commuted value” means, in relation to benefits that a person has a present or future entitlement to receive, the actuarial present value of those benefits determined, as of the time in question,
- (i) on the basis of actuarial assumptions and methods that are adequate and appropriate and in accordance with generally accepted actuarial principles,
  - (ii) in accordance with the conditions, if any, that are prescribed, and
  - (iii) in a manner that is acceptable to the Superintendent,
- or the money representing that value;
- (f) “defined benefit plan” means a pension plan that is not a defined contribution plan;
- (g) “defined benefit provision” means a provision of a pension plan under which benefits are determined in any way other than that described in clause (i);
- (h) “defined contribution plan” means a pension plan that consists of defined contribution provisions and, except to the extent that it relates to benefits accrued in respect of employment before the effective date of the plan, does not contain any defined benefit provisions;
- (i) “defined contribution provision” means a provision of a pension plan under which benefits are determined solely by reference to what is provided by
- (i) contributions made by a member and on a member’s behalf by his employer, and
  - (ii) interest and any other amounts allocated in respect of a member or former member;

(j) “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;

(k) “employee” means an individual employed to do work or provide a service in Alberta or in a designated province who is in receipt of or entitled to remuneration for the work or service;

(l) “employer” means the person or the organization, whether incorporated or not, from whom a person employed by him or it receives his remuneration, and includes any or all of the participating employers of a multi-employer plan in whose employment that person has been;

(m) “employment” means

(i) in relation to a multi-employer plan, an employee’s employment with his employer for which the employer is required by the plan to make contributions to that plan on the employee’s behalf, and

(ii) in any other case or, notwithstanding subclause (i), where the Superintendent gives his approval under section 23(3) in respect of a multi-employer plan, an employee’s employment with his employer;

(n) “former Act” means the *Pension Benefits Act* repealed by section 70;

(o) “former member” means, in relation to a pension plan, an employee or former employee who has terminated his membership or commenced his pension or whose plan has been terminated, and who retains a present or future entitlement to receive a benefit under the plan;

(p) “fund holder” means the person or combination of persons who hold the pension fund of a pension plan under section 39(1);

(q) “initial qualification date” means

(i) in respect of employment in Alberta, January 1, 1967, and

(ii) in respect of employment in a designated province, the prescribed date;

(r) “insurance company” means a corporation authorized to carry on life insurance business in Canada;

(s) “interest” means interest, gains and losses provided for under section 28;

(t) “member” means, in relation to a pension plan that has not been terminated, an employee or, in the case of a multi-employer plan, a former employee, who has made contributions to the plan or on whose behalf his employer was required by the plan to make contributions to it and who has not terminated his membership or commenced his pension;

(u) “multi-employer plan” means a pension plan administered for employees of 2 or more employers, except where both or all

of those employers are affiliates within the meaning of the *Business Corporations Act*;

(v) “non-administrator employer” means an employer who is not an administrator;

(w) “participating employer” means, in relation to a multi-employer plan, an employer who is contractually required to make contributions to that plan;

(x) “pension” means a series of payments that continues for the life of a former member, whether or not it is thereafter continued to any other person;

(y) “pension commencement” means the time by reference to which a person commences to receive a pension under a pension plan;

(z) “pension plan” or “plan” means a plan, scheme or arrangement organized and administered to provide pensions for employees and former employees and under which, except in the case of a supplemental pension plan, the employer is or, in the case of a terminated plan, was required to make contributions to the plan on behalf of the members, and includes the pension fund of a plan but does not include a prescribed plan, scheme or arrangement;

(aa) “pensionable age” means, in relation to a pension plan, the age or the date referred to in section 35(1);

(bb) “prescribed” means prescribed or otherwise provided for by the regulations;

(cc) “records” includes

(i) 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

(ii) 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;

(dd) “registration” means registration under Part 2 of a pension plan or of an amendment to a plan, and includes registration under the former Act;

(ee) “remuneration” means wages, salary, pay, commission or other remuneration;

(ff) “RRSP” means a retirement savings plan within the meaning of the *Income Tax Act* (Canada) that is registered under that Act;

(gg) “solvency tests” means the tests for the solvency of pension plans referred to in section 38(1);

(hh) “spouse” means, in relation to another person,

(i) a person who at the relevant time was married to that other person and was not living separate and apart from him, or

- (ii) if there is no person to whom subclause (i) applies, a person of the opposite sex who lived with that other person for the 3-year period immediately preceding the relevant time and was during that period held out by that other person in the community in which they lived as his consort;
- (ii) “Superintendent” means the Superintendent of Pensions;
- (jj) “supplemental pension plan” means a pension plan, initial and continuing membership in which depends by way of condition precedent on membership in another plan, the first-mentioned pension plan being supplemental to that other plan;
- (kk) “surplus assets” means, having regard to the prescribed assets and liabilities of a pension plan, the portion of those assets that exceeds those liabilities;
- (ll) “termination”, when used in relation to a pension plan, means an event provided to be a termination of the plan by section 45, 46 or 55(3), to the extent that such an event affects members and former members;
- (mm) “termination of membership” means
  - (i) in relation to a member of a multi-employer plan and subject to subclauses (ii) and (iii), the end of any period of 2 consecutive fiscal years of the plan in which the member has not completed at least 350 hours of employment,
  - (ii) in relation to a member of a supplemental pension plan, including a supplemental multi-employer plan, the termination of the member’s membership in the plan to which it is supplemental, and
  - (iii) in relation to a member of any other plan or where the Superintendent gives his approval under section 23(3) in respect of a multi-employer plan, the cessation by the member of employment for which the employer is required by that plan to make contributions to that plan on the member’s behalf,
 and, in relation to a member of a multi-employer plan, includes the return of all his contributions, with interest, under section 27(7) or (8) or his transferring the whole of the commuted value of his pension under section 30(3) or (4);
- (nn) “this Act” means this Act and the regulations under it;
- (oo) “winding-up” means, in relation to a pension plan that has been terminated, the process of distributing the assets of the plan;
- (pp) “Year’s Maximum Pensionable Earnings” has the same meaning as in the *Canada Pension Plan* (Canada);
- (qq) “years of continuous employment” means, subject to section 23(3),
  - (i) in relation to a member of a multi-employer plan, fiscal years of the plan in each of which the member has completed at least 350 hours of employment, and

(ii) in relation to any other plan, years of employment for a continuous period of time including, except where an actual cessation of employment has occurred, any period not exceeding 26 consecutive weeks during which a person who immediately before the commencement of the period was in the employment of the employer is not doing work or providing a service for that employer for remuneration and after the expiry of which the person is again in the employment of that employer,

and, where a member has at any time terminated his membership in one plan to which his employer was required to make contributions on his behalf due to his becoming a member of another plan to which that employer is so required to make contributions, includes, in relation to each of those plans, the aggregate of the years of continuous employment while a member of those plans.

(2) For the purposes of subsection (1)(hh)(i), persons are living separate and apart

(a) if they are living apart and either of them has the intention to live separate and apart from the other, or

(b) if, before the relevant time,

(i) they had been living separate and apart for any period, and

(ii) that period was interrupted or terminated by reason only that either of them became incapable of continuing to live separate and apart or of forming or having the intention to continue to live separate and apart of that person's own volition,

and the separation would probably have continued if that person had not become so incapable.

(3) Notwithstanding subsection (1)(mm)(i), a member of a multi-employer plan terminating his membership by virtue of that subclause who has ceased his employment shall be deemed to have terminated his membership in the province and while employed in the province where he last ceased to be in employment.

(4) For the purposes of this Act, a person is employed in the province in which the establishment of his employer to which he reports for work is situated and, if that person is not required to report for work to any establishment of his employer or is required to report to more than 1 establishment in different provinces, 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.

(5) For the purposes of this Act, a benefit vests in a person when he acquires an unconditional entitlement under the pension plan to receive the benefit, whether at the present or in the future.

(6) Except where otherwise specified, references in this Act to the termination or winding-up of a pension plan include references to the termination or winding-up of only part of a plan.



## PART 1

### ADMINISTRATION

Appointment and duties of Superintendent	<b>2</b> In accordance with the <i>Public Service Act</i> , there may be appointed a Superintendent of Pensions, who is the chief administrative officer charged with the administration and enforcement of this Act.
Reciprocal governmental agreements	<p><b>3</b> The member of the Executive Council charged by the Lieutenant Governor in Council with responsibility for this Act may enter into an agreement with the government of a designated province or of Canada</p> <p>(a) to provide for the reciprocal registration and examination of pension plans and the reciprocal enforcement of specified laws affecting plans,</p> <p>(b) to authorize the authorized representative of that government to perform any of the Superintendent's functions, authorities and duties under this Act, and</p> <p>(c) to provide for the performance by the Superintendent of any of that representative's functions, authorities and duties under the laws governing pension plans of that government's jurisdiction.</p>
Superintendent's authority to extend time limits	<b>4</b> Where the Superintendent considers that there are extenuating reasons for the failure by any person to do anything within a period or before a time limit imposed by a prescribed provision of this Act, he may, on receipt of a written request and by written notice to the applicant, extend the period within which that thing must be done to such time as he considers appropriate in the circumstances and specifies in the notice.
Administrators of multi-employer plans	<p><b>5(1)</b> A multi-employer plan must have a board of trustees or other similar body constituted to administer the plan.</p> <p>(2) Where a multi-employer plan is established, or maintained pursuant to contributions required, under a collective agreement within the meaning of the <i>Labour Relations Act</i>, the number of members of the board of trustees or similar body representing members of the plan must not be less than the number representing employers.</p>
General responsibilities of administrators	<p><b>6(1)</b> The administrator of a pension plan is responsible for administering and shall administer the plan in accordance with this Act.</p> <p>(2) The administrator shall ensure that the plan complies with this Act, including its contractual provisions.</p> <p>(3) Where a plan has been terminated, the administrator shall ensure that it is wound up in accordance with this Act.</p> <p>(4) The administrator shall, if the plan contains a defined benefit provision, have the plan reviewed in accordance with the regulations.</p> <p>(5) While acting in the capacity of administrator, the administrator stands in a fiduciary capacity in relation to members, former members and others entitled to benefits.</p>

7(1) The administrator of a pension plan shall ensure that the Superintendent has been informed in writing of the administrator's name and address within 30 days after becoming the administrator.

(2) The administrator shall inform the Superintendent in writing of any change in the administrator's name or address within 60 days after that change.

(3) Subject to this section, the administrator shall file with the Superintendent,

(a) at the times prescribed and in the form required by the Superintendent, returns containing information respecting

(i) the administration of the plan,

(ii) contributions to it,

(iii) membership in it, and

(iv) any other information that is necessary to enable the Superintendent to carry out his duties under this Act,

and

(b) at the times prescribed or on the request of the Superintendent,

(i) actuarial valuation reports that

(A) contain the prescribed information,

(B) are prepared by a Fellow of the Canadian Institute of Actuaries or such other person as is prescribed, on the basis prescribed and on the basis of actuarial assumptions and methods that are adequate and appropriate and that are in accordance with generally accepted actuarial principles, and

(C) provide for contributions that are sufficient to meet the solvency tests,

(ii) cost certificates signed by a person referred to in subclause (i)(B) and in the form required by the Superintendent, containing the prescribed information and information necessary for the Superintendent to be able to determine whether the plan will meet the solvency tests, and

(iii) where contributions to or benefits from a plan are determined by the provisions of a collective agreement or arbitration award, a copy of those provisions and of any amendments to them.

(4) Where the Superintendent considers that an actuarial valuation report or cost certificate required by subsection (3) does not comply with that subsection, he shall notify the administrator in writing of that fact and shall direct the administrator to have the report or cost certificate amended so as to comply with that subsection, and the administrator shall forthwith comply with the direction.

Disclosure of  
information

(5) Plans that contain no defined benefit provisions are exempt from the requirement to submit actuarial valuation reports and cost certificates under subsection (3).

(6) An actuarial valuation report need not be filed if compliance with subsection (3)(b)(ii) and, where applicable, subsection (3)(b)(iii) is sufficient to enable the Superintendent to determine whether the plan will meet the solvency tests.

**8(1)** An administrator shall, in writing and in the manner and at the times prescribed, provide the information specified in this subsection to the respective persons specified:

(a) to each member, and to an employee who is or is about to be eligible or required to be a member of the pension plan,

(i) an explanation or summary of

(A) the plan,

(B) amendments to the plan that relate to that person's benefits, and

(C) his entitlements and obligations under the plan or amendments,

and

(ii) any other prescribed information;

(b) to each member, the prescribed information on an annual basis;

(c) to a former member, following the termination of his membership, the prescribed information, and subsequently, on a written request by the former member for it, the same information, but updated;

(d) to a member or former member who is about to commence his pension, the prescribed information;

(e) to a member of a multi-employer plan who wishes to make a transfer under section 30(3) or (4), the prescribed information;

(f) to each surviving spouse or designated beneficiary or personal representative of the estate of a deceased member or former member who is entitled to a benefit, the prescribed information;

(g) to a person referred to in clause (c), (d), (e) or (f) who has submitted a written request for it, the data used to calculate any benefits specified in the respective information referred to in that clause;

(h) to each member and former member where it is intended to terminate or wind up the plan, notice of that intention and of the date of the proposed termination or commencement of the winding-up;

(i) to each member and former member on the termination or winding-up of the plan, the prescribed information.

(2) The administrator shall provide all information under subsection (1) without charge.

(3) In subsections (4) to (7), “document” includes part of a document.

(4) Within 30 days after a written request to that effect and without charge, the administrator shall permit any person entitled to a benefit or his agent to examine

(a) a provision of the plan that was in force on any date included in a period during which that person or the person through whom the benefit derives was a member or, where that person is a former member, that otherwise affects his benefits,

(b) any document that concerns conditions of that person’s employment and that contains provisions relating to the plan,

(c) any trust deed or agreement, insurance contract, by-law or resolution relating to the plan,

(d) any agreement relating to the investment of the pension fund of the plan,

(e) the most recent return filed under section 7(3)(a),

(f) the most recent cost certificate filed under section 7(3)(b), and

(g) any other prescribed document.

(5) Unless agreement to a different effect is reached between the administrator and the person requesting the examination, the examination shall take place during regular working hours

(a) where the person requests that it take place at the establishment of the administrator that is nearest to that person’s residence, at that establishment, or

(b) where no such request is made, at the place where the plan is administered.

(6) Instead of permitting the examination under subsection (4), the administrator may, without charge and within the period referred to in that subsection, provide a copy of the document that the person has requested to examine.

(7) The administrator is not obliged to comply with subsection (4) or (6) in respect of any person if he has already complied with either of those subsections in respect of that person within the prescribed period immediately preceding the request.

Retention  
of records

**9(1)** An administrator or a non-administrator employer shall retain records relating to a pension plan for a period of at least 3 years after

(a) in the case of records affecting a person who received a benefit, the date when the benefit

(i) ceased to be paid, in the case of a continuing benefit, or was paid, in any other case, or

(ii) was previously insured through an insurance company,

and

(b) in the case of other records, the date when they ceased to be operative.

(2) Where a pension is to be provided through an insurance company, the insurance company shall comply with subsection (1)(a)(i) as if it were the administrator.

Effect of trust on participating employers

**10** Where a multi-employer plan has been established by or under a trust, then, notwithstanding any other law, the participating employers of the plan are bound by the instrument establishing the trust and by any amendments to that instrument, whether or not they were parties to any agreement pursuant to which the trust was established or amended.

Information from non-administrator employer

**11(1)** On the written request of the administrator and within such reasonable period as is specified in the request, a non-administrator employer shall provide the administrator with information or records that are required by the administrator in order to comply with the plan and to discharge the administrator's responsibilities under section 6.

(2) The request must specifically identify the information or records required under subsection (1).

(3) If the non-administrator employer does not provide the information or records requested within the period specified in the request, the administrator may apply to the Court of Queen's Bench by notice of motion supported by an affidavit for an order to compel provision of the information or records.

(4) The Court may make the order if it is satisfied that

(a) the information or records are in the possession of or under the control of the non-administrator employer, and

(b) the information or records are required as referred to in subsection (1),

and may make the order subject to any conditions that the Court considers appropriate.

(5) If the non-administrator employer requests that any records provided under subsection (1) be returned to him, the administrator shall return them within a reasonable period and may make copies of or extracts from them.

## **PART 2**

### **REGISTRATION AND AMENDMENT OF PENSION PLANS**

Registration of plans

**12(1)** The administrator of a pension plan shall apply for registration of the plan by filing with the Superintendent, not later than 60 days after the establishment of the plan, an application accompanied by

(a) a certified copy of

(i) the plan,

- (ii) any document that creates the plan or under which the plan is constituted,
- (iii) any trust deed or agreement, insurance contract, by-law or resolution relating to the plan,
- (iv) any agreement relating to the investment of the pension fund of the plan, and
- (v) any other prescribed document that relates to the administration of the plan,

and

(b) a copy of

- (i) the valuation report and cost certificate referred to in section 7(3)(b), and
- (ii) the explanation or summary referred to in section 8(1)(a)(i).

(2) The application for registration of the plan must be in the form required by the Superintendent and must contain the information referred to in section 7(3)(a).

(3) The Superintendent shall register and issue to the administrator a certificate of registration in respect of the plan filed with him for registration if the plan complies with this Act and the administrator has complied with this Act in respect of the plan.

Amendment  
of plans

**13(1)** Where an amendment is made to a pension plan that is registered or in respect of which an application for registration is pending or to any document referred to in section 12(1)(a)(ii) to (v), the administrator shall file a certified copy of the amendment with the Superintendent within 60 days after the amendment is made.

(2) Where a new document referred to in section 12(1)(a)(ii) to (v) is executed, the document is deemed to be an amendment to the plan for the purposes of this Act.

(3) The Superintendent shall register the amendment filed with him for registration and issue to the administrator a notice of registration in respect of the amendment if it complies with this Act and the administrator has complied with this Act in respect of the amendment.

Administration  
of unregistered  
plan or  
amendment

**14(1)** An administrator shall not administer a pension plan unless

- (a) the plan is registered, or
- (b) subject to sections 18(6) and 19(3), the application for registration has been duly made and the Superintendent has not notified the administrator in writing that he refuses to register the plan.

(2) An administrator shall not administer a pension plan in a manner that reflects an amendment to it unless

- (a) the amendment is registered, or

	(b) subject to sections 18(6) and 19(3), the amendment has been duly filed for registration and the Superintendent has not notified the administrator in writing that he refuses to register the amendment.
Retroactivity of plan or amendment	<b>15</b> A pension plan or an amendment to a plan may be made effective from a date before its registration or the application for its registration.
Transfer agreements	<p><b>16(1)</b> In this section, “transfer agreement” means an agreement between the administrators of 2 or more pension plans respecting the transfer between them of money or benefits in respect of individual members or former members.</p> <p>(2) An administrator shall file with the Superintendent a certified copy of any transfer agreement relating to the plan within 60 days after it is entered into.</p> <p>(3) The administrator shall ensure that the transfer agreement does not contain any provision relating to a benefit that is subject to this Act that a pension plan is prohibited by this Act from containing.</p>
Cancellation of registration	<p><b>17(1)</b> The Superintendent may cancel the registration of a registered pension plan</p> <p>(a) that does not comply with this Act, or</p> <p>(b) in respect of which the administrator has not complied with this Act or the plan,</p> <p>with effect from such date, not being earlier than the date on which that non-compliance occurred or commenced, as is determined by the Superintendent.</p> <p>(2) The Superintendent may cancel the registration of a registered plan that has been terminated and wound up in accordance with this Act.</p>
Objection to refusal or cancellation of registration	<p><b>18(1)</b> If the Superintendent refuses to register a pension plan or a plan amendment filed for registration or cancels a registration under section 17(1), he shall forthwith serve on the administrator a written notification of that fact containing the reasons for his decision.</p> <p>(2) In the case of a cancellation of registration, the notification must specify the date referred to in section 17(1).</p> <p>(3) The administrator may, within 60 days after service of the notification of the refusal or cancellation, serve on the Superintendent a notice of objection containing the reasons for the objection and all relevant facts.</p> <p>(4) On receipt of the notice of objection, the Superintendent shall forthwith reconsider the refusal or cancellation and rescind, vary or confirm his previous decision, and he shall thereupon serve on the administrator a written notification of that decision.</p> <p>(5) The notification under subsection (4) must be accompanied by reasons, unless the decision is to register the plan or amendment or to rescind the cancellation.</p>

Appeal to the  
Court of Queen's  
Bench

(6) Where an administrator who has been served a notification under subsection (1) serves a written notice on the Superintendent stating that he intends to serve a notice of objection under subsection (3), he may, notwithstanding the Superintendent's decision, administer the plan or administer the plan in a manner that reflects the amendment until the matter is dealt with under subsection (4) or the period referred to in subsection (3) expires without the notice of objection's having been served, whichever occurs first.

**19(1)** Where an administrator has served a notice of objection under section 18(3) and the Superintendent has subsequently notified the administrator that he will not register the plan or amendment or reinstate the registration, as the case may be, the administrator may, by originating notice supported by an affidavit, appeal to the Court of Queen's Bench for an order requiring the Superintendent to register the plan or amendment or reinstate the registration.

(2) A copy of the originating notice and of the affidavit must be filed with the clerk of the Court of Queen's Bench and served on the Superintendent within 60 days after the service of the notification under section 18(4) or such longer period as the Court allows, and the application shall be made returnable within 90 days after the filing of the originating notice.

(3) Where an administrator who has been served a notification under section 18(4) serves a written notice on the Superintendent stating that he intends to appeal under this section, he may, notwithstanding the Superintendent's decision, administer the plan or administer the plan in a manner that reflects the amendment until the Court disposes of the matter or the 60-day period referred to in subsection (2) expires without the appeal's having been made, whichever occurs first.

### **PART 3**

#### **CONTRACTUAL PROVISIONS IN PENSION PLANS**

Contractual  
requirements of  
pension plan

**20(1)** A pension plan must contractually provide for the benefits, contributions and other entitlements and obligations provided for by this Part or for benefits, contributions and entitlements and obligations that are more favourable, having regard to the intent of this Act, for members and former members and their spouses, beneficiaries and estates than those provided for by this Part.

(2) The plan must contractually incorporate the appropriate definition and interpretation provisions of section 1, but, for the purpose of providing for more favourable treatment under subsection (1) for the persons mentioned in that subsection, section 1(1)(hh), (mm) and (qq) shall be deemed to be included in this Part.

(3) Notwithstanding subsections (1) and (2) but subject to subsections (4) and (5), a plan is not required to include or incorporate

(a) a provision of this Part whose inclusion in a pension plan is indicated as being optional,

(b) a provision of this Part which, in the opinion of the Superintendent, is not and will not be applicable to the particular plan



in question and whose exclusion from that plan is permitted by the Superintendent, or

(c) sections 21(2), 22(3) and (4), 23(3), 26(6), 27(2), 30(6), 32(6)(a), 34(1) and (4), 36(2), 38(3) and 40(4).

(4) To the extent that the plan does not in any respect effect a contractual provision required by this Part, the plan shall be deemed to make such provision in that respect as would make it comply with this Part.

(5) The absence from the plan, pursuant to subsection (3), of provisions referred to in subsection (3)(b) or (c), does not affect their application or possible application to the plan.

General  
subject-matter  
requirements

**21(1)** Subject to this Part, a pension plan must provide for

- (a) the administration and maintenance of the plan,
- (b) the means of paying the administration expenses,
- (c) the conditions for membership in the plan,
- (d) benefits and entitlements on
  - (i) termination of membership,
  - (ii) the death of a member or former member,
  - (iii) pension commencement, and
  - (iv) termination of the plan,
- (e) the deadlines for choosing any options and the consequences of not meeting them,
- (f) the treatment of surplus assets during the continuation of the plan, and
- (g) formulas, complying with the prescribed criteria, for determining benefits, member and employer contributions and the allocation of contributions.

(2) Formulas for determining benefits under defined benefit provisions, for contributions relating to defined contribution provisions and for allocation of contributions must be acceptable to the Superintendent.

Entitlement of  
employees to join  
plan

**22(1)** Where there is a pension plan that has not been terminated and that relates to

- (a) all of an employer's employees, or
- (b) all the employer's employees at a particular establishment of the employer,

who are within a prescribed class of employees, each such employee is entitled to become a member of the plan on or at any time after the date specified in subsection (2).

(2) The date referred to in subsection (1) is the first day of the month following the month in which both the following requirements have been fulfilled:

(a) either

(i) in the case of a multi-employer plan respecting which the Superintendent has not given his approval under section 23(3), the end of any period of 2 consecutive fiscal years of the plan in which the employee has completed at least 350 hours of employment, or

(ii) in the case of any other plan, the employee has completed 2 years of continuous employment with the employer,

and

(b) the employee has earned in respect of his employment on and after January 1, 1985 at least 35% of the Year's Maximum Pensionable Earnings in each of 2 consecutive calendar years.

(3) Where a group of employees is in a prescribed class of employees who are covered by the plan but the employees in that group are employed other than on a basis that the employer considers to be full-time, the employer may establish a separate plan for that group.

(4) The separate plan must be comparable, in terms of the value of the benefits provided and taking into account the differences in the number of hours worked in the relevant period of the employment, to the plan covering employees in the prescribed class who are considered to be employed on a full-time basis.

(5) Notwithstanding subsection (1), a plan may provide that the employee must be a member as part of the terms and conditions of his employment.

Vesting based  
on years of  
continuous  
employment

**23(1)** Where a member has completed 10 years of continuous employment, has attained the age of 45 years and terminates his membership while employed in Alberta, there immediately vests in him, on that termination, an entitlement to receive a pension in respect of his membership on and after the initial qualification date but before January 1, 1987.

(2) Where a member has completed 5 years of continuous employment and terminates his membership while employed in Alberta, there immediately vests in him, on that termination, an entitlement to receive a pension in respect of his membership on and after January 1, 1987.

(3) If, on application to him, the Superintendent considers that it would cause undue hardship to the participating employers or members of a multi-employer plan to apply the definition in section 1(1)(qq)(i) to that plan for the purposes of this section, he may in writing give his approval to the application to the plan of the definition in section 1(1)(qq)(ii) instead for those purposes.

Vesting at  
pensionable age

**24** Where a member has reached pensionable age and terminates his membership while employed in Alberta, there immediately vests in him, on that termination, an entitlement to receive a pension in respect of his membership on and after January 1, 1987.

Vesting on termination of plan

**25** On the termination of a pension plan, there immediately and unconditionally vests in each member an entitlement to receive a pension in respect of his membership on and after the initial qualification date.

Amount and terms of pension vested

**26(1)** The pension payable under section 23(1) in respect of employment in Alberta or in a designated province, other than the portion accruing from additional voluntary contributions, must not be less than

(a) for employment on and after the initial qualification date but before January 1, 1987, the pension that is provided for that employment under the terms of the plan at the date of the termination of membership, and

(b) for employment before the initial qualification date where there is an amendment to the plan that was made on or after the initial qualification date but before January 1, 1987, the pension that is provided for that employment under the terms of that amendment.

(2) If the commuted value of the pension referred to in subsection (1) is less than the value of the member's contributions, with interest, made to the plan towards the pension, the pension shall be increased so that the commuted value of the increased pension is not less than the value of his contributions with interest.

(3) The pension payable under section 23(2) or 24 in respect of employment in Alberta or in a designated province, other than the portion accruing from additional voluntary contributions, must not be less than

(a) for employment on and after January 1, 1987, the pension that is provided for that employment under the terms of the plan at the date of the termination of membership, and

(b) for employment before January 1, 1987 where there is an amendment to the plan that was made on or after that date, the pension that is provided for that employment under the terms of that amendment.

(4) A plan may provide that an amendment referred to in subsection (1)(b) or (3)(b) includes an amendment made after the termination of membership and that the amendment so made applies to the former member.

(5) Subject to any regulations made with reference to section 42(1), the pension payable under section 25, other than the portion accruing from additional voluntary contributions, must not be less than the pension payable under subsection (1), (2), (3) or (4).

(6) Where different pension entitlements are given as a result of the application of more than 1 provision of this section, the provision of this section that is most favourable to the member prevails.

Locking in

**27(1)** Subject to this section and sections 29, 31(3) and (5) and 37,

(a) a member or former member may not withdraw any of the commuted value of the pension in respect of his membership on and after the initial qualification date, and

(b) there may not be surrendered or commuted during the life-time

(i) of a member or former member, a pension in respect of his membership on and after the initial qualification date, or

(ii) of a surviving spouse entitled to a pension under section 31 or 32, that pension,

or any interest in any such pension.

(2) Subsection (1) extends to

(a) a person who terminated his membership or whose plan was terminated, and the commuted value of whose benefits was transferred out of the plan to an RRSP for the sole purpose of ultimately providing a pension or to an insurance company to purchase a pension, before January 1, 1987, and

(b) the money so transferred.

(3) Subsections (1) and (2) do not apply to any part of a pension accruing from additional voluntary contributions.

(4) The commuted value locked in under subsections (1) and (2) shall be applied towards the provision of the pension.

(5) Where

(a) a member terminated his membership in a plan while employed in Alberta,

(b) the termination was not due to his becoming a member of another plan to which his employer was required to contribute on his behalf, and

(c) an entitlement to receive a pension did not vest on the termination,

all his contributions to the plan shall be returned to him with interest.

(6) Where a pension has vested in a former member in respect of his membership on and after, but not before, January 1, 1987, the contributions made by him before that date shall be returned to him with interest.

(7) Where

(a) a member of a multi-employer plan has not completed at least 350 hours of employment during any period of 2 consecutive completed fiscal years of the plan, and

(b) an entitlement to receive a pension is not vested in him and would not have vested had he terminated his membership at the end of that period,

the member may have all his contributions made to the plan returned to him with interest.

- (8) A multi-employer plan may require that a member
- (a) who is no longer employed by any participating employer or in a class of employees referred to in section 22(1) that is covered by the plan, and
  - (b) in whom an entitlement to receive a pension is not vested and would not have vested had he terminated his membership,

is to have all his contributions made to the plan returned to him with interest.

- (9) Where a registered amendment to a plan, or, if one plan has been adopted in place of another plan and registered, the plan so adopted, provides for

- (a) the assumption by the employer of liability for the funding of accrued benefits that were previously funded by member contributions and interest, and
- (b) the return of those member contributions, with interest, representing those accrued benefits,

those member contributions with interest may be paid to the member or former member.

- (10) Where a member terminated his membership in one plan due to his becoming a member of another plan to which his employer was required to contribute on his behalf, all his contributions to the plan shall be returned to him with interest, but only when he is no longer a member of any plan to which his employer is required to contribute on his behalf, and only if an entitlement to receive a pension has not vested in him.

- (11) A plan may provide, subject to section 55(4), that a member may receive, on the termination of his membership or of the plan itself while employed in Alberta and if an entitlement to receive a pension is then vested in him, the commuted value of,

- (a) if the member has not completed 5 years of continuous employment, his full pension in respect of his membership, and
- (b) if the member has completed 5 years of continuous employment but has not both completed 10 years of continuous employment and attained the age of 45 years, his pension in respect of his membership before January 1, 1987.

Interest  
on member  
contributions

- 28(1)** Subject to subsections (2) and (3), where under a defined benefit plan member contributions were required in order to attain benefits or additional voluntary contributions have been made, interest shall be applied to the contributions.

- (2) In the case of a defined contribution plan or a defined contribution provision of a defined benefit plan, member contributions shall be credited or debited with such interest, gains and losses as can reasonably be attributed to the operation of the plan's pension fund that holds those contributions.

- (3) A defined benefit plan may provide that where additional voluntary contributions have been made to the plan, the additional vol-

Minimum  
employer  
contributions for  
funding of  
pension

untary contributions are to be credited or debited with interest, gains and losses that can reasonably be attributed to the operation of the plan's pension fund that holds those contributions.

(4) Interest, gains and losses referred to in this section shall be calculated in the manner prescribed and applied to contributions at the rates and times prescribed.

**29(1)** Where a member was required to make contributions in order to attain a pension under a defined benefit plan, not more than  $\frac{1}{2}$  of the commuted value of the pension in respect of his membership on and after January 1, 1987 may be provided by his contributions, with interest, made on or after that date.

(2) Where, on the termination of a member's membership in a defined benefit plan, on the termination of such a plan or on the commencement of a member's pension from such a plan, while employed in Alberta, the value of his contributions made on or after January 1, 1987, with interest, exceeds  $\frac{1}{2}$  of the commuted value of the pension in respect of his membership on and after January 1, 1987, the amount of the excess shall, at the option of the member, be

- (a) returned to the member,
- (b) transferred to another pension plan, if and to the extent that that plan permits the transfer,
- (c) transferred to an RRSP,
- (d) transferred to an insurance company to purchase a deferred pension, or
- (e) if and to the extent that the plan so provides, used to increase the amount of the pension.

(3) Contributions made in respect of a defined contribution provision of a defined benefit plan and any part of the commuted value of the pension deriving from those contributions shall not be taken into account for the purposes of subsections (1) and (2).

(4) For the purposes of subsections (1) and (2), a defined benefit plan may treat

- (a) contributions to a supplemental defined benefit pension plan as aggregated with those made to the plan to which it is supplemental, and
- (b) the commuted value deriving from the contributions to the supplemental plan as aggregated with that under the principal plan.

(5) A defined benefit plan may apply subsections (1) and (2) exclusive of the expression "on and after January 1, 1987", but, where the plan does so, it must not provide for the member to receive any lump sum amount otherwise permitted under section 37(2).

(6) Where a multi-employer defined benefit plan provides that a member who has not accrued the maximum pension permitted under the plan in a fiscal year of the plan is permitted to make contributions in order to increase his pension accrual up to the maximum permit-

ted for that year under the plan, any such contributions, with interest, and the commuted value deriving from those contributions and interest shall not be taken into account for the purposes of subsection (1) or (2).

**30(1) Where**

(a) a member terminated his membership in a pension plan, or his plan was terminated,

(i) on or after January 1, 1987,

(ii) while he was employed in Alberta, and

(iii) before the date that was 10 years before his reaching pensionable age,

and

(b) an entitlement to receive a pension has vested in him,

he may make a transfer, in the manner and to the extent prescribed, of the whole of the commuted value of his pension in respect of his membership on and after the initial qualification date in accordance with subsection (2).

**(2) The transfer may be made to**

(a) another pension plan, if and to the extent that that plan permits the transfer, on the condition that the eventual payment from the other plan be made only in the form of a pension that would otherwise be required by this Act or a benefit referred to in section 37(3),

(b) an RRSP on the conditions prescribed under section 62(1)(d), or

(c) an insurance company to purchase a deferred pension that is not commutable, that will not commence earlier than the earliest date that the pension could have commenced under the plan and that will be in the form referred to in clause (a).

(3) A member of a multi-employer plan who has not completed at least 350 hours of employment during any period of 2 consecutive completed fiscal years of the plan may, in the manner and to the extent prescribed in relation to subsection (1), make the transfer referred to in that subsection.

(4) A multi-employer plan may provide that a member who is no longer employed by any participating employer or in a class of employees referred to in section 22(1) that is covered by the plan may, in the manner and to the extent prescribed in relation to subsection (1), make the transfer referred to in that subsection.

(5) Notwithstanding subsections (1), (3) and (4), the plan may provide that if the commuted value of the pension does not exceed the prescribed amount, the member must make the transfers referred to in those subsections.

(6) On making the transfer under subsection (1), (3) or (4), the member is not entitled to any further benefits in respect of his membership before the transfer.

(7) A pension plan may, where a member terminated his membership in that plan due to his becoming a member of another plan to which his employer was required to contribute on his behalf and the first-mentioned plan has not been terminated, postpone his entitlement to transfer the commuted value of his pension under subsection (1) until he has terminated his membership in that other plan or that other plan is terminated, whichever occurs first.

**31(1)** Where a member or a former member who has not commenced his pension dies, benefits are payable

(a) subject to this section and section 37(1) and (3), by way of a pension to his surviving spouse, or

(b) if there is no surviving spouse, by way of a lump sum payment of the deceased's contributions with interest to his designated beneficiary or, if there is no valid designation of beneficiary, to the personal representatives of his estate in their representative capacity.

(2) The commuted value of the pension payable to the surviving spouse must not be less than the sum of

(a) the value of the deceased's contributions made before January 1, 1987, with interest, and

(b) the greater of

(i) 60% of the commuted value of

(A) if an entitlement to receive a pension would have vested in the deceased under section 23(2) or 24 had he terminated his membership immediately before his death, that pension, or

(B) if the plan has been terminated, the pension in respect of the deceased's membership on and after January 1, 1987,

plus that value of the deceased's contributions made to the plan on and after January 1, 1987 with interest that is in excess of  $\frac{1}{2}$  of the commuted value of that pension, and

(ii) the deceased's contributions to the plan made on and after January 1, 1987, with interest.

(3) If

(a) the plan has been terminated and the deceased did not complete 5 years of continuous employment, or

(b) an entitlement to receive a pension would not have vested in the deceased as mentioned in subsection (2)(b)(i)(A),

the surviving spouse's pension shall be commuted.



(4) The surviving spouse may transfer the whole of the commuted value of the pension in accordance with the conditions specified in and in relation to section 30(1) and (2), but the plan may provide that the spouse must make the transfer.

(5) The spouse has the same options in relation to the excess value of contributions with interest referred to in subsection (2)(b)(i) as the deceased would have had under section 29(2), including a lump sum payment to the spouse.

Post-retirement  
survivor benefits

**32(1)** Notwithstanding anything in this Part except this section and section 37(1) and (2), the pension payable to a former member who had a spouse at the date when he commenced the pension is to be a joint pension payable during the joint lives of the former member and his spouse and which, after the death of either, continues to be payable to the survivor for life.

(2) A pension plan may provide for the joint pension to the survivor to be decreased by not more than 40% or, subject to subsection (3), adjusted.

(3) The joint pension may be adjusted only if its actuarial present value following the adjustment is not less than the actuarial present value of the normal form of pension under the plan that would be payable to the former member from his pensionable age were it not for this section and the provision in the plan corresponding to this section.

(4) The former member may receive a pension that does not comply with this section if the administrator received a statement by the spouse before pension commencement and in the prescribed form that

(a) stated that the spouse had reviewed the information referred to in section 8(1)(d) and was aware of the spousal entitlements under this section,

(b) waived those entitlements, and

(c) was signed by the spouse in the presence of a witness and outside the presence of the member or former member.

(5) A statement under subsection (4) is not valid if it is made more than 90 days before pension commencement.

(6) This section does not apply if

(a) the administrator, before pension commencement, receives an order referred to in section 60 affecting the pension, or

(b) payment of the pension commenced before January 1, 1987.

Surviving  
spouse's change  
in status

**33** A pension payable to the surviving spouse of a deceased member or former member does not cease on the spouse's acquiring a new spouse on or after January 1, 1987.

Adjustments  
in pension for  
OAS, CPP  
and QPP

**34(1)** In this section, "CPP", "QPP" and "OAS" mean respectively the *Canada Pension Plan* (Canada), the *Quebec Pension Plan* (Quebec) and the *Old Age Security Act* (Canada).

(2) A pension plan may provide that a member or former member may, on or before his pension commencement, elect to receive a pension the amount of which is adjusted by reference to benefits payable under CPP, QPP or OAS, so long as the pension payments payable to him after his benefits under OAS and either CPP or QPP have commenced are not less than the amount prescribed for monthly pension payments in relation to section 37(1).

(3) Where a pension plan provides for the reduction of a pension by reason of a member's or former member's entitlement to a pension under CPP, QPP or OAS, the reduction must not exceed the sum of

(a) the amount of the pension payable under CPP or QPP, calculated at the date of the termination of his membership, his death or pension commencement or the termination of the plan, multiplied by the fraction whose numerator is the number of completed months of employment, not exceeding 420, credited for the purposes of determining benefits under the pension plan and whose denominator is 420, and

(b) the amount of the pension payable under OAS calculated at the date of the event referred to in clause (a) multiplied by the fraction whose numerator is the number of completed months of employment, not exceeding 420, so credited up to January 1, 1987 and whose denominator is 420.

(4) The amount of pension being paid under a plan may not be reduced in respect of any change in the benefits being paid under CPP, QPP or OAS.

Age provisions in  
pension plans

**35(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 normally eligible to commence to receive a pension under the plan without reduction or increase, without taking into account any term of the plan whereby an individual member is permitted to commence to receive a pension before or after the general membership would normally commence to receive it.

(2) Subject to this section, where a member continues in employment after reaching pensionable age, he continues to be a member on the same basis that applied before he reached pensionable age.

(3) A plan may

(a) fix a maximum number of years of employment that can be taken into account in determining the pension, or

(b) fix a maximum amount for the pension,

and, when the member reaches that maximum, no further contributions are payable by him.

(4) A plan may provide that a member may choose to commence receiving a pension from pensionable age instead of continuing to be a member under subsection (2), in which case no further contribu-

tions are payable by him, but a multi-employer plan may require the member to commence receiving the pension from pensionable age.

(5) A member whose plan is terminated, or who terminates his membership, on or after January 1, 1987 and in whom an entitlement to receive a pension vests in accordance with section 23 or 25 may commence to receive such pension, at any time on or after the date that is 10 years prior to his reaching pensionable age, as is accrued to that time.

(6) A pension that commences before pensionable age under subsection (5) may be reduced in comparison with what would have been payable had it commenced at pensionable age, but only if the actuarial present value of the reduced pension is at least equal to the aggregate of that of

(a) the pension that would have been payable commencing at pensionable age, and

(b) any other benefit to which the member would have been entitled had he terminated his membership and elected to commence to receive the pension at pensionable age.

(7) A pension must commence before a member or former member who is to receive it attains the age of 71 years.

Payment or  
transfer of  
contributions

**36(1)** Where a person becomes entitled to have contributions made to a pension plan paid to him, the payment, with interest, shall be made within 60 days after the event giving rise to the payment or the completion and filing of all documents required to authorize the making of the payment, including any evidence required under section 61, whichever is the later.

(2) Notwithstanding anything in this Act, any entitlement given by this Act to have contributions with interest paid to a person or to transfer them applies only in relation to contributions with interest that have not previously been paid out of or transferred from the plan.

Permitted  
variations in  
benefits

**37(1)** A pension plan may provide for payment to a former member or the surviving spouse of a deceased member or former member of an amount equal to the commuted value of the pension to which he is entitled if the monthly pension payments that would be payable to him at or after pensionable age are less than the prescribed amount or if that commuted value does not exceed the prescribed amount.

(2) Subject to section 29(5), a pension plan may provide that a former member who has terminated his membership, or whose plan has been terminated, before his reaching pensionable age may receive, in partial discharge of his entitlement to a pension payable under section 23(1) or payable under section 25 in respect of his membership before January 1, 1987, a lump sum amount that in total does not exceed 25% of the commuted value of that pension.

(3) A pension plan or, where a benefit has been transferred to an RRSP, the RRSP holding the transferred money, may provide that if a member, former member or the surviving spouse of a deceased member or former member has a mental or physical disability that

is likely to shorten considerably his life expectancy, he may, before payment of the pension commences, elect to convert the pension or part of it on the prescribed basis to a payment or series of payments for a fixed term.

(4) The degree of mental or physical disability required by subsection (3) must be certified by a medical practitioner.

Funding and  
solvency  
requirements

**38(1)** A pension plan must provide for funding, in accordance with the prescribed tests for the solvency of pension plans and other provisions of the regulations, that is adequate to provide for payment of all benefits.

(2) A pension plan must be funded in accordance with the actuarial valuation reports and cost certificates referred to in section 7(3)(b), as amended pursuant to any direction of the Superintendent under section 7(4).

(3) A participating employer's liability in respect of funding the benefits of a multi-employer plan is limited to the amount that he is contractually required to contribute to the plan.

Fund holders

**39(1)** The pension fund of a pension plan must be held by

(a) an insurance company under a contract for insurance,

(b) a trust in Canada governed by a written trust agreement under which the trustees are

(i) a trust company, as defined in the *Trust Companies Act*, carrying on business in Canada, or

(ii) 3 or more individuals at least 3 of whom reside in Canada and at least 1 of whom is not a significant shareholder, partner or employee of the employer or a proprietor of the business of the employer,

(c) a society established under the *Pension Fund Societies Act* (Canada),

(d) a person pursuant to the *Government Annuities Act* (Canada), or

(e) a combination of the persons referred to in 2 or more of clauses (a) to (d).

(2) In subsection (1)(b)(ii), "significant shareholder" means, in relation to an employer that is a corporation, an individual who, alone or in combination with his parent, brother, sister, spouse or child, owns or has a beneficial interest, directly or indirectly, in shares that represent 10% or more of the voting entitlement attached to all the shares of the employer.

(3) Where the pension fund of a plan is to be held by an insurance company under individual contracts for insurance for each member, those contracts must

	<p>(a) be held on the terms of an express trust whose trustees are or include a trust company referred to in subsection (1)(b)(i) or at least 2 individual trustees, and</p> <p>(b) be issued or assigned to the trustees.</p> <p>(4) The trustees must be entitled to deal fully with all the contracts, including the assignment or transfer of each contract to the applicable member on the termination of his membership or of the plan or on pension commencement.</p>
Making and remitting of contributions	<p><b>40(1)</b> An employer shall make contributions to a pension plan that are sufficient to pay for all the benefits in accordance with the solvency tests.</p> <p>(2) An employer shall, within the prescribed period, remit employer and member contributions due to the plan,</p> <p>(a) in the case of a multi-employer plan, to the administrator, and</p> <p>(b) in the case of any other plan, to the fund holder.</p> <p>(3) Where the administrator of a multi-employer plan is not the fund holder, the administrator shall, immediately on receipt of the contributions, remit them to the fund holder.</p> <p>(4) Where an employer has failed to remit any contributions required by subsection (2) before the expiration of 60 days after the end of the period referred to in that subsection, the administrator or the fund holder who should have received them shall immediately notify the Superintendent in writing of the failure.</p>
Investment requirements	<p><b>41</b> Assets of a pension plan must be invested, and the investments must be made, in accordance with the regulations.</p>
Benefits and assets on termination or winding-up	<p><b>42(1)</b> Subject to sections 38(1) and 40(1), a pension plan containing a defined benefit provision must provide on the prescribed basis for</p> <p>(a) the reduction of benefits, and</p> <p>(b) the methods of allocation and distribution of the assets of the plan and the priorities for determining the benefits of persons entitled to them,</p> <p>in the event that the assets of the plan are not sufficient to pay all benefits in the winding-up of the plan.</p> <p>(2) A pension plan must provide for the allocation of any surplus assets in the winding-up of the plan</p> <p>(a) to the members or former members or their surviving spouses or designated beneficiaries or the personal representatives of their estates,</p> <p>(b) to the employer, or</p> <p>(c) to any combination of the persons referred to in clause (a) or clauses (a) and (b).</p>

Participating  
employers'  
withdrawal from  
plan

**43** A multi-employer plan must specify the consequences of a participating employer's withdrawal from the plan in respect of the funding and vesting of benefits for members and former members affected by the withdrawal.

Fiscal year  
of plan

**44(1)** Unless otherwise provided in a pension plan, the fiscal year of the plan is from January 1 to December 31 in each year.

(2) A fiscal year of a plan may not exceed 12 months without the written consent of the Superintendent.

#### **PART 4**

##### **TERMINATION, WINDING-UP AND DISPOSAL OF BUSINESS**

Events  
constituting  
termination

**45(1)** The refusal or cancellation of the registration of a pension plan constitutes a termination of the whole of the plan.

(2) Subject to this section, the suspension or cessation of employer contributions to a pension plan or of the crediting of benefits

(a) where the suspension or cessation affects only a specific and identifiable class or group of members, constitutes a termination of the part of the plan that is applicable to that class or group, or

(b) where it affects all members, constitutes a termination of the whole of the plan.

(3) For the purposes of subsection (2), an employer is deemed to have ceased to make employer contributions, without limitation as to other circumstances, if

(a) he has failed to remit them within the period referred to in section 40(2), and

(b) the Superintendent

(i) considers that the employer does not intend to make the contributions, and

(ii) notifies the employer in writing of that fact.

(4) The deemed cessation is effective from the last date in respect of which the Superintendent considers that the employer made contributions, and the Superintendent shall specify that date in the notice.

(5) Subsection (2) does not apply to the extent that surplus assets are used to provide employer contributions, so long as the plan permits that use.

(6) Except where the Superintendent gives his approval under section 23(3), the cessation or suspension of contributions by a participating employer to a multi-employer plan does not in itself constitute a termination of the part of the plan that relates to that employer and his employees unless the plan provides that it does so, but the plan may not make any such provision to the extent that it would conflict with subsection (7).

(7) Where all or a specific and identifiable class or group of the members of one plan become members of another plan on the adoption of that other plan,

	<p>(a) years of continuous employment under one of those plans count as years of continuous employment under the other plan, and</p> <p>(b) the original plan or the part of it that affects that class or group shall not be treated as terminated for the purposes of this section.</p> <p>(8) A termination under subsection (1) takes effect when the remedies under sections 18 and 19 have been exhausted or the time limit for making an objection under section 18 or appealing under section 19, as the case may be, has expired without the objection's or appeal's having been made.</p>
Superintendent's authority to declare termination of plan	<p><b>46(1)</b> Where an employer has discontinued or is in the process of discontinuing all or an identifiable part of his business operations, the Superintendent may declare the plan to be terminated as of the date determined by the Superintendent.</p> <p>(2) Where the Superintendent declares a plan to be terminated under subsection (1), sections 18 and 19 apply in respect of that declaration as if the Superintendent were cancelling a registration.</p>
Notification of termination or winding-up	<p><b>47</b> An administrator who intends to terminate or to wind up a pension plan shall notify the Superintendent in writing of that intention</p> <p>(a) at least 60 days before the date of the intended termination or commencement of the winding-up, or</p> <p>(b) if it is intended to terminate or to commence to wind up the plan within 60 days after the decision to terminate or wind up is made, immediately after the making of that decision.</p>
Payments to meet solvency requirements	<p><b>48</b> Within 30 days after the termination of a pension plan, the employer shall pay into the plan all amounts whose payment is required by the terms of the plan or this Act and, without limiting the generality of the foregoing, shall make all payments that, by the terms of the plan or this Act, are due from the employer to the plan but have not been made at the date of the termination and those that have accrued to that date but that are not yet due.</p>
Effect of termination on assets	<p><b>49(1)</b> On the termination of a pension plan, all contributions made after the initial qualification date in respect of a pension shall be applied, to the extent required by the plan and to the extent that they have not already been so applied, towards the provision of the pension.</p> <p>(2) All assets of the plan that were subject to this Act before the termination continue to be so subject after the termination.</p>
Entitlements on partial termination	<p><b>50</b> Where only part of a pension plan is terminated, the entitlements of members and former members affected by the partial termination are not less than those to which they would have been entitled had the whole of the plan been terminated on the date of the partial termination.</p>

Commencement  
of winding-up

**51(1)** The winding-up of a pension plan must commence forthwith after the termination of the plan unless the Superintendent gives his written approval to postponing the winding-up.

(2) The Superintendent may at any time withdraw an approval given under subsection (1), in which case the winding-up must commence forthwith after the withdrawal of the approval.

(3) Within 60 days after the termination of a pension plan, the administrator shall file with the Superintendent a report prepared by a Fellow of the Canadian Institute of Actuaries or such other person as is prescribed, setting out

- (a) the nature of the benefits to be provided,
- (b) the assets and liabilities of the plan,
- (c) the allocation and distribution of the assets of the plan and the priorities for determining the benefits of persons entitled to them, and
- (d) such other information as the Superintendent may require to ensure that the termination and winding-up of the plan comply with this Act.

(4) Where the winding-up does not commence forthwith after the termination, the administrator shall, within 60 days after the decision to wind up is made, file an additional report prepared by a person referred to in subsection (3) setting out the information required by subsection (3), but updated.

Allocation and  
distribution  
of assets

**52(1)** Assets of a pension plan that has been terminated may not, without the prior written consent of the Superintendent, be applied towards the provision of any benefits until the Superintendent has approved the report required by section 51(3) and, where applicable, section 51(4), except that the administrator may, in respect of occurrences giving rise to the benefits before the termination, pay any benefits to persons entitled to them as they become due.

(2) Where

- (a) a plan has been terminated,
- (b) there is no approval under section 51(1) in force, and
- (c) the Superintendent considers that no or insufficient action has been taken to wind up the plan,

he may direct the administrator to allocate and distribute the assets of the plan, and the administrator shall comply with that direction.

Superintendent's  
authority  
to appoint  
administrator

**53(1)** Where the administrator cannot be located or is insolvent or there is no administrator to undertake the winding-up, the Superintendent may appoint a person to be the administrator for the purposes of the winding-up and may direct that administrator to allocate and distribute the assets of the plan.

(2) The Superintendent may appoint himself administrator for the purposes of subsection (1).



(3) The Superintendent may direct that any expenses incurred in connection with the allocation and distribution of assets under subsection (1), including his own expenses if he is appointed administrator, be paid out of the plan.

(4) An administrator shall comply with directions given him by the Superintendent under subsection (1) or (3).

Costs of  
winding-up

**54** Where a pension plan is terminated and the plan does not provide for payment of the expenses incurred in winding up the plan, then, notwithstanding the plan, the Superintendent may in writing permit such expenses of winding up as he considers reasonable in the circumstances to be paid out of the plan in priority to benefits.

Effect of disposal  
of business

**55(1)** Where

(a) an employer, in this section called the “predecessor employer”, disposes of all or part of his business or undertaking or of its assets,

(b) an employee of the predecessor employer becomes an employee of the person acquiring the business, undertaking or assets, in this section called the “successor employer”, and

(c) the successor employer does not assume responsibility for the accrued benefits of the predecessor employer’s plan,

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

(2) Irrespective of whether the successor employer has or has not assumed responsibility for the accrued benefits of the predecessor employer’s plan and notwithstanding the change in employer, for the purposes of determining

(a) the length of employment with respect to any eligibility condition of the successor employer’s plan for the purposes of section 22,

(b) whether a pension vests in a member under a plan of either employer, or

(c) whether the commuted value of a pension under a plan of either employer is locked in under section 27,

the employee’s employment with both employers shall be taken into account on the basis that the change in employers does not in itself effect any break in employment.

(3) Where

(a) a transaction described in subsection (1) takes place,

(b) an employee of the predecessor employer becomes a member of a pension plan of the successor employer, and

(c) the predecessor employer wishes to terminate and wind up his plan in so far as it relates to that employee and notifies the Superintendent to that effect,

the predecessor employer's plan is terminated in so far as it relates to that employee.

(4) An employee referred to in subsection (3) is not entitled to a lump sum payment representing the commuted value of his pension under the predecessor employer's plan, and the commuted value shall be transferred in accordance with the conditions specified in and in relation to section 30(1) and (2).

## PART 5

### MISCELLANEOUS

Effect of plan amendment

**56(1)** An amendment to a pension plan, or, where one plan has been adopted in place of another, the plan so adopted, may not reduce

(a) a person's benefits in respect of employment on or after the initial qualification date and before the effective date of the amendment or the adoption of the other plan, or

(b) the commuted value of a person's benefits in respect of remuneration, employment or membership before January 1, 1966 by reference to his pension under the *Canada Pension Plan* (Canada) or the *Quebec Pension Plan* (Quebec).

(2) Unless the plan so provides, subsection (1)(a) does not apply to that portion of the benefits that is based on the earnings of a member projected in relation to a period after the date of the amendment or adoption of the other plan.

Transfer of assets

**57(1)** A transfer of assets of a pension plan may not be made from that plan to another plan unless

(a) the transfer is made pursuant to section 29(2), 30, 31(4) or 55(4),

(b) a copy of a transfer agreement relating to the transfer has been filed under section 16(2), or

(c) the written consent of the Superintendent has been obtained.

(2) A transfer of assets of a plan may not be made from one fund holder of that plan to another fund holder of that plan, other than by way of providing benefits under the plan, unless

(a) the contract or trust agreement of the other fund holder has been filed with the Superintendent and the plan and any relevant amendment providing for the transfer has been registered, or

(b) the written consent of the Superintendent has been obtained.

(3) Notwithstanding subsection (1), an administrator shall not, without the consent of or being directed to do so by the Superintendent, transfer money out of the plan under section 30, 31(4) or 55(4) or to insure a benefit through an insurance company, if the transfer would impair the solvency of the plan.

	<p>(4) The Superintendent may in writing consent to or direct a transfer referred to in subsection (3) on such terms and conditions as he considers appropriate in the circumstances.</p> <p>(5) The administrator shall immediately comply with a direction under subsection (4).</p>
Surplus assets	<p><b>58</b> An administrator or a fund holder shall not pay or transfer any surplus assets of a pension plan to an employer unless</p> <ul style="list-style-type: none"> <li>(a) the plan provides for the payment or transfer,</li> <li>(b) the administrator has complied with the prescribed conditions, and</li> <li>(c) the administrator has received written notice from the Superintendent stating that, following the payment or transfer of the surplus assets, the plan will, in the Superintendent's opinion, continue to meet the solvency tests.</li> </ul>
Prohibition and effect of assignment, etc.	<p><b>59(1)</b> Benefits, money that has been transferred under section 29(2), 30, 31(4) or 55(4) or pursuant to a similar transfer made before January 1, 1987 and money earned by such transferred money may not be assigned, charged, alienated or anticipated and are exempt from execution, seizure or attachment, and any transaction purporting to assign, charge, alienate or anticipate benefits or any such money is void.</p> <p>(2) Any transaction purporting to effect a withdrawal, surrender or commutation referred to in section 27(1) is void.</p> <p>(3) Where this Act requires an amount to be withheld, deducted, paid or credited, any agreement or arrangement by the person on whom the requirement is imposed not to withhold, deduct, pay or credit that amount is void.</p>
Matrimonial property orders	<p><b>60</b> Subject to section 59(1), the entitlement of any person to receive a benefit under a pension plan is subject to entitlements 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.</p>
Evidence of entitlement to benefit	<p><b>61</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 administrator that he is so entitled, and the administrator may require the claimant to provide such evidence, including evidence by way of affidavit, declaration or certificate, as the administrator requires to have the claim established.</p>
Regulations	<p><b>62(1)</b> The Lieutenant Governor in Council may make regulations</p> <ul style="list-style-type: none"> <li>(a) respecting reviews of plans under section 6(4);</li> <li>(b) enabling the Superintendent to require administrators to provide certified and consolidated copies of pension plans or any documents referred to in section 12(1)(a)(ii) to (v), with all amendments to date incorporated;</li> </ul>

(c) governing fees for the filing of returns under section 7(3)(a) and for applications for registration;

(d) respecting the conditions on which transfers of money to an RRSP under sections 30, 31(4) and 55(4) and any subsequent transfers to an RRSP of money so transferred are to be made to ensure that the eventual payment from the RRSP be made only in the form of a pension that would otherwise be required by this Act or a benefit referred to in section 37(3);

(e) establishing time limits for the exercise of options relating to benefits;

(f) respecting the manner of computing contributions and benefits and the determination of the commuted value of benefits;

(g) notwithstanding sections 22 to 24, respecting the benefits and membership of a former member of a pension plan who has commenced to receive his pension and recommences employment covered by that plan;

(h) respecting the funding of pension plans;

(i) respecting the investment of assets of plans and requiring the auditing of investments and the submission of lists of investments, audited reports on investments and copies of investment policies and procedures in relation to pension plans;

(j) authorizing the Superintendent to make an order requiring the repayment to a plan of money transferred in contravention of section 57(3) or of the terms and conditions referred to in section 57(4), and providing for the enforcement of the order;

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

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

(2) A regulation made in reference to section 1(1)(e), 30(5) or 37(1) is, if so provided in the regulation, effective from a date before its filing under the *Regulations Act*.

(3) Regulations may be specific or general in their application and may make different provision for different kinds, categories or classes of persons, plans or benefits.

Service of  
documents

**63** A document served under section 18, 19(2) or (3), 46 or 65(2)(b) must 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 residence with some person who is or appears to be at least 16 years of age, or

(ii) by mailing it to him by registered or certified mail to his last known postal 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 office of the corporation stated on the most recent return under section 7(3)(a);
- (c) in the case of the Superintendent,
  - (i) by leaving it for him at his office, or
  - (ii) by mailing it to him by registered or certified mail to his office.

Proof of date  
of service

**64** Where, in the course of any proceeding or prosecution under this Act, it is necessary to prove the date of service of a document referred to in section 63,

- (a) if service is effected personally or by leaving the document somewhere pursuant to section 63, the actual date on which it is so served is the date of service, or
- (b) if service is effected by registered or certified mail, service shall be deemed to have been made 5 days after the date of mailing.

Inspection and  
production of  
documents

**65(1)** In this section, “authorized person” means the Superintendent or a person appointed under the *Public Service Act* and designated by the Superintendent in writing for the purposes of this section as his authorized representative.

(2) An authorized person may, at any reasonable time and for the purpose of determining whether or not there has been a breach of this Act or of a pension plan,

- (a) inspect the records
  - (i) respecting a pension plan, that are kept by an administrator, a non-administrator employer, a fund holder or any other person, or
  - (ii) respecting any money that has been transferred under section 30, 31(4) or 55(4), that are kept by any person responsible for an RRSP or by an insurance company responsible for providing a pension, that is holding any such money,

that are relevant to the making of that determination, and

(b) by written notice served on a person referred to in clause (a), demand that he provide or produce to the authorized person, within such reasonable period as is stipulated in the notice,

- (i) those records for the purposes of the inspection, or
- (ii) any information that is relevant to the making of that determination, in a form acceptable to the authorized person and whether or not in connection with an inspection under this subsection.

(3) For the purposes of an inspection under subsection (2)(a), the authorized person may, if he has reasonable grounds to believe that the records are likely to be found in the premises of the person referred to in that clause, enter into those premises, but, if those premises are a dwelling-house, he may not enter without the consent of the occupant, except under the authority of a warrant under section 13 of the *Summary Convictions Act*.

(4) Where a person has been served with a notice to provide or produce information or records under subsection (2)(b) and has not provided or produced the information or records in accordance with the notice, the Superintendent may apply to the Court of Queen's Bench by notice of motion supported by an affidavit for an order to compel the person to provide or produce the information or records.

(5) The Court may make the order if it is satisfied that

(a) the information or records are in the possession of or under the control of the person, and

(b) the information or records are relevant to the making of the determination referred to in subsection (2),

and may make the order subject to any conditions that the Court considers appropriate.

(6) An authorized person to whom records are provided or produced pursuant to the demand under subsection (2)(b) or pursuant to an order under subsection (5) may, on giving a receipt for them, remove those records for the purpose of making copies of or extracts from them.

(7) If records are removed under subsection (6), the authorized person shall, within a reasonable period, return the records.

(8) No person shall prevent or obstruct, or attempt to prevent or obstruct, an authorized person from doing anything that the authorized person is authorized by this section to do.

(9) Failure to comply with a demand under subsection (2)(b) is not an offence against this Act.

Civil  
enforcement

**66** The Superintendent may apply to the Court of Queen's Bench by notice of motion supported by an affidavit for an order

(a) compelling a person to do anything that that person is required by this Act or a pension plan to do, or

(b) prohibiting a person from

(i) doing anything that that person is prohibited by this Act or a pension plan from doing, or

(ii) doing anything in relation to a pension plan that he is prohibited by law from doing.

Offences and penalties

**67(1)** A person who

- (a) contravenes this Act, or
- (b) to avoid compliance with this Act,
  - (i) destroys, alters, mutilates, secretes or otherwise disposes of records,
  - (ii) makes a false or misleading statement or entry in any records, or
  - (iii) fails to state anything in any records,

is guilty of an offence and liable to a fine not exceeding \$100 000.

(2) Where 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 penalty provided for the offence.

Limitation period for prosecution

**68(1)** A prosecution under this Act may not be commenced later than 2 years after the time when the subject-matter of the prosecution first came to the knowledge of the Superintendent.

(2) A statement by the Superintendent as to the time when the subject-matter of the prosecution first came to the knowledge of the Superintendent is admissible in evidence in respect of the prosecution as prima facie proof of the facts stated in it without proof of the appointment or signature of the Superintendent.

Transitional

**69(1)** *Notwithstanding section 3, subsisting reciprocal agreements entered into under the former Act between the Government and other governments are valid according to their terms until rescinded, in so far as they are not varied by an agreement under that section.*

(2) *Where a pension plan was established before January 1, 1987, the administrator shall ensure that the copies referred to in section 12(1)(a) have been filed with the Superintendent before March 2, 1987.*

(3) *The administrator of a pension plan established before January 1, 1987 shall ensure that*

*(a) in respect of each amendment made before January 1, 1987, the copy referred to in section 13(1) has been filed with the Superintendent before March 2, 1987, and*

*(b) a certified copy of each transfer agreement within the meaning of section 16(1) relating to the plan and entered into before January 1, 1987 is filed with the Superintendent before March 2, 1987.*

(4) *Notwithstanding section 20(1) and (2) or any other provision of this Act, amendments that are required to bring into compliance with this Act a pension plan that immediately before January 1, 1987 was registered under the former Act may be filed for registration with the Superintendent at any time during 1987, but section 20(4) applies to the plan.*

(5) *For the purposes of section 4, subsection (4) of this section is a prescribed provision of this Act.*

*(6) Where a pension plan was terminated before January 1, 1987, the entitlement referred to in section 25 is vested in each person who was a member immediately before the termination.*

*(7) Subject to any regulations made with reference to section 42(1), the pension payable under subsection (6), other than the portion accruing from additional voluntary contributions, must not be less than the pension payable under section 26(1), (2) or (4).*

*(8) Documents filed under the former Act and referred to in this section shall be deemed for the purposes of this Act to be filed under this Act.*

Repeal

**70** *The Pension Benefits Act is repealed.*

Coming  
into force

**71** *This Act comes into force on January 1, 1987.*