

1999 BILL 30

Third Session, 24th Legislature, 48 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 30

**EMPLOYMENT PENSION PLANS
AMENDMENT ACT, 1999**

MRS. TARCHUK

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

Bill 30
Mrs. Tarchuk

BILL 30

1999

EMPLOYMENT PENSION PLANS AMENDMENT ACT, 1999

(Assented to , 1999)

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

Amends SA
1986 cE-10.05

1 The *Employment Pension Plans Act* is amended by this Act.

2 Section 1(1) is amended

(a) in clause (a) by adding “optional ancillary contributions and” after “except”;

(b) in clause (b)(i) by striking out “or” at the end of paragraph (A) and adding the following after paragraph (A):

(A.1) a multi-unit plan, the body referred to in section 5.01(1), or

(c) by adding the following after clause (b):

(b.01) “ancillary benefit” means a benefit of a kind provided pursuant to section 33.1(1);

(d) in clause (b.1) by adding “or excess assets, as the case may be” after “surplus assets”;

(e) by repealing clause (c) and substituting the following:

(c) “benefit” means a pension or any other benefit under a pension plan, and includes a return of contributions to or in respect of a member or former member, any payment in a series of payments that

Explanatory Notes

1 Amends chapter E-10.05 of the Statutes of Alberta, 1986.

2 Section 1(1) presently reads in part:

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 board of trustees referred to in section 5.1 or, if there is no such board, the employer,

or

constitutes a benefit and future entitlements to any such benefit, but does not include a refund of surplus assets;

(f) by repealing clauses (e) and (f) and substituting the following:

(e) “commuted value” means, in relation to benefits that a person has a present or future entitlement to receive

(i) under a defined benefit provision, the actuarial present value of those benefits determined, as of the time in question,

(A) on the basis of actuarial assumptions and methods that are adequate and appropriate and in accordance with generally accepted actuarial principles,

(B) in accordance with the conditions, if any, that are prescribed, and

(C) in a manner that is acceptable to the Superintendent,

or the money representing that value, or

(ii) under a defined contribution provision, a locked-in retirement account or a retirement income arrangement, the money representing the value of the person’s account as of the time in question;

(f) “Court” means the Court of Queen’s Bench;

(g) by repealing clause (h);

(h) in clause (k)

(i) by adding “who is” after “individual”;

(ii) by striking out “province who” and substituting “province and”;

(i) in clause (l) by adding “or, if the plan so provides, a multi-unit plan” after “multi-employer plan”;

(j) by adding the following after clause (m):

(m.1) “excess assets” means, with respect to the prescribed assets and liabilities of a pension plan that is not

- (ii) *where a person has been appointed administrator of a plan by the Superintendent under section 53(1) or (2), that person;*
- (b.1) *“assets”, in relation to a pension plan, includes its surplus assets;*
- (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;*
- (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;*
- (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;*
- (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;*
- (s) *“interest” means interest, gains and losses provided for under section 28;*

being wound up, the amount, if any, by which those assets exceed those liabilities;

- (m.2) “excess contributions” means the excess, if any, of the value of a member’s contributions made in respect of a plan’s defined benefit provisions in the relevant period, with interest, over ½ of the commuted value of the pension accruing from those provisions in respect of his membership in that period;

(k) in clause (s) by adding “(1) to (4)” after “28”;

(l) in clause (t) by striking out “, in the case of a multi-employer plan, a former employee,” and substituting “former employee”;

(m) by repealing clause (u) and substituting the following:

- (u) “multi-unit plan” means a pension plan administered for employees of 2 or more employers that is not designated by the Superintendent under clause (gg.1) as a specified multi-employer plan;

(n) by adding the following after clause (v):

- (v.1) “optional ancillary contributions” means contributions made voluntarily by a member under a defined benefit provision that are additional to those that he is required to make to attain his pension and as a consequence of which optional ancillary benefits selected for provision under the plan must be provided with respect to him, and includes compounded interest on those contributions;

(o) by repealing clause (w) and substituting the following:

- (w) “participating employer” means,
- (i) in relation to a specified multi-employer plan, an employer who is required under a collective agreement or participation agreement, or
 - (ii) in relation to a multi-unit plan, an employer who is required under a participation agreement referred to in section 5.01(2),

to make contributions to that plan;

- (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;*
- (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, and includes any benefits that are ancillary to those payments and future rights to any such payments or ancillary benefits;*
- (ee.1) *“retirement income arrangement” means*
 - (i) *a retirement income fund within the meaning of the Income Tax Act (Canada) that is registered under that Act and that meets the prescribed conditions, or*
 - (ii) *any other arrangement prescribed to be a retirement income arrangement;*
- (ff) *“RRSP” means a retirement savings plan within the meaning of the Income Tax Act (Canada) that is registered under that Act;*
- (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;*

(p) by repealing clause (x) and substituting the following:

- (x) “pension” means a benefit in the form of a series of payments that continues for the life of a former member, whether or not it is thereafter continued to any other person, and includes future entitlements to any such payments, but does not include ancillary benefits unless they become part of a pension as a result of the application of section 33.1(2);

(q) by adding the following after clause (aa):

- (aa.1) “plan for specified individuals” means a pension plan whose only members are specified individuals for the purposes of the prescribed provision of the tax Act;

(r) in clauses (ee.1)(i) and (ff) by striking out “*Income Tax Act* (Canada)” and substituting “tax Act”;

(s) by adding the following after clause (gg):

- (gg.1) “specified multi-employer plan” means a pension plan administered for employees of 2 or more employers and designated by the Superintendent as a specified multi-employer plan;

(t) by repealing clause (hh) and substituting the following:

- (hh) “spouse” means, in relation to another person,
 - (i) a person who, at the relevant time, was married to that other person and had not been living separate and apart from that other person for 3 or more consecutive years, or
 - (ii) if there is no person to whom subclause (i) applies, a person of the opposite sex who had lived with that other person in a marriage-like relationship for the 3-year period immediately preceding the relevant time;

(u) by repealing clause (kk) and substituting the following:

- (kk) “surplus assets” means, with respect to a pension plan that is being wound up, the amount, if any, by which the plan's assets exceed its liabilities, as stated in the report filed under section 51(3) or,

- (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;*
- (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.*

where applicable, the more recent report filed under section 51(4);

(kk.1) “tax Act” means the *Income Tax Act* (Canada), and includes the regulations under that Act;

(v) in clause (ll) by striking out “, 46 or 55(3)” and substituting “or 46”;

(w) in clause (qq) by striking out “and” at the end of subclause (i) and adding the following after subclause (i):

(i.1) in relation to a member of a multi-unit plan, years of employment for a continuous period of time with one employer or, if the plan so provides, with more than one employer, including any prescribed break in such employment, and

3 Section 1 is amended by adding the following after subsection (6):

(7) For the purposes of any provision of this statute giving the Superintendent any administrative or enforcement power relating to another person, references to an action include references to an omission to act.

(8) The Lieutenant Governor in Council may, for the purposes of this statute or specified provisions of this statute, by regulation define any expression used but not defined in this statute, in which case the expression has the meaning so defined.

4 The following is added after section 1:

Interpretation
re employment
outside
Alberta and
designated
provinces

1.01(1) Where a member terminates his membership while employed in a jurisdiction outside Alberta and the designated provinces and his last period of employment within Alberta and the designated provinces before the termination of membership was in Alberta, he is deemed for the prescribed purposes of this Act

(a) to have terminated his membership while employed in Alberta, and

(b) to have performed years of continuous employment while a member and employed under those circumstances.

3 Additional interpretation provisions.

4 Additional interpretation provisions respecting “foreign” employment.

(2) The Lieutenant Governor in Council may make regulations adapting any provisions of this statute dealing with a person's termination of membership while employed in Alberta or years of continuous employment to include the employment outside Alberta and the designated provinces contemplated by subsection (1).

(3) No enactment forming part of this statute is to be construed in itself as constituting a prohibition against a plan's allowing employment outside Alberta and the designated provinces to be taken into account for benefit and vesting purposes.

5 The following is added after section 3:

Fees

3.1 The Superintendent may charge such fees as are established in writing by the Minister with respect to services, information or documents provided by the Superintendent other than in the administration of this Act.

Directions for compliance

3.2(1) If the Superintendent considers that a pension plan does not comply with this Act or is not being administered in accordance with this Act or the plan, the Superintendent may direct the person responsible, in writing,

(a) to cease or refrain from doing whatever constitutes the non-compliance, or

(b) to do whatever the Superintendent considers necessary to remedy the situation,

or both, within 60 days or such longer period as the Superintendent specifies in the direction.

(2) If the Superintendent considers that an administrator, employer or any other person with responsibilities under this Act is, in respect of a pension plan, doing or about to do anything that is contrary to safe and sound pension administration practices, the Superintendent may direct that person, in writing,

(a) to cease or refrain from doing that thing, or

(b) to do whatever the Superintendent considers necessary to remedy the situation,

or both, within 60 days or such longer period as the Superintendent specifies in the direction.

5 Power of Superintendent to charge certain fees and to direct compliance.

(3) The Superintendent shall issue a direction under subsection (1) and meet the requirements of this section before cancelling a plan's registration under section 17(1).

(4) Notwithstanding subsection (1) or (2), if the Superintendent considers that the minimum length of time required by that subsection for compliance might prejudice the interests of the members, former members or any other persons entitled to benefits, the direction may provide that such compliance must be effected immediately or before the expiration of such period of less than 60 days as is specified in the direction.

(5) The Superintendent shall, in a direction under subsection (1) or (2), provide the person to whom it is addressed with an opportunity to make written representations to the Superintendent about it within such reasonable period as is specified in it.

(6) On receiving any representations made under subsection (5) and after reviewing them, the Superintendent shall in writing confirm, vary or revoke the direction.

(7) A person served with a direction under subsection (1) or (2) shall comply with it and, where subsection (4) applies, shall do so within the time limit specified, regardless of the person's right to the opportunity referred to in subsection (5).

6 Section 5(1) is amended by adding "under a trust deed or agreement or similar document acceptable to the Superintendent" after "constituted".

7 The following is added after section 5:

Administration
and
organization of
multi-unit
plans

5.01(1) A multi-unit plan must have a board of trustees or other similar body constituted under a trust deed or agreement or similar document acceptable to the Superintendent to administer the plan or there must be filed with the Superintendent an agreement among all the participating employers designating one of them to administer the plan.

(2) With respect to a multi-unit plan, the participating employers must execute one or more participation agreements that meet the prescribed conditions.

6 Section 5(1) presently reads:

5(1) A multi-employer plan must have a board of trustees or other similar body constituted to administer the plan.

7 Administration and organization of multi-unit plans.

8 Section 5.1 is amended by adding “or a multi-unit plan” after “multi-employer plan”.

9 Section 7 is amended

(a) in subsection (3)

(i) by repealing clause (a) and substituting the following:

(a) at the times prescribed and in the form required by the Superintendent,

(i) in the case of a plan for specified individuals, a certificate executed by the administrator stating that the plan has not been terminated and that it complies with this Act, or

(ii) in the case of any other plan, returns containing information respecting

(A) the administration of the plan,

(B) contributions to it,

(C) membership in it, and

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

(ii) in clause (b) by adding “, other than a plan for specified individuals,” after “a plan”;

8 Section 5.1 presently reads:

5.1 A pension plan that is not a multi-employer plan may have a board of trustees constituted to administer the plan if there is a collective agreement between the employer and a trade union that represents members of the plan, and if that agreement

- (a) requires that there be a board of trustees for the plan and places full authority and responsibility for the administration of the plan on the board of trustees,*
- (b) sets out, whether specifically or generally, some or all of the terms to be included in the plan, and*
- (c) contains provisions that have the effect of limiting the employer's responsibilities and authority with respect to the plan to remitting contributions in accordance with the agreement and, if applicable, having the right to make appointments to the board of trustees.*

9 Section 7 presently reads in part:

(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,**
- (b) in the case of a plan that contains a defined benefit provision, 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***

(iii) by striking out “and” after clause (b), adding “, and” at the end of clause (c) and adding the following after clause (c):

(d) in the case of a specified multi-employer plan, within the prescribed period after the administrator receives them, the audited financial statements of the plan.

(b) by repealing subsection (6).

10 Section 8 is amended

(a) in subsection (1) by adding the following after clause (i):

(j) to each member who enters into an agreement referred to in section 37.1(1), the prescribed information;

(k) to a member-spouse and a non-member-spouse within the meaning of section 44.1(1)(c) and to the Court, the prescribed information in relation to a division or distribution of a benefit under Part 3.1.

(b) in subsection (4)

(i) in clause (e) by striking out “returns” and substituting “certificates or returns, as the case may be,”;

(ii) in clause (f) by striking out “, or to the extent that section 7(6) applies, the 2 latest actuarial valuation reports,”;

(c) in subsection (4.1) by adding “or excess assets” after “surplus assets”;

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,

and

(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

(c) within the prescribed period after a request to the administrator is made in writing by the Superintendent and 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.

(6) Subsection (3)(b)(ii) does not apply to the extent that an actuarial valuation report is filed which in effect contains the required cost certificate.

10 Section 8 presently reads in part:

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:

(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

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

(f) the 2 most recent cost certificates, or to the extent that section 7(6) applies, the 2 latest actuarial valuation reports, filed under section 7(3)(b), and

(4.1) Where it is proposed that surplus assets of a pension plan will be paid or transferred to an employer, the administrator shall, within the period prescribed and without charge, permit any person entitled to a benefit or such a person's agent to examine any provision of the plan that is or ever was in force.

(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

- (d) in subsection (5)(a.2) by striking out “multi-employer plan not established or maintained pursuant to contributions required under a collective agreement and” and substituting “multi-unit plan,”.**

11 Section 12 is amended

(a) in subsection (1)

- (i) in clause (a)(v) by adding “governance or” before “administration”;**

- (ii) by repealing clause (b)(i) and substituting the following:**

- (i) a valuation report and cost certificate referred to in section 7(3)(b)(i) and (ii), whether required to be filed under section 7(3) or not, and**

- (b) by repealing subsection (2) and substituting the following:**

- (2) An application for registration of a plan must be in the form and contain the information required by the Superintendent.**

12 Section 13 is amended

- (a) in subsection (1) by striking out “60 days after the amendment is made” and substituting “the prescribed period”;**

- (b) in subsection (3) by striking out “The” and substituting “Subject to section 56, the”.**

- (a.2) in the case of a multi-employer plan not established or maintained pursuant to contributions required under a collective agreement and where the person requests that it take place at the establishment of any participating employer that is nearest to that person's residence, at that establishment, or*

11 Section 12 presently reads in part:

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, and

(iv) repealed 1992 c13 s12,

(v) any other prescribed document that relates to the administration of the plan,

(b) a copy of

(i) the valuation report and cost certificate referred to in section 7(3)(b), and

(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).

12 Section 13 presently reads in part:

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.

(3) The Superintendent shall register an amendment to the plan filed with him for registration and issue to the administrator a notice of registration in respect of the amendment if it complies

13 Section 17 is amended

- (a) in subsection (1) by striking out “The” and substituting “Subject to section 3.2, the”;**
- (b) in subsection (2) by striking out “may” and substituting “shall”.**

14 Section 20(3)(c) is amended by striking out “32(6)(a),”.

15 Section 21 is amended

- (a) in subsection (1) by repealing clause (g) and substituting the following:**

- (g) the treatment of excess assets and surplus assets,
and

- (b) by adding the following after subsection (2):**

- (3) A pension plan must provide that where a lump sum is payable to any person, then, at the option of that person, to the extent that the tax Act allows, that payment may be transferred to an RRSP.

16 Section 22 is amended

- (a) in subsection (2)**

with this Act and the administrator has complied with this Act in respect of the amendment.

13 Section 17 presently reads:

17(1) 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 administrator has not complied with this Act or the plan,

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.

(2) The Superintendent may cancel the registration of a registered plan that has been terminated and wound up in accordance with this Act.

14 Section 20(3) presently reads in part:

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

(c) sections 21(2), 22(3), (4), (6), (7) and (8), 23(3), 26(6), 27(2), 30(6), 32(6)(a), 34(1) and (4), 36(1.1) and (2), 38(1) and (4) and 40(4).

15 Section 21(1) presently reads in part:

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

(g) the treatment of surplus assets during the continuation of the plan, and

16 Section 22 presently reads in part:

22(1) A pension plan that has not been terminated must cover a prescribed class of employees of the employer, and each employee of that employer who falls within that prescribed class

(i) in clause (a)(ii) by adding “or, if the tax Act does not allow the employee to become a member then, such later date as it does allow the employee to become a member” **after** “employer”;

(ii) in clause (b)(i) by adding “or the later date” **after** “employment”;

(b) in subsection (9) by adding “or a multi-unit plan” **after** “multi-employer plan”.

17 Section 23 is amended

(a) in subsection (2) by adding “but before January 1, 2000” **after** “1987”;

(b) by adding the following after subsection (2):

(2.1) Where a member has been a member for a continuous period of at least 2 years or, in the case of a specified multi-employer plan, has had 2 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, 2000.

is entitled to become a member of the plan on or at any of the prescribed times 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 at least 35% of the Year's Maximum Pensionable Earnings in each of the 2 consecutive calendar years occurring immediately before

(i) the employee's completion of the employment referred to in clause (a)(i) or (ii), as the case may be, or

(ii) the year in which the employee applies to become a member of the plan.

(9) For the purposes of subsection (1), different employers in a multi-employer plan may have different prescribed classes of employees covered by the plan.

17 Section 23(2) presently reads:

(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.

18 Section 26 is amended

(a) in subsection (3)

(i) in clause (a) by adding “but before January 1, 2000” **after** “1987”;

(ii) in clause (b) by adding “but before January 1, 2000” **after** “that date”;

(b) by adding the following after subsection (3):

(3.1) The pension payable under section 23(2.1) 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, 2000, 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, 2000 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.

(c) in subsection (4) by striking out “or (3)(b)” and substituting “, (3)(b) or (3.1)(b)”;

(d) in subsection (5) by adding “, (3.1)” after “(3)”.

19 Section 27 is amended

(a) in subsection (1) by striking out “31(3) and (5) and 37” and substituting “31(2) and (7), 37 and 37.1”;

(b) in subsection (3) by adding “, optional ancillary contributions or any excess contributions paid to a member or former member as a result of a conversion of a defined benefit provision to a defined contribution provision” after “contributions”;

(c) by adding the following after subsection (3):

(3.1) Notwithstanding subsection (3), subsections (1) and (2) apply where, under a defined benefit provision of a specified multi-employer plan, a member of that plan who has not accrued the maximum pension permitted under the plan in a fiscal year of the plan and in whom an entitlement to receive a pension has vested, has made

18 Section 26 presently reads in part:

(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).

19 Section 27 presently reads in part:

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 lifetime

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

contributions in order to increase that pension accrual within the limit permitted for that year under the plan.

(d) in subsection (4) by adding “(including subsection (3.1))” after “(2)”;

(e) by repealing subsection (11) and substituting the following:

(11) Where a member of a multi-unit plan has moved from one participating employer to another, all his contributions to the plan shall be returned to him with interest, but only when he is no longer employed by any participating employer, taking into account any prescribed breaks in employment, and only if an entitlement to receive a pension has not vested in him.

(12) A plan may provide, subject to section 22.1(4) and (5) and regulations made in respect of section 55, that on the termination of his membership or of the plan itself while employed in Alberta, a member in respect of whom an entitlement to receive a pension has vested under the terms of the plan itself may receive as a lump sum payment, to the extent that there are any vesting requirements set out in section 23(1), (2) and (2.1) that he has not met, the commuted value of the portion of the pension mentioned in that subsection or those subsections in respect of which those requirements have not been met.

20 Section 28 is amended

(a) in subsection (1)

(i) by striking out “subsections (2) and (3)” and substituting “subsections (3) and (3.1)”;

(ii) by striking out “plan” and substituting “provision”;

(iii) by adding “or optional ancillary contributions,” after “voluntary contributions”;

(b) in subsection (2) by striking out “plan or a defined contribution provision of a defined benefit plan” and substituting “provision”;

(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.

(11) A plan may provide, subject to sections 22.1(4) and (5) and 55(4), that a member who has not reached pensionable age 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.

20 Section 28 presently reads in part:

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, gains and losses 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, employer and 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

(c) in subsection (3) by striking out “defined benefit plan” and substituting “plan containing only defined benefit provisions”;

(d) by adding the following after subsection (3):

(3.1) A plan that provides for optional ancillary contributions must provide that those 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.

21 Section 29 is amended

(a) by repealing subsection (1) and substituting the following:

Minimum
employer
contributions
for funding of
pension

29(1) Where a member was required to make contributions in order to attain a pension under a defined benefit provision, not more than ½ of the commuted value of that pension, so far as it relates to his membership on and after January 1, 1987, may be provided by those contributions, with interest, made on or after that date.

(b) in subsection (2) by repealing the portion preceding clause (a) and clause (a) itself and substituting the following:

(2) Where, on the termination of a member’s membership in a plan containing a defined benefit provision, on the termination of such a plan, on the commencement of a member’s pension from such a plan or on the death before pension commencement of a member of such a plan, while employed in Alberta, there are excess contributions relating to any period on and after January 1, 1987, they shall, at the option of the person referred to in clause (a), be

(a) returned to the member or to a person who is to receive a benefit under section 31, as the case may be,

(c) by repealing subsection (3);

(d) in subsection (4)

(i) by striking out “benefit plan” and substituting “benefit provision”;

(ii) in clause (a) by striking out “defined benefit pension plan” and substituting “plan containing a defined benefit provision”;

additional voluntary 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.

21 Section 29 presently reads:

29(1) Where a member was required to make contributions in order to attain a pension under a defined benefit plan, not more than ½ 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 ½ 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) if the plan so provides, transferred to an insurance business 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

- (e) in subsection (5) by striking out “plan” wherever it occurs and substituting “provision”;
- (f) in subsection (6) by striking out “multi-employer defined benefit plan” and substituting “defined benefit provision of a specified multi-employer plan”;
- (g) by repealing subsection (7);
- (h) in subsection (8) by adding “or optional ancillary contributions” after “contributions”.

22 Section 30(3) is amended by striking out “that subsection” and substituting “subsection (1)”.

23 Section 31 is repealed and the following is substituted:

Pre-retirement
death benefits

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

- (a) to his surviving spouse, or
- (b) if there is no surviving spouse, to his designated beneficiary or, if there is no valid designation of beneficiary, to the personal representatives of his estate in their representative capacity.

(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 permitted 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).

(7) Where subsection (1) applies and the plan is amended to provide in effect that benefits on or after the date of the amendment will be determined for all or some members under a defined contribution provision, then subsection (1) shall be applied with respect to the benefits accrued up to the date when the amendment becomes effective so far as it relates to those members.

(8) This section does not apply with respect to additional voluntary contributions.

22 Section 30 presently reads in part:

(3) Subject to subsection (3.1), a member of a multi-employer plan who has not completed at least 350 hours of employment during the period of the last 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.

23 Section 31 presently reads:

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

(2) If an entitlement to receive a pension would not have vested in the deceased had he terminated his membership immediately before his death, the benefit under subsection (1)(a) or (b) is a lump sum payment of the deceased's contributions with interest.

(3) Additional voluntary contributions are to be paid as lump sums under subsection (1).

(4) Subject to section 37(1) and (3), if an entitlement to receive a pension would have vested in the deceased had he terminated his membership immediately before his death, or had vested in the deceased because the plan had been terminated, and there is a surviving spouse, the benefit that the surviving spouse is to receive under subsection (1)(a) is a pension whose commuted value is not less than the sum (so far as applicable) of

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

(b) the greater of

(i) 60% of the commuted value of the pension in respect of the deceased's membership on and after January 1, 1987 and before January 1, 2000, plus excess contributions relating to that period, and

(ii) the deceased's contributions to the plan made on and after January 1, 1987 but before January 1, 2000, with interest,

and

(c) the commuted value of the pension with respect to the deceased's membership, plus excess contributions, relating to any period on and after January 1, 2000.

(5) If an entitlement to receive a pension would have vested in the deceased had he terminated his membership immediately before his death, or had vested in the deceased because the plan had been terminated, and there is no surviving spouse, the benefit under subsection (1)(b) is a lump sum payment in the amount of

(a) with respect to the deceased's membership before January 1, 2000, his contributions made before that date, with interest, and

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 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 or that the spouse may only make the transfer if the deceased would have been entitled to make a transfer,

(a) if a member, had he terminated membership in the plan immediately before dying, or

(b) if a former member, had he been a member and had he terminated membership in the plan immediately before dying.

(b) with respect to his membership on and after January 1, 2000, the benefit specified in subsection (4)(c).

(6) 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 or that the spouse may only make the transfer if the deceased would have been entitled to make a transfer,

(a) if a member, had he terminated his membership in the plan immediately before dying, or

(b) if a former member, had he been a member and had he terminated membership in the plan immediately before dying.

(7) The surviving spouse has the same options in relation to the excess contributions referred to in subsection (4)(b)(i) and (c) as the deceased member would have had under section 29(2).

(8) A surviving spouse may receive as a lump sum payment any part of a pension payable to the spouse that arises from the member's and the employer's contributions made before January 1, 1987 if the plan so provides in respect of a member, and if the deceased would have been entitled to receive as a lump sum payment the part of the pension in the applicable circumstances set out in subsection (6)(a) or (b).

(9) A plan must provide that if a surviving spouse dies before pension commencement without having elected or become entitled to make the transfer under subsection (6), a lump sum payment equal to at least that payable under subsection (5) (in the circumstances in which it is applicable) is to be paid to the spouse's designated beneficiary or, if there is no such person living, the personal representatives of the spouse's estate in their representative capacity.

(10) The pension payable to a surviving spouse under this section is payable on or after the date that is 10 years prior to the date when the spouse reaches the plan's pensionable age.

24 Section 32(6)(a) is repealed.

(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.

(6) A plan must provide that if a spouse dies before pension commencement without having elected or become entitled to make the transfer under subsection (4), an amount equal to at least the amount of the member's contributions with interest is to be paid to the spouse's designated beneficiary or, if there is no such person living, the spouse's estate.

(7) A surviving spouse may commute any part of a pension payable to the spouse that arises from

(a) if the plan so provides, the member's and the employer's contributions made before 1987, or

(b) additional voluntary contributions,

if the applicable condition specified in subsection (8) is met.

(8) The condition referred to in subsection (7) is that the deceased would have had the right to commute the part of the pension,

(a) if a member, had he terminated membership in the plan immediately before dying, or

(b) if a former member, had he been a member and had he terminated membership in the plan immediately before dying.

24 Section 32(6) presently reads:

(6) This section does not apply if

Ancillary
benefits

25 The following is added after section 33:

33.1(1) A pension plan may provide, as an ancillary benefit, any of the following benefits:

- (a) disability benefits;
- (b) bridging benefits;
- (c) to the extent that they exceed the minimum requirements of this Part,
 - (i) pre-retirement death benefits,
 - (ii) early retirement benefits, and
 - (iii) postponed retirement benefits;
- (d) other benefits that are prescribed to be ancillary benefits.

(2) When and only when a member or former member meets all the eligibility requirements under the plan necessary to exercise the right to receive the ancillary benefit, that benefit becomes part of his overall benefit entitlement.

26 Section 35(7) is repealed and the following is substituted:

(7) A pension must commence not later than the last moment as of which that person is allowed to commence to receive a pension under the tax Act.

27 Section 36(2) is amended by adding “(including Part 3.1)” after “in this Act”.

28 Section 37 is amended

- (a) by repealing subsection (1) and substituting the following:

(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.

25 Ancillary benefits.

26 Section 35(7) presently reads:

(7) A pension must commence not later than the end of the calendar year in which a member or former member who is to receive it attains the age of 71 years.

27 Section 36(2) presently reads:

(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.

28 Section 37 presently reads in part:

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

Variations in
benefits

37(1) A pension plan, a locked-in retirement account or a retirement income arrangement must provide for the option of 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 prescribed conditions are met.

(b) in subsection (3)

(i) by striking out “mental or physical”;

(ii) by striking out “considerably his life expectancy”
and substituting “his life considerably”;

(c) in subsection (4) by striking out “mental or physical”;

(d) by repealing subsection (6);

(e) in subsection (7) by striking out “subsections (5) and (6)” **and substituting** “subsection (5)”;

(f) by repealing subsection (9).

29 The following is added after section 37:

Further
variation - for
reduction in
working time

37.1(1) A pension plan may provide that a member

(a) whose working time and remuneration are reduced
by agreement with his employer,

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.

(3) Subject to subsection (5), a pension plan or, where a benefit has been transferred to a locked-in retirement account or a retirement income arrangement, the locked-in retirement account or retirement income arrangement 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 terminal illness or 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 to him.

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

(6) Subsection (5) does not apply if the administrator, before the conversion, receives an order referred to in section 60 affecting the pension.

(7) In subsections (5) and (6), "administrator" includes a person who administers a locked-in retirement account or a retirement income arrangement.

(9) Where an application is made to the Superintendent along with evidence that a sum was transferred by a member or former member of a plan to a locked-in retirement account in an amount that,

(a) when combined with the money in all the person's other locked-in retirement accounts, is not sufficient to purchase a pension or a retirement income arrangement commencing at the pensionable age under that plan or, where applicable, the pension plan from which any of the money was originally transferred, or

(b) would have been commutable under subsection (1) under the provisions of the plan from which it was transferred but was not commuted,

the Superintendent may allow the amount or amounts in the locked-in retirement account or accounts to be commuted.

29 Further variation, for reduction in working time.

(b) who has not commenced to receive his pension, and

(c) who is within 10 years of attaining or has attained pensionable age,

is entitled to receive from the plan, under the prescribed conditions, a lump sum payment in the prescribed amount representing partial compensation for the reduction in remuneration for each year covered by the agreement.

(2) When the member ultimately terminates, the pension receivable is to have the prescribed adjustment made to it.

(3) Notwithstanding section 20(1), the plan may not contain provisions dealing with the lump sum payment that are more favourable than those contained in subsection (1) and the regulations made with reference to subsection (1).

30 Section 38 is amended by adding the following after subsection (3):

(3.1) An employer shall make contributions to a pension plan that are sufficient to pay for all the benefits in accordance with the tests referred to in subsection (2).

(3.2) Notwithstanding subsections (3) and (3.1), a plan for specified individuals must be funded in accordance with the plan's actuarial valuation reports, whether filed or not, and the employer shall make contributions to it to the level prescribed.

30 Section 38 presently reads in part:

(2) 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.

(3) 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).

31 Section 40 is amended

- (a) by repealing subsection (1);**
- (b) in subsections (2) and (3) by adding “or a multi-unit plan” after “multi-employer plan”;**
- (c) in subsection (4)**
 - (i) by striking out “required by subsection (2)” and substituting “in accordance with the prescribed requirements”;**
 - (ii) by striking out “that subsection” and substituting “subsection (2)”.**

32 Section 41 is amended by adding “and in a manner that a reasonable and prudent person would apply to the plan’s portfolio of investments having regard to the plan’s liabilities” after “regulations”.

33 Section 42(1) is repealed and the following is substituted:

Benefits and
assets on
winding up

42(1) Subject to sections 38(2), (3.1) and (3.2), a pension plan containing a defined benefit provision must provide on the prescribed basis, or on such other basis as the Superintendent considers reasonable and equitable in the circumstances and consents to in writing,

- (a)** for the methods of allocation and distribution of the assets of the plan at the termination of and in the winding-up of the plan in the event that the plan’s assets are not sufficient to pay all benefits at the plan’s termination, and

31 Section 40 presently reads:

40(1) An employer shall make contributions to a pension plan that are sufficient to pay for all the benefits in accordance with the solvency tests.

(2) An employer shall, within the prescribed period, remit employer and member contributions due to the plan,

(a) in the case of a multi-employer plan, to the administrator, and

(b) in the case of any other plan, to the fund holder.

(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.

(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.

(5) Money that an employer is required to pay into a pension fund shall be treated as accruing on a daily basis.

32 Section 41 presently reads:

41 Assets of a pension plan must be invested, and the investments must be made, in accordance with the regulations.

33 Section 42(1) presently reads:

42(1) Subject to sections 38(2) and 40(1), a pension plan containing a defined benefit provision must provide on the prescribed basis, or on such other basis as the Superintendent considers reasonable and equitable in the circumstances and consents to in writing, for

(a) the reduction of benefits, and

(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,

- (b) except in the case of a specified multi-employer plan, that payments are to be made in accordance with section 48(2) or (3), as the case may be.

34 The following is added after section 44:

PART 3.1

**DIVISION AND DISTRIBUTION OF BENEFITS
ON SPOUSAL RELATIONSHIP BREAKDOWN**

Interpretation

44.1(1) In this Part,

- (a) “agreement” means a matrimonial property agreement;
- (b) “matrimonial property order” or “order” means a matrimonial property order within the meaning of the *Matrimonial Property Act*, or a similar order enforceable in Alberta of a court outside Alberta, that affects the payment or distribution of a person’s benefits;
- (c) “member-spouse” means, in relation to the pension plan in question, the spouse who is or was the member in question, and “non-member-spouse” means the other spouse;
- (d) “share” means, with respect to a member-spouse or the non-member-spouse, that person’s share of the total pre-division benefit resulting from the division under this Part and that, in the case of the non-member-spouse, is to be distributed under this Part;
- (e) “spouse” means a spouse, including a former spouse, to whom this Part applies;
- (f) “total pre-division benefit” means the total benefit, or the value of that benefit, accrued to the member-spouse immediately before the division under this Part and on which that division is to be based pursuant to this Part.

(2) References in this Part to this Part include the regulations made with reference to this Part.

in the event that the assets of the plan are not sufficient to pay all benefits in the winding-up of the plan.

34 Breakdown in spousal relationship.

Prevalence of
this Part in
relation to
benefits

44.2(1) Notwithstanding the *Matrimonial Property Act* or any other rule of law or equity to the contrary, the Court shall not make a matrimonial property order dividing or distributing a benefit or any portion of a benefit except in such a manner as complies with this Part.

(2) Nothing in subsection (1) prevents the Court from distributing, under the *Matrimonial Property Act*, property that is not a benefit in a manner that takes account of how a benefit is to be divided or distributed in compliance with this Part.

Application

44.3(1) This Part applies with respect to the division and distribution of benefits where, as between a member-spouse and the non-member-spouse, a matrimonial property order or agreement is filed with an administrator, and this Part applies notwithstanding any other provision of this Act, except as specifically stated, and notwithstanding any other rule of law or equity to the contrary.

(2) This Part applies only with respect to a matrimonial property order made or agreement entered into

(a) after the commencement of this subsection, or

(b) before the commencement of this subsection if there is filed with the administrator a written election by both spouses to have this Part apply.

Matrimonial
property
orders

44.4 Subject to this Part, the entitlement of any person to a benefit is subject to entitlements arising under a matrimonial property order or agreement filed with the administrator.

Division and
distribution of
benefits

44.5 Benefits must be divided between the member-spouse and the non-member-spouse, and the non-member-spouse's share distributed, in accordance with this Part and the prescribed conditions, in the prescribed manner and, subject to the foregoing, in accordance with the applicable matrimonial property order or agreement.

Valuation of
benefits

44.6(1) The value of the total pre-division benefit and the non-member-spouse's share must be calculated in the prescribed manner.

(2) The division of a benefit between the spouses must not reduce the member-spouse's share of the total pre-division benefit by more than 50%.

(3) The aggregate of the actuarial present values of the shares of both spouses must equal the actuarial present value of the total pre-division benefit.

(4) The total pre-division benefit and the value of the non-member-spouse's share are to be based only on the prescribed proportion of the total period for which the benefit was accruing.

(5) Subsection (2) does not apply with respect to additional voluntary contributions or optional ancillary contributions, and nothing in this Part prohibits the receipt by either spouse of all or most of either or both kinds of contributions.

Locking in of
non-member-
spouse's
share

44.7(1) A provision of a pension plan that prohibits terminating members from transferring their pension entitlements if they are within 10 years of pensionable age does not apply with respect to a non-member-spouse's share.

(2) Sections 27 and 37, as they apply with respect to a member-spouse, also apply with respect to the non-member-spouse's share.

(3) Subject to this section, the non-member-spouse's share may be transferred under the prescribed conditions.

Bar against
further claims

44.71 If the full amount of the non-member-spouse's share has been distributed pursuant to this Part,

- (a) that spouse has no further entitlement to any benefit or any other right under the plan, and
- (b) the administrator and the plan have no further obligation to that spouse and have no liability to either spouse or any other person by reason only of the fact that the matrimonial property order or agreement was complied with.

Adjustment of
member's
share

44.8 After the division, the administrator shall adjust the member-spouse's share in the prescribed manner.

Application to
Court for
clarification,
etc.

44.81(1) If, on the filing of a matrimonial property order or agreement, the administrator is unable to comply with it because it is incomplete, it does not comply with this Part or the plan or there is doubt as to what exactly the administrator must do to comply with it, the administrator may apply to the Court to redress the situation arising from that inability so to comply.

(2) An application to the Court under subsection (1) is to be by notice of motion in the case of a matrimonial property

order, or by originating notice in the case of an agreement, in either case supported by an affidavit and on 7 days' notice or such shorter period as the Court allows.

(3) The costs of an application under subsection (1) are to be borne by both or either of the spouses, as decided by the Court and, to the extent that any such costs are paid by the administrator, the administrator has a right of action in debt against the spouse or spouses for the costs, according to the Court's decision on the costs.

Fees

44.9 The administrator may charge a fee for the services provided under this Part in an amount not exceeding that prescribed.

Assignment
and protection
from
execution, etc.

44.91(1) The division or distribution of a benefit under a matrimonial property order or agreement does not constitute an assignment, charge, alienation or anticipation of the benefit for the purposes of section 59.

(2) Both spouses' shares, except to the extent that they consist of benefits derived from additional voluntary contributions or optional ancillary contributions, have the exemption from legal process carried by section 59.

35 The heading to Part 4 is amended by striking out "DISPOSAL OF BUSINESS" and substituting "PREDECESSOR AND SUCCESSOR PLANS".

36 Section 45 is amended

(a) in subsection (2.1) by adding “, other than a plan for specified individuals,” after “a plan”;

(b) by adding the following after subsection (3):

(3.1) Subsection (2) does not apply where employer contributions cease in respect of the sole member or all the members of a plan for specified individuals by reason of the fact that the sole member or all the members have commenced to receive his pension or their pensions, as the case may be.

35 The heading to Part 4 presently reads:

*TERMINATION, WINDING-UP AND
DISPOSAL OF BUSINESS*

36 Section 45 presently reads in part:

(2.1) The suspension of all members of a plan constitutes a termination of the whole of the plan.

(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,

(c) in subsection (6) by striking out “subsection (7)” and substituting “regulations made with respect to section 55”;

(d) by repealing subsection (7);

(e) by adding the following after subsection (7.1):

(7.2) Where an employer withdraws from a multi-unit plan and does not join or establish a successor plan, there is a termination of that part of the plan that relates to that employer and members and former members relating to that employer.

37 Section 46 is amended

(a) in subsection (1) by adding “or partially terminated, as the case may be,” after “terminated”;

(b) in subsection (2) by adding “or partially terminated” after “terminated”.

38 Section 48 is amended

(a) by renumbering it as section 48(1);

(b) in subsection (1) by striking out “Within” and substituting “Subject to this section, within”;

(c) by adding the following after subsection (1):

(2) Where, at the termination of a pension plan other than a specified multi-employer plan or a multi-unit plan, the plan has a solvency deficiency, the employer shall continue to make payments into the plan fund after the termination, and the prescribed rules apply.

(3) Where a multi-unit plan is terminated or a participating employer withdraws from a multi-unit plan and does not join or establish a successor plan and there is a solvency deficiency, the employers who are no longer participating employers as a result of that event shall continue to make payments into the plan fund after the termination, and the prescribed rules apply.

- (a) years of continuous employment under one of those plans count as years of continuous employment under the other plan, and*
- (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.*

37 Section 46 presently reads:

46(1) 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.

(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.

38 Section 48 presently reads:

48 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.

(4) Without limiting subsection (3), the employer designated under section 5.01(1), if any, is and remains liable to make all the payments required by subsection (3) should the employers referred to in subsection (3) fail to make them.

39 Section 49(1) is amended by striking out “28(2)” and substituting “28”.

40 Section 51(4) is amended by adding “in a manner acceptable to the Superintendent” after “updated”.

41 Section 55 is repealed and the following is substituted:

Predecessor
and successor
plans and
employers

55 Where a prescribed kind of transaction results in there being predecessor and successor plans or predecessor and successor employers in relation to a plan or plans, or all or a specific and identifiable class or group of the members of one plan become members of another plan, the prescribed rules are to apply with respect to the transaction.

39 Section 49(1) presently reads:

49(1) On the termination of a pension plan, all contributions made after the initial qualification date in respect of a pension, together with interest, gains and losses described in section 28(2) on those contributions, 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.

40 Section 51(4) presently reads:

(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.

41 Section 55 presently reads:

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

42 Section 56 is amended

(a) in subsection (1) by striking out “or” at the end of clause (a), adding “, or” at the end of clause (b) and adding the following after clause (b):

(c) the amount or the commuted value of an ancillary benefit for which a member or former member has met all the eligibility requirements under the plan necessary to exercise the right to receive the benefit.

(b) by adding the following after subsection (2):

(2.1) Subsection (1)(a) and (b) do not apply with respect to ancillary benefits to which subsection (1)(c) does not apply.

(c) in subsection (3) by striking out “Income Tax Act (Canada)” and substituting “tax Act”;

- (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 and there is deemed to be no cessation of 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).

42 Section 56 presently reads in part:

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).*

(d) by adding the following after subsection (3):

(4) The Superintendent may refuse to register an amendment to a specified multi-employer plan if, before taking into account the effect of the amendment, the plan has a solvency deficiency.

43 Section 57 is amended in subsections (1)(a), (3) and (6) by striking out “31(4) or 55(4)” and substituting “31(6) or 44.7(3) or the regulations made in respect of section 55”.

44 Section 58 is repealed and the following is substituted:

Surplus and
excess assets

58(1) An administrator or a fund holder shall not pay or transfer any surplus assets or excess assets of a pension plan to an employer unless

- (a) the plan provides for the payment or transfer, or the employer establishes that it has a claim to them or to part of them, as the case may be, under this section,
- (b) the administrator has complied, and the plan complies, with the prescribed conditions, and

(3) Notwithstanding anything in this Act, a pension plan may be amended at any time to reduce the benefits provided under a defined benefit provision of the plan in respect of a member but only if and to the extent that such an amendment is necessary to avoid the revocation of the plan's registration under the Income Tax Act (Canada).

43 Section 57 presently reads in part:

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 22.1(5), 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.*

(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 22.1(5), 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.

(6) Where money has been transferred pursuant to section 22.1(5), 30, 31(4) or 55(4), the money is held under the pension plan, locked-in retirement account, retirement income arrangement or pension with an insurance business that holds it subject to the same conditions imposed by or under sections 27, 31 and 32 as would have applied had the transfer not been made.

44 Section 58 presently reads:

58 An administrator or a fund holder shall not pay or transfer any surplus assets of a pension plan to an employer unless

- (a) the plan provides for the payment or transfer,*
- (b) the administrator has complied with the prescribed conditions, and*
- (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*

- (c) the administrator has received the Superintendent's written notice of consent to the payment or transfer.
- (2) An employer has a claim to the surplus assets or excess assets or part of them for the purposes of subsection (1)(a) if, after notification of the employer's proposal for the payment or transfer, at least
 - (a) 2/3 of the members, as one group, and
 - (b) 2/3 of the former members and other persons within a prescribed class, as the other group,notify the employer that they consent to the proposal.

45 Section 58.1 is amended

(a) in subsection (1)

- (i) **by adding** "but subject to Part 3.1" **after** "this Act";
 - (ii) **by striking out** "*Income Tax Act* (Canada)" **and substituting** "tax Act";
- (b) by repealing subsection (2).**

46 Section 59 is amended

(a) in subsection (1)

- (i) **by striking out** "31(4) or 55(4)" **and substituting** "31(6) or 44.7(3) or the regulations made in respect of section 55";

Superintendent's opinion, continue to meet the solvency tests.

45 Section 58.1 presently reads:

58.1(1) Notwithstanding anything in this Act, the administrator of a pension plan may, on making a written request to the Superintendent accompanied by sufficient information supporting the request and on receiving the Superintendent's prior written approval, return a contribution made under the plan by a member or by an employer to the person who made the contribution, but only if and to the extent that the return is necessary to avoid the revocation of the plan's registration under the Income Tax Act (Canada).

(2) Unless a plan prohibits it, an administrator may return any amount of contributions made to the plan by an employer or by an employee to that person resulting from a mistake if

- (a) the administrator, within 180 days after the end of the fiscal year in which the erroneous contribution was made, notified the Superintendent in writing of the circumstances behind the mistake, and*
- (b) the Superintendent has given written notice stating that, following the return, the plan will, in the Superintendent's opinion, continue to meet the solvency tests.*

46 Section 59 presently reads in part:

59(1) Subject to subsection (2), benefits, money that has been transferred under section 22.1(5), 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.

- (ii) **by adding** “either at law or in equity” **after** “attachment”;
- (b) **in subsection (2) by adding** “or optional ancillary contributions” **after** “contributions”.

47 Section 60 is repealed.

48 Section 62 is amended

(a) in subsection (1)

(i) by repealing clause (c) and substituting the following:

(c) setting and otherwise respecting fees

(i) for the filing of certificates and returns under section 7(3)(a),

(ii) for applications for registration,

(iii) in respect of the termination of plans for specified individuals,

(iv) for written notices of consent under section 58(1)(c), and

(v) for file searches;

(c.1) authorizing the collection by or for the Superintendent of personal information within the meaning of the *Freedom of Information and Protection of Privacy Act* about members or former members from any person, in the course of administering this Act;

(ii) in clause (d) by striking out “section 22.1(5), 30, 31(4) and 55(4)” **and substituting** “sections 22.1(5), 30, 31(6) and 44.7(3) and the regulations made in respect of section 55”;

(iii) by adding the following after clause (h):

(h.1) respecting benefits under section 37.1;

(2) *Subsection (1) does not apply to additional voluntary contributions.*

47 Section 60 presently reads:

60 Subject to section 59(1), the entitlement of any person to receive a benefit under or to transfer a benefit from a pension plan is subject to entitlements arising under a matrimonial property order within the meaning of the Matrimonial Property Act, or a similar order enforceable in Alberta of a court outside Alberta that affects the payment or distribution of a person's benefits.

48 Section 62 presently reads in part:

62(1) The Lieutenant Governor in Council may make regulations

(c) governing fees for the filing of returns under section 7(3)(a), for applications for registration, for written notices under section 58(c), for file searches and for the copying of documents held by the Superintendent;

(d) respecting the conditions under which transfers of money under section 22.1(5), 30, 31(4) and 55(4) and any subsequent transfers of money so transferred are to be made to ensure that the eventual payment will be made in the form of a pension that would otherwise be required or permitted by or under this Act or a benefit referred to in section 37(3);

(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.

- (h.2) respecting any matter falling within the general intent of Part 3.1;
 - (h.3) making any amendment to any provision of this statute that is necessary to render the provision compliant with the tax Act or Revenue Canada's interpretation of the tax Act so as to maintain tax Act registrability for plans;
 - (h.4) respecting conversions from defined benefit provisions to defined contribution provisions, and vice versa, and the effect of such conversions;
- (b) in subsection (2) by striking out “or 37(1)” and substituting “, 37(1), 38(2) or 55”;**
- (c) by adding the following after subsection (3):**
- (4) Regulations made under subsection (1)(h.3) expire 2 years after their commencement.

49 Section 63 is amended

- (a) by adding “3.2(1) or (2),” before “18”;**
- (b) by striking out “or (3)”;**
- (c) in clause (b)(ii) by adding “certificate or” before “return”.**

50 Section 65(2)(a)(ii) is amended

- (a) by striking out “31(4) or 55(4)” and substituting “31(6) or 44.7(3) or the regulations made in respect of section 55”;**
- (b) by striking out “an RRSP” and substituting “a locked-in retirement account or a retirement income arrangement”.**

51 Section 67 is amended

49 Section 63 presently reads in part:

63 A document served under section 18, 19(2) or (3), 46 or 65(2)(b) must be served

50 Section 65(2) presently reads in part:

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

(a) inspect the records

(ii) respecting any money that has been transferred under section 22.1(5), 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

51 Section 67 presently reads:

(a) in subsection (1) by striking out “A” and substituting “Subject to subsection (1.1), a”;

(b) by adding the following after subsection (1):

(1.1) A person who makes a false or misleading statement for the purpose of obtaining a benefit under section 37 or a prescribed provision respecting locked-in retirement accounts or retirement income arrangements is guilty of an offence and liable to a fine not exceeding \$15 000.

(c) by repealing subsection (2) and substituting the following:

(2) Where it is proved to the satisfaction of the court trying a case that a corporation has contravened an offence provision of this Act, whether or not the corporation has been prosecuted for the contravention, an officer, director or agent of the corporation who directed, authorized, assented to, acquiesced in or participated in the contravention by the corporation is also a party to and guilty of the offence relating to the contravention and is separately liable to the penalty provided for the offence.

52 Section 69 is amended by repealing subsections (9) to (11).

53(1) The following provisions are amended by adding “specified” before “multi-employer plan” wherever it occurs:

section 1(1)(b)(i)(A), (l), (m)(i) and (ii), (mm) and (qq)(i) and (3);
section 5(1) and (2);

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, whether or not the corporation has been prosecuted or convicted of the offence.

52 Section 69 presently reads in part:

(9) Notwithstanding section 20(1) and (2) or any other provision of this Act, amendments that are required to bring a pension plan that was a registered plan immediately before the commencement of the Employment Pension Plans Amendment Act, 1992 into compliance with this Act following the amendments enacted by section 24(a) of that Act or, if applicable, section 30(c) of that Act insofar as it incorporates a new section 37(5) into this Act may be filed for registration with the Superintendent the next time the plan is amended following that commencement, but in any case not later than December 31, 1993.

(10) Section 20(4) applies to the plan referred to in subsection (9).

(11) For the purposes of section 4, subsection (9) of this section is a prescribed provision of this Act.

53 Substitution of new term for “multi-employer plan” and deletion of words consequent on new definition of “Court” in specified provisions.

section 5.1;
section 8(1)(e) and (5)(a.1);
section 10;
section 22(2)(a)(i) and (9);
section 23(3);
section 27(7)(a) and (8);
section 30(3) and (4);
section 35(4);
section 38(4)(a) and (b);
section 40(2)(a) and (3);
section 43;
section 45(6) and (7.1)(a);
section 62(1)(g).

(2) The following provisions are amended by striking out “of Queen’s Bench”:

section 11(3);
section 19(1) and (2);
section 65(4);
section 66.

54 This Act comes into force on Proclamation.

54 Coming into force.