

Bill 35
Dr. Brown

BILL 35

2005

EMPLOYMENT PENSION PLANS AMENDMENT ACT, 2005

(Assented to , 2005)

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

Amends RSA 2000 cE-8

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

2 Section 1(1) is amended

(a) in clause (a)

(i) by striking out “those that the member is required to make to attain a pension” **and substituting** “member required contributions”;

(ii) by adding “and, where any such money has been transferred from the plan, compounded interest on any such money” **after** “those additional voluntary contributions”;

(b) in clause (b)(ii) by adding “12.1(1) or” **after** “section”;

(c) in clause (c) by adding “any clause of” **after** “to”;

(d) by adding the following after clause (e):

(e.1) “bridging benefits” means a series of periodic payments that are additional to a pension and

- (i) are provided to a former member who commenced a pension before attaining the age of 65 years, and
- (ii) are payable until and only until that age is attained;

(e) by adding the following after clause (i):

- (i.1) “custodian” means, subject to subsection (1.1), a financial institution to the extent that it is lawfully acting under an agreement with an administrator or fund holder or both that
 - (i) delegates to it the holding of the pension fund on behalf of the fund holder and in trust for the members and former members, whether or not the agreement allows any further subdelegation by the financial institution of the holding to subcustodians, and
 - (ii) does not, by virtue of any such subdelegation, purport to relieve that financial institution of any obligation or duty imposed on it as the custodian by law or equity;

(f) in clause (k)

(i) by repealing subclause (i) and substituting the following:

- (i) contributions made on a member’s behalf by the member’s employer and member required contributions, and

(ii) in subclause (ii) by striking out “allocated” and substituting “applied”;

(g) by repealing clause (l) and substituting the following:

- (l) “designated jurisdiction” means a jurisdiction referred to in any clause of subsection (1.2);
- (l.1) “designation of beneficiary” means a designation pursuant to section 47 of the *Trustee Act* of a person to receive a benefit payable under a pension scheme on the death of a participant, within the meaning of that section,

of that scheme, and “designated beneficiary” shall be construed accordingly;

(1.2) “disability benefits” means a series of periodic payments provided to a former member who has become totally or partially disabled prior to attaining pensionable age;

(h) in clause (m) by striking out “province or territory” and substituting “jurisdiction”;

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

(q.1) “file”, used with reference to the filing of a matrimonial property order or agreement with a plan’s administrator, means file under section 69.1;

(j) in clause (t) by striking out “who hold the pension fund of a pension plan under” and substituting “referred to in”;

(k) by adding the following after clause (t):

(t.1) “included employment” means included employment within the meaning of and regulated by the *Pension Benefits Standards Act* (Canada);

(l) in clause (u)(ii) by striking out “province or territory, the prescribed date” and substituting “jurisdiction, the date provided for in the respective clause of subsection (1.2)”;

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

(x.1) “matrimonial property agreement” means a written agreement that provides for the division and distribution of a benefit and that meets the requirements of section 37, including being enforceable under section 38, of the *Matrimonial Property Act*;

(x.2) “matrimonial property 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 division and distribution of a benefit;

(n) in clause (y)

(i) **by adding** “or is required to make” **after** “has made”;

(ii) **by adding** “is or” **after** “employer”;

(o) by adding the following after clause (y):

(y.1) “member required contributions” means contributions by a member that the member was or is required to make to attain a benefit and whose payment, under the terms of the plan, imposes on the employer an obligation to make concurrent contributions;

(y.2) “member-pension partner” means, in relation to the pension plan in question, the pension partner who is or was the member in question, and “non-member-pension partner” means the other pension partner;

(y.3) “money”, where appropriate, includes other assets;

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

(z) “multi-unit plan” means a pension plan administered for employees of 2 or more employers and designated by the Superintendent as a multi-unit plan;

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

(aa.1) “optional ancillary benefits” means the ancillary benefits referred to in clause (bb);

(r) in clause (bb)

(i) **by striking out** “those that the member is required to make to attain a pension and as a consequence of which optional” **and substituting** “member required contributions and as a consequence of which”;

(ii) **by adding** “and, where any such money has been transferred from the plan, compounded interest on any such money” **after** “those contributions”;

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

(bb.1) “other plan documents” or “another plan document” means, in relation to a pension plan, the documents or a

document referred to in section 19(1)(a)(ii), (iii) and (iv) or any of them, as the case may be;

(t) by adding the following after clause (cc):

(cc.1) “participation agreement” means, in relation to a specified multi-employer plan or a multi-unit plan, an agreement between an employer or employers on the one hand and the administrator on the other that meets the prescribed conditions;

(u) in clause (gg) by striking out “a prescribed plan, scheme or arrangement” and substituting the following:

(i) an employees profit sharing plan or a deferred profit sharing plan within the meaning of sections 144 and 147 respectively of the tax Act,

(ii) an arrangement to provide a retiring allowance within the meaning of subsection 248(1) of the tax Act, or

(iii) any other prescribed plan, scheme or arrangement;

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

(hh.1) “plan for connected individuals” means a plan for specified individuals whose only members are specified individuals who were connected at any time in the year with an employer who participates in the plan for the purposes of the prescribed provisions of the tax Act;

(w) in clause (ii) by striking out “provision” and substituting “provisions”;

(x) in clause (xx)

(i) in subclause (i)

(A) by striking out “end” and substituting “beginning”;

(B) by striking out “the member has not completed” and substituting “it transpires, at the end of that period, that the member did not complete”;

- (ii) in subclause (ii) by striking out “specified multi-employer” and substituting “multi-unit”;**
- (iii) in subclause (iii) by adding “but subject to subsection (2.1)” after “multi-employer plan”;**
- (y) in clause (ccc)**
 - (i) in subclause (ii) by striking out “prescribed break in such employment” and substituting “break in such employment provided for in subsection (3.1)”;**
 - (ii) in subclause (iii) by striking out “26” and substituting “52”.**

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

(1.1) Where the fund holder and the custodian are one and the same person, the administrator must be a party to the agreement referred to in subsection (1)(i.1).

(1.2) The following are the Canadian jurisdictions, referred to in subsection (1)(l) and (u)(ii), in which there is in force legislation substantially similar to this Act, and the initial qualification date for each of them is the date specified:

- (a) Ontario: January 1, 1965;
- (b) Quebec: January 1, 1966;
- (c) The Northwest Territories: October 1, 1967;
- (d) The Yukon Territory: October 1, 1967;
- (e) Saskatchewan: January 1, 1969;
- (f) Manitoba: July 1, 1976;
- (g) Nova Scotia: January 1, 1977;
- (h) Newfoundland and Labrador: January 1, 1985;
- (i) New Brunswick: December 31, 1991;

- (j) British Columbia: January 1, 1993;
- (k) Nunavut: April 1, 1999;
- (l) Canada, to the extent that the pension regime in question covers included employment: March 23, 1967.

(2) Section 1(2) is amended by striking out “(1)(rr)(i)” and substituting “(1)(ff.1)(i)”.

(3) Section 1 is amended by adding the following after subsection (2):

(2.1) Notwithstanding subsection (1)(xx)(iii), a multi-unit plan may, with respect to the period not exceeding 1 year provided for in the plan, either allow a member to elect that or provide that the cessation circumstances described in subsection (1)(xx)(iii) are not to constitute termination of membership, and if the member (having made that election where the plan allows the election rather than mandates the circumstances) becomes employed before the end of that period in an employment for which a participating employer is required by that plan to make contributions to that plan on the member’s behalf, there is no termination of the membership.

(4) Section 1(3) is amended

- (a) by striking out “in the province or territory and”;**
- (b) by striking out “last ceased to be in employment” and substituting “was employed at the beginning of the period referred to in that subclause”.**

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

(3.1) The breaks in employment established for the purposes of subsection (1)(ccc)(ii) are any period not exceeding 52 consecutive weeks,

- (a) where an actual cessation of employment has not occurred, respecting which the member
 - (i) immediately before the beginning of that period was in the employment of one employer,

- (ii) is not during that period doing work or providing a service for that employer for remuneration, and
- (iii) after the expiry of that period is again in the employment of that employer,

or

- (b) where an actual cessation of employment has occurred, respecting which the plan treats the employment, whether with one or more than one employer, as continuing without interruption,

provided that, in the case of a multi-unit plan that provides as mentioned under subsection (2.1), the member returns to employment with the same employer in the case of clause (a) or becomes employed with any participating employer referred to in subsection (2.1) in the case of clause (b), before the expiration of the period referred to in subsection (2.1).

(3.2) For the purposes of this Act, assets of a pension plan are determined on the basis of their market value

- (a) if those assets are valued at the most probable price that they should bring in an arm's length sale in a competitive and open market under all conditions requisite to a fair sale and on terms that, having regard to open market conditions, are competitive and not unreasonable and assuming that the price is not affected by undue stimuli, with both seller and buyer acting willingly, prudently and knowledgeably, and
- (b) if, where the Superintendent so requires, the value is that established in an appraisal by an independent appraiser acceptable to the Superintendent.

(6) Section 1 is amended by adding the following after subsection (4):

(4.1) For the purpose of interpreting references in subsections (3) and (4) and other provisions of this Act (except section 19.1) to anything that happens inside or outside Alberta, a province or territory or any other location in the context of included employment, no included employment is to be treated as

occurring in that location, but included employment is deemed instead to occur in the non-geographical, jurisdictional context provided for in subsection (1.2)(1).

4 Section 2 is amended

- (a) by repealing subsections (1) and (2) and substituting the following:**

Interpretation re employment outside Alberta and designated jurisdictions

2(1) Where a member terminates membership while employed outside Alberta and the designated jurisdictions and the member's last period of employment within Alberta and the designated jurisdictions before the termination of membership was in Alberta, the member is deemed for the purposes of this Act

- (a) to have terminated membership while employed in Alberta, and
- (b) to have performed years of continuous employment while a member and employed under those circumstances.

(2) Where a provision of this Act refers to employment in Alberta or the designated jurisdictions and the subject-matter of the provision is not dealt with by subsection (1), that reference is to be taken to include employment outside Alberta and the designated jurisdictions if the person's last employment within Alberta and the designated jurisdictions before the event in question was in Alberta.

- (b) in subsection (3) by striking out "provinces" and substituting "jurisdictions".**

5 Section 3(2) and (3) are amended by striking out "Provincial Treasurer" wherever it occurs and substituting "Minister of Finance".

6 Section 5 is amended

(a) **by renumbering it as section 5(1);**

(b) **in subsection (1) by adding “, and a Deputy Superintendent of Pensions” after “this Act”;**

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

(2) Subject to subsection (1), the Deputy Superintendent of Pensions has all of the powers, duties and functions of the Superintendent.

7 Section 6(1) is amended by striking out “province or territory or of Canada” and substituting “jurisdiction”.

8 Section 8 is amended

(a) **in subsection (1) by striking out “does not comply with this Act or” and substituting “or any of the other plan documents do not comply with this Act or that a pension plan”;**

(b) **in subsection (2) by striking out “administration”.**

9 Section 12 is amended by repealing clause (c) and substituting the following:

(c) contains provisions that have the effect of limiting the employer’s responsibilities and authority with respect to contributions to the plan to making contributions in accordance with the agreement.

10 The following is added after section 12:

Removal of administrator and appointment of temporary administrator

12.1(1) Notwithstanding sections 10, 11 and 12 and any other law, where the Superintendent considers, with respect to a pension plan that is not being wound up, that

- (a) either
 - (i) the administrator cannot be located, is insolvent or is unable or unwilling to perform, or has failed in a substantial manner to perform diligently, the duties or functions that an administrator has under this Act or the terms of the plan,
 - (ii) the plan does not have an administrator, or
 - (iii) the plan or its administration fails in a substantial manner to comply with this Act,

and

- (b) either
 - (i) the security of the plan is jeopardized or compromised to a significant extent, or
 - (ii) it is in the best interests of the members and the other persons entitled or potentially entitled to benefits,

the Superintendent may, if there is an administrator, in writing remove that administrator from the office and, whether or not there is an administrator, may appoint the Superintendent or any other person to be the administrator temporarily.

(2) The administrator appointed under subsection (1) holds office until the Superintendent is satisfied that the person or body who will be the administrator after that appointment terminates is fully willing and able to perform the administrator's duties and functions and the Superintendent rescinds the appointment.

(3) The Superintendent shall, at least the prescribed number of days before the effective date of an appointment to be made under subsection (1), give notice of the proposed removal and

appointment, if applicable, to an administrator who is to be removed.

(4) An administrator who is to be removed may make written representations about the proposed removal and appointment to the Superintendent within the prescribed number of days after service of the notice under subsection (3).

(5) Notwithstanding anything in this section, the Superintendent may, in the instrument appointing the temporary administrator, restrict the powers, duties or functions that that administrator would otherwise have under this Act or impose any terms or conditions on the appointment.

(6) Subject to any restrictions under subsection (5), the temporary administrator may amend the terms of the plan.

(7) The administration expenses of the plan before and during its temporary administration period, including any costs of the administrator's removal and the temporary administrator's appointment, are to be paid in accordance with the terms of the plan.

11 Section 13 is amended

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

(2) The administrator shall ensure that the plan, including its contractual provisions and the other plan documents, complies with this Act.

(b) in subsection (4) by adding “defined benefit provisions of the” **before** “plan reviewed”;

(c) in subsection (6) by striking out “any agreement relating to the investment of the pension fund of the plan does not” **and substituting** “none of the other plan documents”.

12 Section 14(3) is amended

(a) in clause (a)(i) by striking out “specified” **and substituting** “connected”;

(b) in clause (b)

(i) by striking out “specified” and substituting “connected”;

(ii) in subclause (i) by striking out “and” at the end of paragraph (B) and by adding the following after paragraph (C):

(D) are satisfactory to the Superintendent, and

(E) if applicable, contain a certification by the preparer that the results of the independent valuation prepared under clause (e) have been incorporated in them,

(iii) by repealing subclause (ii) and substituting the following:

(ii) cost certificates that

(A) are signed by a person referred to in subclause (i)(B),

(B) are in the form required by the Superintendent,

(C) are satisfactory to the Superintendent, and

(D) contain the prescribed information and information necessary for the Superintendent to be able to determine whether the plan will meet the solvency tests,

(c) by striking out “and” at the end of clause (c) and by repealing clause (d) and substituting the following:

(d) within the prescribed period after the end of the plan’s fiscal year, the prescribed financial statements, and

(e) if so required by notice in writing by the Superintendent, an independent valuation of the market value of the plan’s assets or a specific asset or category of assets, by the date specified in that notice.

13 Section 15 is amended

(a) in subsection (1)

(i) in clause (a)(i)(B) by adding “subject to subsection (1.1),” **before** “amendments”;

(ii) by adding the following after clause (a):

(a.1) to each member who could be adversely affected by a proposed amendment that the administrator has decided to implement at a future date, an explanation or summary of that proposed amendment;

(iii) in clause (k) by striking out “within the meaning of section 58(1)(c)”;

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

(1.1) If an administrator has complied with subsection (1)(a.1), the administrator need not also comply with subsection (1)(a)(i)(B) in respect of a member and the amendment unless the actual amendment made differs to a material extent from the proposed amendment referred to in subsection (1)(a.1).

(c) in subsection (4)

(i) by adding “all or any of the following documents, namely,” **after** “to examine”;

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

(c.1) the financial statements prescribed with reference to section 14(3)(d),

(c.2) any report resulting from an authorized person’s activity under section 90 that is produced by the Superintendent to the administrator,

(d) by adding the following after subsection (4):

(4.1) If a person referred to in subsection (4) makes a written request to receive a copy of a document referred to in that subsection, the administrator shall, within 30 days after the

request and for a charge not exceeding the reasonable costs incurred in providing the copy, provide to that person a copy of the document.

(e) by adding the following after subsection (8):

(8.1) The administrator of a specified multi-employer plan or a multi-unit plan shall disclose to a participating employer in that plan, on the written request of that employer, any of the information that is available for examination under subsection (4)(a), (c), (c.1), (c.2), (d), (e) and (f), on payment of a charge not exceeding the reasonable costs incurred in providing that disclosure.

(f) by adding the following after subsection (9):

(10) The administrator is not obliged to comply with subsection (4.1) with respect to any one person entitled to a

benefit and with regard to the same document more than once in any calendar year.

(11) The administrator is not required to comply with subsection (8.1) more than once in each calendar year in respect of any one participating employer.

14 Section 17 is amended by striking out “and (7)”.

15 Section 19 is amended

- (a) in subsection (1)(a)(iii) by adding “custodian agreement,” after “agreement,”;**
- (b) in subsection (3) by striking out “complies” and substituting “and all the documents relating to the plan and required to be filed comply”.**

16 The following is added after section 19:

Relocation of registration to Alberta

19.1 Where an existing pension plan registered in a designated jurisdiction is to have its registration moved to Alberta, the administrator shall, within 60 days after being so requested in writing by the Superintendent, file with the Superintendent such amendments to the plan and such other documents as are necessary to bring the plan and its administration into conformity with this Act.

17 Section 20 is amended

- (a) in subsection (1) by striking out “document referred to in section 19(1)(a)(ii) to (iv)” and substituting “of the other plan documents”;**
- (b) by adding the following after subsection (1):**

(1.1) Where a pension plan to which section 12 applies is amended so that it becomes a multi-unit plan, the administrator shall file with the Superintendent, within the prescribed period, all the documents that the administrator would have had to file under section 19 had the plan been newly established as a multi-unit plan at the time of the amendment.

(c) in subsection (2)

(i) by striking out “document referred to in section 19(1)(a)(ii) to (iv)” **and substituting** “other plan document”;

(ii) by striking out “document so referred to” **and substituting** “other plan document”;

(d) in subsection (4) by striking out “a document referred to in section 19(1)(a)(ii) to (iv)” **and substituting** “another plan document”.

18 Section 21 is amended

(a) in subsection (3) by striking out “a document referred to in section 19(1)(a)(ii) to (iv)” **and substituting** “another plan document”;

(b) by adding the following after subsection (4):

(5) Where an amendment has been filed for registration and the Superintendent notifies the administrator in writing of the refusal to register the amendment, the administrator shall have the amendment cancelled with full retroactive effect, and shall reverse any transactions that were based on the assumption that the amendment was valid, as if the amendment had never been made.

19 Section 22(2) is amended by striking out “a document referred to in section 19(1)(a)(ii) to (iv)” **and substituting** “another plan document”.

20 Section 27 is amended

(a) in subsection (2)

(i) by striking out “1(1)(rr)” and substituting “1(1)(ff.1)”;

(ii) by striking out “(ccc) is” and substituting “(ccc) and (2.1) are”;

(b) in subsection (3)(c) by adding “and (8.1)” after “38(8)”.

21 Section 29 is amended

(a) in subsection (1) by adding “, subject to subsection (1.1),” after “, and”;

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

(1.1) A pension plan may, with the prior approval of the Superintendent, exclude from membership in it persons who, but for this subsection, would become eligible under subsection (1) to become a member of the plan after a date specified in the plan.

(1.2) Without limiting the Superintendent’s discretion to deny approval on other grounds, the Superintendent shall deny approval under subsection (1.1) unless there is another plan in which persons excluded under that subsection are automatically entitled to become members.

22 Section 34(1), (3) and (4) are amended by striking out “province or territory” and substituting “jurisdiction”.

23 Section 35 is amended

(a) in subsection (1) by striking out “and 47” and substituting “, 47 and 77.1”;

(b) by adding the following after subsection (4):

(4.1) Subsections (1) and (2) do not apply where

- (a) a member or former member referred to in the relevant subsection has been declared by the body commonly known as the Canada Revenue Agency under the tax Act to be a non-resident for income tax purposes, or
- (b) on the death of such a member or former member, the benefit would, but for this clause, have to be paid on a locked-in basis to a pension partner who has been so declared a non-resident.

24 Section 37 is amended by adding the following after subsection (2):

(2.1) Where pension commencement does not take place immediately following the termination of membership or of the plan, then, for the purposes of subsection (2), the plan may provide for the recomputation of the excess contributions as at the date of pension commencement.

25 Section 38 is amended

- (a) by repealing subsections (1) and (2) and substituting the following:**

Portability of commuted value of benefits

38(1) Where

- (a) an entitlement to receive a pension has vested in a member, and
- (b) the member terminated membership in the pension plan, or the member's plan was terminated,
 - (i) on or after January 1, 1987,
 - (ii) while the member was employed in Alberta, and
 - (iii) to the extent that the pension arose under a defined benefit provision and if pension commencement has not yet occurred, before the

date that was 10 years before the member's
attaining pensionable age,

the member may make a transfer from the plan, in the manner and to the extent prescribed, of the whole of the commuted value of the member's pension in respect of that membership on and after the initial qualification date in accordance with subsection (2).

(2) Subject to subsections (2.1) and (2.2), a transfer under subsection (1) must be made in full at one time and may be made to one or more of whichever of the following vehicles are applicable, namely,

- (a) at any time
 - (i) to another pension plan 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 or permitted by this Act or a benefit referred to in section 46(3), or
 - (ii) to a locked-in retirement account on the conditions prescribed under section 87(1)(e),
- (b) at any time if the plan so provides, to an insurance business to purchase a deferred annuity that is not commutable, that will not commence earlier than attainment of the age of 50 years and that will be in the form referred to in clause (a)(i), or
- (c) at any time after attainment of the age of 50 years if the plan so provides,
 - (i) to an insurance business to purchase an annuity in the pension form referred to in clause (a)(i), or
 - (ii) to a retirement income arrangement.

(2.1) A transfer under subsection (1) may be made as a series of 2 or more payments at different times if the whole of the commuted value cannot be transferred at one time because of the application of section 82(3).

(2.2) A transfer under subsection (1) (whether at a single time or as a series of payments under subsection (2.1)) may not be severed so that the transfer is made to 2 or more different vehicles referred to in subsection (2) if the transfer at one time of the whole of the commuted value to a single vehicle would result in the transferred money's being locked in but severance would render any portion of it unlockable.

(b) by adding the following after subsection (7):

(7.1) Where a person

- (a) who became a member of a pension plan after the commencement of this subsection,
- (b) who terminates membership in the plan, and
- (c) to whom no defined benefit provisions of the plan apply,

is entitled to a benefit under the plan, the plan may require the member to effect a transfer of that benefit from the plan in accordance with subsection (2) within 90 days of the termination of membership.

(c) by adding the following after subsection (8):

(8.1) For the purposes of subsection (8), where the transfer is made as a series of 2 or more payments pursuant to subsection (2.1), no transfer is deemed to be made until the last payment in the series, comprising the remaining balance of the commuted value, is made.

26 Section 39 is amended

(a) in subsection (1)

- (i) in clause (a) by adding** “unless a waiver has been validly executed under subsection (5.1)” **after** “partner”;
- (ii) in clause (b) by adding** “or if such a waiver has been validly executed” **after** “pension partner”;

(b) in subsection (4) by adding “who has not validly executed a waiver under subsection (5.1)” **after** “a surviving pension partner”;

(c) in subsection (5) by adding “or if a waiver has been validly executed under subsection (5.1)” **after** “pension partner”;

(d) by adding the following after subsection (5):

(5.1) A pension partner who is entitled or potentially entitled to receive a benefit under this section may, before or after the member or former member’s death and before the benefit is paid or commences to be paid, waive the benefit in the prescribed form and manner and under prescribed conditions that reflect section 40(4)(b), in which case that person is not entitled to receive any benefits under this section, and if the member or former member has designated or designates that pension partner as the designated beneficiary, then that valid waiver also applies with respect to any benefit that the pension partner would otherwise have received as the designated beneficiary.

(5.2) Subsections (6) to (10) apply only to a pension partner who has not validly executed a waiver under subsection (5.1).

(5.3) A waiver under subsection (5.1) of a benefit becomes void if the member or former member remains alive when the benefit is paid or commences to be paid.

27 Section 40 is amended

(a) by repealing subsection (4) and substituting the following:

(4) The former member may receive a pension that does not comply with this section or that is payable in accordance with section 43(2) if the administrator before pension commencement received

(a) a statement by the pension partner in the prescribed form that

- (i) stated that the pension partner had reviewed the information referred to in section 15(1)(d) and was aware of the pension partner entitlements under subsections (1) to (3),
- (ii) waived those entitlements, and
- (iii) was signed by the pension partner in the presence of a witness and outside the presence of the member or former member,

and

- (b) proof in the prescribed form and satisfying the prescribed conditions that the pension partner obtained independent advice about the implications of executing that statement.

(4.1) A pension partner who has validly executed a statement under subsection (4) is deemed to be the sole designated beneficiary of the former member, notwithstanding any actual designation of beneficiary and any other law relating to such an actual designation.

(4.2) Subsection (4.1) does not apply if the administrator before pension commencement received

- (a) a statement by the pension partner in the prescribed form that
 - (i) stated that the pension partner had reviewed the information referred to in section 15(1)(d) and was aware of the pension partner entitlement under subsection (4.1),
 - (ii) waived that entitlement, and
 - (iii) was signed by the pension partner in the presence of a witness and outside the presence of the member or former member,

and

- (b) proof in the prescribed form and satisfying the prescribed conditions that the pension partner obtained

independent advice about the implications of executing that statement.

(4.3) If a pension partner who is the deemed beneficiary by virtue of subsection (4.1) does not survive the former member, another person who has actually been designated as the designated beneficiary is the designated beneficiary of the former member.

(4.4) A waiver under subsection (4) or (4.2) of a benefit becomes void if the member or the former member dies before the benefit is paid or commences to be paid.

(b) in subsection (5) by adding “or (4.2)” after “(4)”.

28 Section 42 is amended

(a) in subsection (1)(c)(iii) by adding “, being enhancements to the pension of a person referred to in section 44(2) beyond that payable as a result of the application of that subsection” after “benefits”;

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

(3) Subsection (2) does not apply to optional ancillary benefits.

29 Section 46 is amended by adding the following after subsection (7):

(8) A pension plan with defined contribution provisions may provide for the prescribed benefits to be paid if the plan also includes the procedures relating to those benefits that are required by the Superintendent.

(9) On application in writing, the Superintendent may give written consent on the prescribed basis to the commutation or surrender, in whole or in part, of a locked-in retirement account, a retirement income arrangement or an RRSP referred to in section 35(2) on the grounds of the person’s being in circumstances of financial hardship and need, and with that consent, that transaction is valid, notwithstanding section 85(1) and (4).

30 Section 47(1) is amended by adding “an amount not exceeding” **after** “payment in”.

31 Section 48 is amended

(a) in subsection (2) by striking out “A” and substituting “Subject to subsection (6), a”;

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

(2.1) A pension plan must provide for testing in accordance with the prescribed tests.

(c) by repealing subsection (4) and substituting the following:

(4) Subject to subsection (6), an employer, or in the case of a plan under whose terms the employer or employers and the employees have joint responsibility for funding the plan and that meets the prescribed criteria, those employers and employees shall make contributions to the plan that are sufficient to pay for all the benefits in accordance with the requirements referred to in subsection (2).

(d) in subsection (5) by striking out “specified” and substituting “connected”;

(e) in subsection (6)

(i) by striking out “A participating” and substituting “An”;

(ii) by striking out “the participating” and substituting “the”;

(f) by repealing subsection (7).

32 Section 49 is amended

(a) in subsection (1)

- (i) **by adding** “in the name of the plan” **after** “must be held”;
- (ii) **in clause (b)(ii) by adding** “subject to subsection (1.1),” **before** “3 or more”;

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

(1.1) A fund holder consisting of a trust to which subsection (1)(b)(ii) applies must hold the pension fund through a custodian.

(1.2) The custodian referred to in subsection (1.1) may hold the pension fund or part of it with a subcustodian through a lawful subdelegation referred to in section 1(1)(i.1).

33 Section 50 is amended

(a) by adding the following before subsection (1):

(0.1) In this section, “ultimate recipient” means, in relation to a pension plan,

- (a) if the fund holder is a trust to which section 49(1)(b)(ii) applies, the custodian, and
- (b) if the fund holder is not such a trust, the fund holder.

(b) in subsection (1)(b) by striking out “fund holder” and substituting “ultimate recipient”;

(c) by repealing subsections (2) and (3) and substituting the following:

(2) The administrator of a specified multi-employer plan or a multi-unit plan shall, within the prescribed period after receiving the contributions from the employer, remit them to the ultimate recipient.

(3) If the ultimate recipient does not receive the contributions it should receive within the period prescribed with reference to subsection (1)(b) or (2), as the case may be, it shall, within the prescribed period, report that fact in writing to the Superintendent.

(3.1) The ultimate recipient shall monitor the remittances that have been and that should have been received by it so as to be able to give the report required by subsection (3) accurately and in time.

(3.2) The employer or administrator, as the case may be, shall provide to the ultimate recipient, at the prescribed time and in the form required by the Superintendent, a summary of the contributions that it is required by this section to remit and that it expects to remit that will enable the ultimate recipient to comply with this section.

(3.3) If any information provided under subsection (3.2) becomes inaccurate, the employer or administrator shall forthwith provide to the ultimate recipient a revised statement giving the correct information.

34 Section 51 is amended by adding the following after subsection (2):

(2.1) An administrator who is required to remit contributions under section 50 holds in trust for the beneficiaries of the pension plan an amount equal to those contributions that remain to be so remitted.

35 Section 55(1)(b) is amended by adding “or a pension plan to which section 48(6) applies” after “plan”.

36 Section 69(2) is amended by striking out “85” and substituting “85.1”.

37 The following is added after section 69:

Filing of documents with administrator

69.1 For the purposes of this Part, a matrimonial property order or agreement is filed with the administrator if it or a certified copy of it is served on the administrator in a manner

referred to in section 88 with the onus of proving proper service resting on the server.

38 Section 70 is amended

- (a) in subsections (3) and (5) by striking out “specified” and substituting “connected”;
- (b) in subsection (7) by striking out “surplus” and substituting “excess”.

39 Section 73 is amended

- (a) by repealing subsection (2) and substituting the following:
 - (2) Where, at the termination of a pension plan other than a specified multi-employer plan, a multi-unit plan or a pension plan to which section 48(6) applies, the plan has a solvency deficiency, then, subject to limitations imposed by the tax Act in respect of plans for specified individuals, the employer shall continue to make payments into the plan fund after the termination, and the prescribed rules apply.
- (b) in subsection (3) by adding “that assumes responsibility for the liabilities of the predecessor plan in respect of that employer” after “a successor plan”.

40 Section 77 is amended by adding the following after subsection (1):

- (1.1) Without limiting subsection (1), no assets may be applied or paid from a terminated plan in any manner to any person until
 - (a) the administrator has applied in writing to the Superintendent for consent to that specific transaction, supported by such documents as the Superintendent requires to determine whether or not the consent should be given, and

- (b) the Superintendent has consented in writing to that transaction.

41 The following is added after section 77:

Missing persons

77.1(1) In this section,

- (a) “application” means an application under section 7(1) of the *Public Trustee Act* and this section for an initial order;
- (b) “benefit” means the benefit or, where the context so requires or allows, the portion of the full benefit, that is held in the pension plan and to which a missing person is actually, prospectively or potentially entitled at the termination of the plan, with interest applied after that termination in accordance with this Act;
- (c) “death” includes proof, to the standard required by the law and to the satisfaction of the Court hearing the application proceedings, that the missing person is dead, and “alive” and “living” shall be construed as indicating absence of such proof;
- (d) “further order” means an order of the Court under subsection (20), and includes an order under section 41 of the *Public Trustee Act*;
- (e) “initial order” means an order under section 7(1) of the *Public Trustee Act* and this section;
- (f) “maintenance order” means a maintenance order, within the meaning of and including an agreement deemed to be, or that is enforceable as if it were, a maintenance order, under the *Maintenance Enforcement Act*, whether made or entered into before or after the commencement of this section, to the extent that it is enforceable under that Act and is brought before the Court in proceedings to which this section relates;
- (g) “missing member” means a member or former member who is or was alleged to be missing;

- (h) “missing person” means
 - (i) a missing member, or
 - (ii) any other person who is actually or prospectively entitled, through a member or former member, to a benefit or, pursuant to subsection (16) or (17)(a), to any of the trust estate, who is or was alleged to be missing;
 - (i) “termination” means, with respect to a pension plan, termination of the whole of the plan;
 - (j) “trust estate” means the balance of the money representing the missing person’s benefit that is or is to be the subject of the distribution or transfer, as the case may be, referred to in subsection (8)(b) and includes any accretion to or depletion of the original trust estate that is allowed or provided for by the *Public Trustee Act*;
 - (k) “waived the benefit” means validly waived, pursuant to section 39(5.1), the benefit to which the non-member-pension partner would otherwise have been entitled.
- (2) Subject to section 77, the administrator shall, as soon as practicable after the termination of the plan and in any case before the initial order is made,
- (a) pay to any person who is beneficially entitled to the benefit and is not a missing person any benefit that the

administrator is allowed or required by the plan or this Act to pay to that person, and

- (b) make the division and distribution under and otherwise apply the terms of any matrimonial property order or matrimonial property agreement that has been filed with the administrator, except for the distribution to a missing person.

(3) If, during the winding up of a terminated pension plan, the administrator is unable to locate one or more of the persons to whom any benefits are to be paid, the administrator shall, within the respective period prescribed,

- (a) make searches for them in accordance with the requirements set by the Superintendent, and
- (b) to the extent that the administrator is still unable to locate them,
 - (i) provide to the Superintendent a list of persons not found containing the prescribed information about them, together with evidence that the searches were performed in accordance with those requirements, and
 - (ii) unless subsection (13) applies, apply to the Superintendent for consent to make applications in respect of them.

(4) An application may be made only by the pension plan's administrator.

(5) An application may be made only if

- (a) the pension plan holding the benefit has been terminated,
- (b) the administrator has filed with the Superintendent such documents as the Superintendent requires to enable the making of the appropriate decision whether to grant the consent to the making of the application or not,
- (c) the Superintendent has consented under section 77(1.1) to the transfer of the proposed trust estate in accordance

with this section and has consented in writing to the making of the application,

- (d) the application complies with subsection (8),
- (e) the application is accompanied with,
 - (i) as they appear in the plan's current records,
 - (A) the full name, address, pension partner status and birth date of the missing person, and
 - (B) so far as applicable, the names and addresses of the missing member's pension partner and designated beneficiaries,

and

- (ii) so far as they relate to the missing person, remain relevant or potentially or prospectively relevant to the trust estate and are within the possession of the administrator,
 - (A) any current designations of beneficiary, and
 - (B) any waivers of benefits by pension partners,

and

- (f) subsection (13) does not apply.

(6) Section 9(1) of the *Public Trustee Act* applies with respect to an initial order or a further order and the notice required to be given under that subsection in relation to an initial order must be accompanied with copies of everything required by subsection (5)(e) to accompany the application.

(7) If the Superintendent grants the consents referred to in subsection (5)(c), the administrator shall forthwith make the respective applications.

(8) The application must, without limiting other matters relating to the benefit that may be included or that must be

included for the purposes of the *Public Trustee Act*, request that the initial order direct that

- (a) the benefit be unlocked and the administrator pay any amount that the administrator is required to withhold on account of the missing person's income tax liability to comply with the administrator's legal obligations in that regard (in this section referred to as the withholding tax),
- (b) after applying clause (a),
 - (i) the benefit beneficially payable to a missing person under a matrimonial property order or a matrimonial property agreement that has been filed with the administrator be distributed, on the missing person's behalf, to the Public Trustee, or
 - (ii) the administrator transfer the balance of the money representing any other missing person's benefit to the Public Trustee,

to be dealt with in accordance with this section, and

- (c) the Public Trustee be appointed trustee of particular property of the missing person, in accordance with section 7(1)(b)(i) of the *Public Trustee Act* and this section, consisting solely of the trust estate,

and the Court may grant the application and make the order accordingly.

(9) Section 7(1) of the *Public Trustee Act* applies subject to this section, and an application under that provision (but not also under this section) to appoint the Public Trustee trustee of

- (a) particular property of the missing person, that is so worded as potentially to include any benefit, or
- (b) the missing person's property generally,

is to be treated by the Court as excluding benefits.

(10) Where the terms of a matrimonial property order or a matrimonial property agreement that has been filed with the

administrator require or allow a delay in the distribution of the benefit until the benefit becomes payable to the member, then, notwithstanding Part 4 and the regulations relating to it and the terms of the matrimonial property order or agreement, the matrimonial property order or agreement is to be deemed to require a form of distribution under that legislation that involves no delay.

(11) If in the application proceedings before the initial order is made a matrimonial property order or a matrimonial property agreement that has not been filed with the administrator is brought before the Court, the Court shall stay the proceedings and order that the matrimonial property order or agreement be filed with the administrator, and the proceedings are not to recommence until and unless it has been so filed and the administrator has carried it out to the extent legally possible.

(12) When the Court makes an initial order,

- (a) the administrator shall, within 30 days after making the distribution or transfer referred to in subsection (8)(b), provide to the Superintendent a copy of the order and written confirmation that the whole amount of the benefit has been disbursed in accordance with this section and the order,
- (b) notwithstanding any other sections of this Act, the missing person and all other persons entitled or potentially or prospectively entitled to a benefit within the meaning of section 1(1)(e) through the missing person lose all rights and entitlements otherwise given by this Act or the plan relating to that benefit,
- (c) to the extent that they have acted in good faith, the employer or employers, administrator, trustee, fund holder and custodian of the plan have no liability to any person with respect to the trust estate,
- (d) the money that is the subject of the application ceases to be a benefit and becomes trust estate, and
- (e) the administrator shall forthwith provide to the Public Trustee,

- (i) a copy of the initial order,
- (ii) as they appear in the plan's current records, the full name, birth date and social insurance number of the missing person, and
- (iii) any other documents and information that the administrator has and that the Public Trustee reasonably requires to enable the proper administration of the trust estate.

(13) Where the administrator has complied with subsections (2) and (3)(a) and (b)(i), a benefit less the withholding tax is less than the prescribed amount and the Superintendent has consented under section 77(1.1) to the relevant transaction described in this subsection, the benefit is unlocked and, after payment of the withholding tax, must be paid,

- (a) in the case of a multi-unit plan, to the employer with whom the missing member is or was most recently employed or, if that employer no longer exists, to the administrator as such,
- (b) in the case of a specified multi-employer plan where the employer with whom the missing member is or was most recently employed has a collective agreement, to the bargaining agent with whom that agreement was made, or
- (c) in the case of any other plan, to the employer with whom the missing member is or was most recently employed.

(14) The Superintendent may provide any personal information within the meaning of the *Freedom of Information and Protection of Privacy Act* to the Public Trustee that is necessary or advisable to enable the Public Trustee to deal with the trust estate in accordance with this section and may collect any such personal information from the Public Trustee that is incidental to the process set out in this section.

(15) Sections 7(2) and (4) and 8 of the *Public Trustee Act* do not apply to the trust estate.

(16) Notwithstanding any other law, the person entitled to receive the trust estate from the Public Trustee under a further order is

- (a) subject to subsection (17), if the missing person is a missing member who is not dead, that individual, as the person beneficially entitled to it,
- (b) subject to subsection (17), if the missing person is a missing member who is dead,
 - (i) a living person who was the deceased's pension partner at the death and has not waived the benefit, as the person beneficially entitled to it in those circumstances,
 - (ii) if there is no such living non-member-pension partner or there is such a living non-member-pension partner who has waived the benefit, the deceased's living designated beneficiary, as the person beneficially entitled to it in those circumstances, or
 - (iii) if there is no such living non-member-pension partner or designated beneficiary, the personal representatives of the deceased's estate in their capacity as such,

or

- (c) if the member or former member is dead and the person who in the initial order proceedings was declared a missing person is
 - (i) a person who survived the deceased member or former member, was the deceased's pension partner at the death, has not waived the benefit and
 - (A) is not dead, that person as the person beneficially entitled to it in those circumstances, or
 - (B) is dead, the personal representatives of that person's estate in their capacity as such,

or

- (ii) a designated beneficiary of the deceased, where there is no such surviving non-member-pension partner or there is such a non-member-pension partner who has waived the benefit, who
 - (A) is not dead, that person as the person beneficially entitled to it in those circumstances, or
 - (B) is dead, the personal representatives of that person's estate in their capacity as such.

(17) If the missing person is a missing member, whether the missing member is or is not dead, then, under a further order,

- (a) a person who has a matrimonial property order or a matrimonial property agreement that
 - (i) affected the benefit but was not filed with the administrator, or
 - (ii) is made or entered into after the initial order is made and affects the trust estate,

is entitled to have that matrimonial property order or agreement carried out against the trust estate,
- (b) a person who has a maintenance order attachable against the trust estate is entitled to have that order carried out, and
- (c) section 41 of the *Public Trustee Act* applies.

(18) Where, under a designation of beneficiary, there are 2 or more living designated beneficiaries entitled to the trust estate under subsection (16)(b)(i)(B) or (ii)(B), those designated beneficiaries are to share the trust estate according to the respective shares specified in the designation of beneficiary.

(19) References in a matrimonial property order or a matrimonial property agreement referred to in subsection (17)(a)(i) to the benefit or the administrator are deemed to be references to the trust estate or the Public Trustee respectively, and any other adaptations that are necessary resulting from the

fact that the order or agreement has become applicable to the trust estate rather than to the benefit are to be deemed made.

(20) The Court may, on application, order the payment by the Public Trustee to a person who is not or who is no longer missing of the whole or the portion of the trust estate that that person is entitled under this section to receive from the Public Trustee.

(21) With respect to any matrimonial property order or matrimonial property agreement affecting the trust estate and made or entered into after the initial order is made (including one amending a matrimonial property order or agreement made or entered into before the initial order), the *Matrimonial Property Act* applies.

(22) Subject to subsection (23), the trust estate is exempt from execution, seizure or attachment either at law or in equity.

(23) Sections 10 and 11(2) to (7) of the *Public Trustee Act* apply with respect to the trust estate notwithstanding that the money is held under this section and, notwithstanding any other provisions of this section, payments may be made under sections 10, 11 and 40 of that Act without the requirement of a further order.

(24) The Superintendent and any other person whom the Court regards as interested in the application are entitled to be heard in proceedings to which this section relates and to submit any relevant documents, and the administrator shall in writing give sufficient notice of the hearing to the Superintendent.

(25) The Public Trustee may, but is under no duty to, make representations in any proceedings for an initial or a further order.

42 Section 78(5)(b) is amended by adding “, custodian” after “holder”.

43 Section 82 is amended

(a) in subsection (2)

(i) **by adding “or custodian” after “fund holder” wherever it occurs;**

(ii) **by striking out “or” at the end of clause (a) and substituting “and”;**

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

(3.1) For the purposes of subsection (3) as it applies with respect to section 38, where a transfer is made as a series of 2 or more payments under section 38, there is deemed to be no transfer until the last payment referred to in section 38(8.1) is made.

44 Section 83(1) is amended by striking out “or a fund holder” and substituting “, fund holder or custodian”.

45 Section 85 is repealed and the following is substituted:

Prohibition against assignment, etc.

85(1) Subject to subsection (2), money that is held in a pension plan, money that has been transferred under section 30(5), 37(2)(b) or (d), 38, 39(6) or 64(3) or the regulations made in respect of any such provision or of section 80 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 any transaction purporting to assign, charge, alienate or anticipate any such money is void.

(2) Subsection (1) does not apply to additional voluntary contributions or optional ancillary contributions.

(3) The giving of any amount by a pension partner in compliance with the waiving of any entitlement to a benefit under a waiver specifically provided for by this Act or with a matrimonial property order or agreement does not constitute an assignment, charge, alienation or anticipation for the purposes of subsection (1).

(4) Any transaction purporting to effect a withdrawal, surrender or commutation referred to in section 35(1) or (2) is void.

Exemption from attachment, etc.

85.1(1) Subject to this section, money that is held in a pension plan, money that has been transferred under section 30(5), 37(2)(b) or (d), 38, 39(6) or 64(3) or the regulations made in respect of section 80 or pursuant to a similar transfer made before January 1, 1987 and money earned by such transferred money are exempt from execution, seizure or attachment either at law or in equity.

(2) Subsection (1) does not apply

- (a) to additional voluntary contributions or optional ancillary contributions, or
- (b) in respect of a retirement savings vehicle within the meaning of and under section 17.1 of the *Maintenance Enforcement Act*.

(3) The giving of any amount by a pension partner in compliance with a matrimonial property order or agreement does not constitute an execution, seizure or attachment for the purposes of subsection (1).

Nullity of certain agreements, etc.

85.2 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.

Income and asset testing under other legislation

85.3 The discretionary entitlement of a person to withdraw money from a locked-in retirement account or from a retirement income arrangement pursuant to the prescribed provisions of the regulations or from an RRSP to which section 35(2) applies is not to be considered when determining, for the purposes of any other prescribed legislation, income or assets available to the person.

46 Section 87 is amended

(a) in subsection (1)

(i) in clause (b) by striking out “documents referred to in section 19(1)(a)(ii) to (iv)” **and substituting** “other plan documents”;

(ii) in clause (h) by adding “specified” **after** “another”;

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

(i.1) requiring administrators to provide information to pension partners respecting the waiving of benefits;

(iv) in clause (l) by striking out “Revenue Canada’s interpretation” **and substituting** “the interpretation by the agency commonly known as the Canada Revenue Agency”;

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

(n.1) respecting missing persons and the trust estate within the meaning of section 77.1, including the relationship between the regime under that section and the *Public Trustee Act*;

(b) in subsection (2) by adding “or (2.1)” **after** “48(2)”.

47 Section 88 is amended

- (a) **by renumbering it as section 88(2) and by adding the following before subsection (2):**

Service of documents

88(1) In this section and section 89, “certified mail” includes any method of delivering written materials for which the addressee or a person allowed by subsection (2) to accept them on the addressee’s behalf is required to acknowledge receipt of them by providing a signature.

- (b) **in subsection (2)**

- (i) **by striking out** “under section 8(1) or (2), 25, 26(2), 71 or 90(2)(b)” **and substituting** “on a person under this Act”;

- (ii) **by adding the following after clause (b):**

(b.1) in the case of a trust consisting of individuals,

- (i) by the method described in clause (a)(i) or (ii), with reference to any of the individual trustees, or

- (ii) if the trust has an official office, by the method described in clause (b)(ii) with reference to that office;

48 Section 89 is amended by striking out “or” at the end of clause (a) and repealing clause (b) and substituting the following:

- (b) if service is effected by certified mail for which a signature is required as described in section 88(1), service is deemed to have been effected on the date that signature is provided, or
- (c) if service is effected by registered mail or by any other form of certified mail, service is deemed to have been effected 5 days after the date of sending the document.

49 Section 90 is amended

(a) in subsection (1) by striking out “under the *Public Service Act* and designated”;

(b) in subsection (2)

(i) in clause (a)(i) by adding “, a custodian” after “holder”;

(ii) by striking out “and” at the end of clause (a);

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

(c) require a person referred to in clause (a) or a representative of such a person to submit to an oral interview, whether the interview is to be recorded by the interviewer or not.

50 Section 92(1) is amended

(a) by striking out “or” at the end of clause (a) and by adding the following after clause (a):

(a.1) refuses to answer any question posed by the Superintendent or a person acting on the Superintendent’s behalf under this Act, where the answer to the question is necessary to enable that person to perform effectively the person’s duties or functions under this Act, or

(b) in clause (b) by repealing subclauses (ii) and (iii) and substituting the following:

(ii) makes a false or misleading statement,

(iii) makes a false or misleading entry in any record, or

(iv) omits to state, in any record or other document or orally, any material fact that is necessary to make a statement contained in the record or other document or made orally, as the case may be, not misleading in the light of the circumstances in which it is made,

51 Section 94 is amended by renumbering it as section 94(1) and by adding the following after subsection (1):

(2) Section 3 is deemed to exclude reference to the Universities Academic Pension Plan referred to in section 1(c) of the *Public Sector Pension Plans Act*.

52 Sections 15(1)(k), 58(1)(d) and (f), 60(1), 62, 63, 64, 65 and 66 are amended by striking out “member-pension-partner”, “non-member-pension-partner”, “non-member-pension-partner’s” and “member-pension-partner’s” wherever they occur and substituting “member-pension partner”, “non-member-pension partner”, “non-member-pension partner’s” and “member-pension partner’s” respectively.

53(1) The *Maintenance Enforcement Amendment Act, 2004* is amended in section 28

- (a) subject to subsection (2), by repealing subsection (2);
- (b) in subsection (3), in the new section 87(1)(d.1)(i) of the *Employment Pension Plans Act*, by striking out “a prescribed” and substituting “a”.

(2) Subsection (1)(a) does not come into force, and is repealed, if section 28(2) of the *Maintenance Enforcement Amendment Act, 2004* comes into force before subsection (1)(a) is proclaimed in force.

54(1) The *Public Sector Pension Plans Act* is amended by this section.

(2) Schedule 1 is amended

- (a) in section 1(f) by striking out “established under” and substituting “referred to in”;
- (b) by repealing section 6(1) and substituting the following:

Local Authorities Pension Plan Fund

6(1) The Minister of Finance shall hold and administer the Local Authorities Pension Plan Fund in accordance with this Schedule and the regulations.

- (c) in sections 6(3), 7(1) and 8(1) and (3) by striking out “Provincial Treasurer” and substituting “Minister of Finance”.

(3) Schedule 2 is amended

- (a) in section 1(1)(f) by striking out “established under” and substituting “referred to in”;
- (b) in sections 1(1)(j), 9(13) and 16(4), (5), (6) and (7) by striking out “Provincial Treasurer” wherever it occurs and substituting “Minister of Finance”;
- (c) by repealing section 6(1) and substituting the following:

Public Service Pension Plan Fund

6(1) The Minister of Finance shall hold and administer the Public Service Pension Plan Fund in accordance with this Schedule and the regulations.

(4) Schedule 4 is amended

- (a) in section 1(1)(b.2) and (f) by striking out “established under” and substituting “referred to in”;
- (b) in section 4(1)(k) by striking out “Provincial Treasurer” and substituting “Minister of Finance”;
- (c) by repealing section 6(1) and substituting the following:

Special Forces Pension Plan Fund

6(1) The Minister of Finance shall hold and administer the Special Forces Pension Plan Fund in accordance with this Schedule and the regulations.

- (d) by repealing section 6.1(1) and substituting the following:

Special Forces Pension Indexing Fund

6.1(1) The Minister of Finance shall hold and administer the Special Forces Pension Indexing Fund in accordance with this Schedule and the regulations.

- (e) in sections 6(3), 6.1(3), 6.2, 7(1), 8(1) and (3) and 9(13) by striking out “Provincial Treasurer” and substituting “Minister of Finance”.

(5) Schedule 5 is amended

- (a) in section 1(1)(f) by striking out “established under” and substituting “referred to in”;
- (b) by repealing section 6(1) and substituting the following:

Management Employees Pension Plan Fund

6(1) The Minister of Finance shall hold and administer the Management Employees Pension Plan Fund in accordance with this Schedule and the regulations.

- (c) in sections 6(3), 7(1) and 8(1) and (3) by striking out “Provincial Treasurer” and substituting “Minister of Finance”.

(6) Schedule 6 is amended

- (a) in section 1(1)(f) by striking out “established under” and substituting “referred to in”;
- (b) by repealing section 6(1) and substituting the following:

Public Service Management (Closed Membership) Pension Plan Fund

6(1) The Minister of Finance shall hold and administer the Public Service Management (Closed Membership) Pension Plan Fund in accordance with this Schedule and the regulations.

- (c) in sections 6(3), 7(1) and 8(1), (3) and (4) by striking out “Provincial Treasurer” and substituting “Minister of Finance”.

55 The *Public Trustee Act* is amended

(a) by adding the following after section 7:

Missing persons and former private pension plan benefits

7.1 The Public Trustee shall not pay out any money received under section 77.1 of the *Employment Pension Plans Act* except under a further order within the meaning of section 77.1(1) of that Act or in accordance with section 10, 11 or 40 of this Act.

(b) in section 46 by adding the following after clause (q):

(q.1) respecting missing persons and the trust estate within the meaning of section 77.1(1) of the *Employment Pension Plans Act* and the relationship between this Act and the regime under section 77.1 of that Act.

56(1) Subject to this section, this Act comes into force on Proclamation.

(2) Section 38, other than section 38(a), is deemed to have come into force on March 1, 2000.

(3) Section 45, to the extent that it adds a new section 85.1(2)(b) to the *Employment Pension Plans Act*, comes into force on the commencement of section 28(1) of the *Maintenance Enforcement Amendment Act, 2004* or of section

45, to the extent that it adds a new section 85.1(1) to the *Employment Pension Plans Act*, whichever is the later.

(4) Section 51 is deemed to have come into force on January 1, 2000.

(5) Section 1 and section 53, except section 53(1)(a), come into force on the date of assent to this Act.

Explanatory Notes

1 Amends chapter E-8 of the Revised Statutes of Alberta 2000.

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 the member is required to make to attain a pension, except optional ancillary contributions and 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 specified multi-employer plan, the body referred to in section 10(1),*

(B) *a multi-unit plan, the body referred to in section 11(1), or*

(C) *any other plan, the board of trustees referred to in section 12 or, if there is no such board, the employer,*

or

(ii) *where a person has been appointed administrator of a plan by the Superintendent under section 78(1) or (2), that person;*

(c) *“ancillary benefit” means a benefit of a kind provided pursuant to section 42(1);*

(k) *“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 the member's employer, and*
- (ii) *interest and any other amounts allocated in respect of a member or former member;*
- (l) *“designated province or territory” means a province or territory of Canada, other than Alberta, that is prescribed to be a province or territory in which there is in force legislation substantially similar to this Act;*
- (m) *“employee” means an individual who is employed to do work or provide a service in Alberta or in a designated province or territory and is in receipt of or entitled to remuneration for the work or service;*
- (t) *“fund holder” means the person or combination of persons who hold the pension fund of a pension plan under section 49(1);*
- (u) *“initial qualification date” means*
 - (i) *in respect of employment in Alberta, January 1, 1967, and*
 - (ii) *in respect of employment in a designated province or territory, the prescribed date;*
- (y) *“member” means, in relation to a pension plan that has not been terminated, an employee or former employee who has made contributions to the plan or on whose behalf the employer was required by the plan to make contributions to it and who has not terminated membership or commenced a pension;*
- (z) *“multi-unit plan” means a pension plan administered for employees of 2 or more employers that is not designated by the Superintendent under clause (qq) as a specified multi-employer plan;*

- (bb) *“optional ancillary contributions” means contributions made voluntarily by a member under a defined benefit provision that are additional to those that the member is required to make to attain a pension and as a consequence of which optional ancillary benefits selected for provision under the plan must be provided with respect to the member, and includes compounded interest on those contributions;*
- (gg) *“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;*
- (ii) *“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;*
- (xx) *“termination of membership” means*
- (i) *in relation to a member of a specified 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 specified 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 an*

approval under section 31(4) in respect of a specified 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 specified multi-employer plan, includes the return of all the member's contributions, with interest, under section 35(8) or (9) or the transfer of the whole of the commuted value of the pension under section 38(3) or (6);

(ccc) *"years of continuous employment" means, subject to section 31(4),*

(i) *in relation to a member of a specified multi-employer plan, fiscal years of the plan in each of which the member has completed at least 350 hours of employment,*

(ii) *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*

(iii) *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 membership in one plan to which the employer was required to make

contributions on the member's behalf due to the member 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.

3 Further interpretation provisions. Section 1(2) to (4) presently read:

(2) For the purposes of subsection (1)(rr)(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)(xx)(i), a member of a specified multi-employer plan terminating membership by virtue of that subclause who has ceased employment is deemed to have terminated membership in the province or territory and while employed in the province or territory where the member last ceased to be in employment.

(4) For the purposes of this Act, a person is employed in the province or territory in which the

establishment of the employer to which the person reports for work is situated and, if the person is not required to report for work to any establishment of the employer or is required to report to more than one establishment in different provinces or territories, the person is deemed to be employed in the province or territory in which the establishment of the employer from which remuneration is paid is situated.

4 Section 2 presently reads:

2(1) Where a member terminates membership while employed in a jurisdiction outside Alberta and the designated provinces or territories and the member's last period of employment within Alberta and the designated provinces or territories before the termination of membership was in Alberta, the member is deemed for the prescribed purposes of this Act

- (a) to have terminated membership while employed in Alberta, and*
- (b) to have performed years of continuous employment while a member and employed under those circumstances.*

(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 or territories 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 Section 3 presently reads in part:

(2) The Minister responsible for the pension plans referred to in section 1 of the Public Sector Pension Plans Act, in the capacity as their administrator, and the Provincial Treasurer, insofar as the Provincial Treasurer is, or is fulfilling the functions of, trustee of those pension plans (or, in the case of the Public Service Pension Plan, the Public Service Pension Board if it becomes the trustee of that Plan) are bound by this Act to the extent prescribed by regulations made under section 6 of that Act.

(3) Subject to this section, a pension plan referred to in subsection (1) is exempt from the application of this Act so long as

- (a) the plan continues to be administered by the Minister referred to in subsection (2), and*
- (b) the Provincial Treasurer (or, in the case of the Public Service Pension Plan, the Public Service Pension Board if it becomes the trustee of that Plan) continues to hold the plan's pension fund in trust.*

6 Section 5 presently reads:

5 In accordance with the Public Service Act, there may be appointed a Superintendent of Pensions, who is the chief administrative officer charged with the administration and enforcement of this Act.

7 Section 6(1) presently reads:

6(1) 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 territory or of Canada

- (a) to provide for the reciprocal registration and examination of pension plans and the reci*
- (b) to authorize the authorized representative of that government to perform any of the*

Superintendent's functions, authorities and duties under this Act,

- (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,*
 - (d) *to provide in effect that where pension plans are or, but for the application of a provision under clause (a), would require to be registered both under this Act and under legislation of one or more other jurisdictions in Canada that is substantially similar to this Act, either*
 - (i) *this Act or any part of it is not to apply, and the substantially similar legislation of that other jurisdiction or of any of those other jurisdictions, as the case may be, is to apply, to those plans, or*
 - (ii) *this Act or any part of it is to apply, and the substantially similar legislation of the other jurisdiction or jurisdictions is not to apply, to them,*
- and*
- (e) *to establish conditions for the non-application and the application, as provided for pursuant to clause (d)(i) or (ii), of the laws referred to in that subclause.*

8 Section 8 presently reads in part:

8(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 any longer period that 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 any longer period that the Superintendent specifies in the direction.

9 Section 12(c) presently reads:

12 A pension plan that is not a specified multi-employer plan or a multi-unit 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

- (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.*

10 Removal of administrator and appointment of temporary one.

11 Section 13 presently reads in part:

(2) The administrator shall ensure that the plan complies with this Act, including its contractual provisions.

(4) The administrator shall, if the plan contains a defined benefit provision, have the plan reviewed in accordance with the regulations and have the results of the review set out in the form of an actuarial valuation report and a cost certificate.

(6) The administrator shall ensure that any agreement relating to the investment of the pension fund of the plan does not contain any provision that a pension plan is prohibited by this Act from containing.

12 Section 14(3) presently reads:

(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,*
 - (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 the Superintendent's duties under this Act,*
- (b) *in the case of a plan, other than a plan for specified individuals, 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 any other person that 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,*

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,*
- (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, and*

- (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.*

13 Section 15 presently reads in part:

15(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) *that person's entitlements and obligations under the plan or amendments,*

and

- (ii) *any other prescribed information;*

- (k) *to a member-pension-partner and a non-member-pension-partner within the meaning of section 58(1)(c) and to the Court, the prescribed information in relation to a division or distribution of a benefit under Part 4.*

(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 that person's 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 that person's 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, bylaw or resolution relating to the plan,*

- (d) *the 3 most recent certificates or returns, as the case may be, filed under section 14(3)(a),*

- (e) *the 2 most recent cost certificates filed under section 14(3)(b), and*

(f) *any other prescribed document.*

14 Section 17 presently reads:

17 Where a specified multi-employer plan has been established by or under a trust, then, notwithstanding any other law but subject to section 48(6) and (7), 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.

15 Section 19 presently reads:

19(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 with

(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, bylaw or resolution relating to the plan, and*

(iv) *any other prescribed document that relates to the governance or administration of the plan,*

and

(b) *a copy of*

(i) *a valuation report and cost certificate referred to in section 14(3)(b)(i) and (ii), whether required to be filed under section 14(3) or not, and*

(ii) *the explanation or summary referred to in section 15(1)(a)(i).*

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

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

16 Relocation of registration to Alberta.

17 Section 20 presently reads:

20(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 19(1)(a)(ii) to (iv), the administrator shall file a certified copy of the amendment with the Superintendent within the prescribed period.

(2) Where a new document referred to in section 19(1)(a)(ii) to (iv) is executed, the document is deemed to be an amendment to any document so referred to that the new document replaces for the purposes of this Act.

(3) Subject to section 81, the Superintendent shall register an amendment to the plan filed with the Superintendent 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.

(4) The administrator shall ensure that an amendment to a document referred to in section 19(1)(a)(ii) to (iv) does not contain any provision that a pension plan is prohibited by this Act from containing.

18 Refusal of registration of an amendment. Section 21 presently reads in part:

(3) An administrator shall not administer a pension plan in a manner that reflects an amendment to a document referred to in section 19(1)(a)(ii) to (iv) unless the amendment has been filed with the Superintendent.

19 Section 22(2) presently reads:

22(2) An amendment to a document referred to in section 19(1)(a)(ii) to (iv) may be made effective from a date before it is filed with the Superintendent.

20 Section 27 presently reads in 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)(rr), (xx) and (ccc) is 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 that, 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 28(2), 29(3), (4), (6), (7) and (8), 31(4), 34(7), 35(2), 38(8), 43(1) and (5), 45(2) and (3), 48(1) and (6) and 50(3).*

21 Section 29 presently reads in part:

29(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 is entitled to become a member of the plan on or at any of the prescribed times after the date specified in subsection (2).

22 Section 34 presently reads in part:

34(1) The pension payable under section 31(1) in respect of employment in Alberta or in a designated province or territory, 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.*

(3) The pension payable under section 31(2) or 32 in respect of employment in Alberta or in a designated province or territory, other than the portion accruing from additional voluntary contributions, must not be less than

- (a) for employment on and after January 1, 1987 but before 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, 1987 where there is an amendment to the plan that was made on or after that date but before January 1, 2000, the pension that is provided for that employment under the terms of that amendment.*

(4) The pension payable under section 31(3) or 32 in respect of employment in Alberta or in a designated province or territory, 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.*

23 Section 35 presently reads:

35(1) Subject to this section and sections 37, 39(2) and (7), 46 and 47,

- (a) a member or former member may not withdraw any of the commuted value of the pension in respect of the member's or former member's 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 the member's or former member's membership on and after the initial qualification date, or*
 - (ii) of a surviving pension partner entitled to a pension under section 39 or 40, that pension,*

or any interest in any such pension.

(2) Subsection (1) extends to

- (a) a person who terminated 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.*

24 Section 37(2) presently reads:

(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 39, as the case may be,*
- (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.*

25 Section 38 presently reads:

38(1) Where

- (a) a member terminated membership in a pension plan, or the member's plan was terminated,*
 - (i) on or after January 1, 1987,*
 - (ii) while the member was employed in Alberta, and*
 - (iii) before the date that was 10 years before the member's reaching pensionable age except with respect to a pension or any portion of a pension arising under a defined contribution provision,*

and

- (b) an entitlement to receive a pension has vested in the member,*

the member may make a transfer, in the manner and to the extent prescribed, of the whole of the commuted value of the member's

pension in respect of that membership on and after the initial qualification date in accordance with subsection (2).

(2) The transfer may be made

- (a) to 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 or permitted by this Act or a benefit referred to in section 46(3),*
- (b) to a locked-in retirement account on the conditions prescribed under section 87(1)(e), or*
- (c) if the plan so provides,*
 - (i) to an insurance business 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), or*
 - (ii) to a retirement income arrangement.*

(3) Subject to subsection (4), a member of a specified 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 subsection (1).

(4) The plan may provide that if the member's employment after the period referred to in subsection (3) has resulted in the accrual of further benefits under the plan, subsection (3) only applies if, applying the terms of the plan, a termination of membership occurred on or before the date of the administrator's receipt of an application for the transfer under that subsection.

(5) The application referred to in subsection (4) must not be received earlier than the end of the period referred to in subsection (3).

(6) A specified 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 29(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.

(7) Notwithstanding subsections (1), (3) and (6), 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.

(8) On making the transfer under subsection (1), (3) or (6), the member is not entitled to any further benefits in respect of the member's membership before the transfer or, where applicable, the period of the member's membership that was subject to the transfer.

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

26 Section 39 presently reads in part:

39(1) Where a member or former member who has not commenced a pension dies, benefits are payable, if applicable,

- (a) to the member's or former member's surviving pension partner, or*
- (b) if there is no surviving pension partner, to the member's or former member's designated beneficiary or, if there is no valid designation of beneficiary, to the personal*

representatives of the member's or former member's estate in their representative capacity.

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

(4) Subject to section 46(1) and (3), if an entitlement to receive a pension would have vested in the deceased had the deceased terminated membership immediately before dying, or had vested in the deceased because the plan had been terminated, and there is a surviving pension partner, the benefit that the surviving pension partner 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 the deceased terminated membership immediately before dying, or had vested in the deceased because the plan had been terminated, and there is no surviving pension partner, 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, the deceased's contributions made before that date, with interest, and

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

27 Designated beneficiaries and waivers of rights. Section 40 presently reads in part:

(4) The former member may receive a pension that does not comply with this section or that is payable in accordance with section 43(2) if the administrator received a statement by the pension partner before pension commencement and in the prescribed form that

- (a) stated that the pension partner had reviewed the information referred to in section 15(1)(d) and was aware of the pension partner entitlements under this section,*
- (b) waived those entitlements, and*
- (c) was signed by the pension partner 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.

28 Section 42 presently reads:

42(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 the member's or former member's overall benefit entitlement.

29 Allowance of further variable benefits.

30 Section 47(1) presently reads:

47(1) A pension plan may provide that a member

- (a) whose working time and remuneration are reduced by agreement with the employer,
- (b) who has not commenced to receive a 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.

31 Section 48 presently reads:

48(1) This section applies only in relation to pension plans that contain defined benefit provisions.

(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 14(3)(b), as amended pursuant to any direction of the Superintendent under section 14(4).

(4) 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).

(5) Notwithstanding subsections (3) and (4), 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.

(6) A participating employer's liability in respect of funding the benefits of

- (a) a specified multi-employer plan, or*
- (b) a pension plan, other than a specified multi-employer plan, that is established, and maintained pursuant to contributions required, under a collective agreement and whose administrator is a board of trustees,*

is limited to the amount that the participating employer is contractually required to contribute to the plan.

(7) None of the provisions of this Act or of any instrument establishing a trust in relation to a plan respecting the funding of benefits are to be treated as enlarging a participating employer's liability as limited by subsection (6).

32 Section 49 presently reads in part:

49(1) The pension fund of a pension plan must be held by

- (b) a trust in Canada governed by a written trust agreement under which the trustees are*
 - (ii) 3 or more individuals at least 3 of whom reside in Canada and at least one of whom is not a significant shareholder, partner or employee of the employer or a proprietor of the business of the employer,*

33 Section 50 presently reads:

50(1) An employer shall, within the prescribed period, remit employer and member contributions due to the plan,

- (a) in the case of a specified multi-employer plan or a multi-unit plan, to the administrator, and*
- (b) in the case of any other plan, to the fund holder.*

(2) Where the administrator of a specified multi-employer plan or a multi-unit plan is not the fund holder, the administrator shall, immediately on receipt of the contributions, remit them to the fund holder.

(3) Where an employer has failed to remit any contributions in accordance with the prescribed requirements before the expiration of 60 days after the end of the period referred to in subsection (1), the administrator or the fund holder who should have received them shall immediately notify the Superintendent in writing of the failure.

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

34 Section 51(2) presently reads:

(2) An employer who is required to pay contributions to a pension fund holds in trust for the beneficiaries of the pension plan an amount equal to the employer contributions due and not paid into the pension fund.

35 Section 55(1) presently reads:

55(1) Subject to sections 48(2), (4) and (5), a pension plan containing a defined benefit provision must provide on the

prescribed basis, or on any other basis that 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*
- (b) except in the case of a specified multi-employer plan, that payments are to be made in accordance with section 73(2) or (3), as the case may be.*

36 Section 69(2) presently reads:

(2) Both pension partners' 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 85.

37 Filing of matrimonial property orders and agreements with administrator.

38 Section 70 presently reads in part:

(3) The suspension of all members of a plan, other than a plan for specified individuals, constitutes a termination of the whole of the plan.

(5) 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 the sole member's pension or all the members' pensions, as the case may be.

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

39 Section 73 presently reads in part:

(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.

40 Consent to application or payment of funds. Section 77 presently reads:

77(1) Assets of a pension plan that has been terminated may not, without the prior written consent of the Superintendent, be applied toward the provision of any benefits until the Superintendent has approved the report required by section 76(3) and, where applicable, section 76(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 76(1) in force, and*
- (c) the Superintendent considers that no or insufficient action has been taken to wind up the plan,*

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

41 Missing persons in case of plan termination.

42 Section 78 presently reads in part:

(5) An administrator appointed under this section

- (a) may amend the plan, and*
- (b) on giving notice to a fund holder or investment advisor for the plan, may substitute that administrator as the party to any contract with that other person in place of the person representing the plan who was previously a party to the contract.*

43 Section 82 presently reads in part:

(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 to the plan 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(5), 38, 39(6) or 64(3) or the regulations made in respect of section 80 or to insure a benefit through an insurance company, if the transfer would impair the solvency of the plan.*

44 Section 83(1) presently reads:

83(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*
- (c) the administrator has received the Superintendent's written notice of consent to the payment or transfer.*

45 Section 85 presently reads:

85(1) Subject to subsection (2), benefits, money that has been transferred under section 30(5), 37(2), 38, 39(6) or 64(3) or the regulations made in respect of section 80 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

either at law or in equity, and any transaction purporting to assign, charge, alienate or anticipate benefits or any such money is void.

(2) Subsection (1) does not apply to additional voluntary contributions or optional ancillary contributions.

(3) Any transaction purporting to effect a withdrawal, surrender or commutation referred to in section 35(1) is void.

(4) 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.

46 Regulation-making powers.

47 Section 88 presently reads:

88 A document served under section 8(1) or (2), 25, 26(2), 71 or 90(2)(b) must be served

(a) in the case of an individual,

(i) personally or by leaving it for the individual at the individual's 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 the individual by registered or certified mail to the individual's 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 certificate or return under section 14(3)(a);*

(c) *in the case of the Superintendent,*

(i) *by leaving it for the Superintendent at the Superintendent's office, or*

(ii) *by mailing it to the Superintendent by registered or certified mail to the Superintendent's office.*

48 Section 89 presently reads:

89 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 88,

(a) *if service is effected personally or by leaving the document somewhere pursuant to section 88, 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 is deemed to have been made 5 days after the date of mailing.*

49 Section 90(1) and (2) presently read:

90(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 the Superintendent's authorized representative.

(2) An authorized person may, at any reasonable time and for the purpose of determining whether

there has been a breach of or full compliance with 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(5), 38, 39(6) or 64(3) or the regulations made in respect of section 80, that are kept by any person responsible for a locked-in retirement account or a retirement income arrangement 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 the person provide or produce to the authorized person, within any reasonable period that 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.

50 Section 92(1) presently reads:

92(1) Subject to subsection (2), 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.

51 Transitional provision re old Universities Academic plan.

52 Reference corrections.

53 Consequential amendments to Maintenance Enforcement Amendment Act, 2004.

54 Consequential amendments to Public Sector Pension Plans Act.

55 Consequential amendments to Public Trustee Act.

56 Coming into force.