

2012 Bill 10

First Session, 28th Legislature, 61 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 10

EMPLOYMENT PENSION PLANS ACT

MRS. KENNEDY-GLANS

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

BILL 10

2012

EMPLOYMENT PENSION PLANS ACT

(Assented to , 2012)

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

Part 1

Interpretation and Application

Interpretation

1(1) In this Act,

- (a) “active member”, in relation to a pension plan, means an individual who is employed in employment covered by the plan if
 - (i) he or she is, with respect to that employment,
 - (A) accruing benefits under the plan, or
 - (B) contributing to the plan or having contributions made to the plan on his or her behalf,
 - (ii) he or she is not, with respect to that employment, accruing benefits under the plan or contributing to the plan or having contributions made to the plan on his or her behalf because
 - (A) he or she has elected to suspend his or her membership under section 31, or
 - (B) the plan is one under which benefits have ceased to accrue and that is continued with the consent of the Superintendent under section 115(1),

or

- (iii) he or she is on a temporary absence from that employment;
- (b) “actuarial excess”, in relation to a pension plan that is not terminated, means the value of the assets of the plan less the value of the liabilities of the plan, both calculated in the prescribed manner;
- (c) “additional voluntary contributions” means contributions made by a member to a pension plan that are additional to the contributions the member is or was required to make under the plan text document of the plan, and includes interest on those contributions, but does not include
 - (i) optional ancillary contributions, and
 - (ii) other contributions if, under the terms of the plan text document, payment of those other contributions imposes or imposed on the participating employer an obligation to make additional contributions;
- (d) “administrator”, in relation to a pension plan, means the person responsible for administering the plan in accordance with section 35, and includes any person appointed by the Superintendent as an administrator of the plan under section 128 or as a temporary administrator of the plan under section 134;
- (e) “ancillary benefit” means a benefit referred to in section 92(1);
- (f) “authorized person” means
 - (i) the Superintendent, or
 - (ii) a person designated by the Superintendent, in writing, as the Superintendent’s authorized representative;
- (g) “benefit”, in relation to a pension plan, means a pension, or other monetary amount, that a person is or may become entitled to receive under the plan, but does not include a refund of actuarial excess or surplus;
- (h) “benefit formula provision” means

- (i) a defined benefit provision,
- (ii) a target benefit provision, or
- (iii) any provision of the plan text document of a pension plan that is prescribed to be a benefit formula provision;
- (i) “collective agreement” means an agreement between one or more employers and its or their employees, and includes a collective agreement within the meaning of the *Labour Relations Code*;
- (j) “collectively bargained multi-employer plan” means a multi-employer plan established through a collective agreement, unless under section 28 the Superintendent designates the plan as a non-collectively bargained multi-employer plan or a single employer plan, and includes any plan designated by the Superintendent as a collectively bargained multi-employer plan under section 28;
- (k) “commuted value”,
 - (i) in relation to benefits that a person is or may become entitled to receive under a benefit formula provision of a pension plan, means the actuarial present value of those benefits determined in accordance with subsection (2), or
 - (ii) in relation to benefits that a person is entitled to receive under a defined contribution provision of a pension plan, means the total amount of the contributions that are or were required to be made in relation to those benefits, and includes interest on those contributions;
- (l) “Court”, except in sections 78(b) and 150(2), means the Court of Queen’s Bench;
- (m) “CPP Act” means the Canada Pension Plan;
- (n) “deferred member”, in relation to a pension plan, means an individual who
 - (i) has ceased to be an active member in the plan,

- (ii) is entitled to receive a benefit under the plan, and
- (iii) has not reached his or her pension commencement date;
- (o) “defined benefit provision” means a provision of the plan text document of a pension plan that establishes a formula by which the amount of the pension that is to be paid to a member is determined, but does not include a target benefit provision or a provision that is prescribed to be a benefit formula provision;
- (p) “defined contribution provision” means a provision of the plan text document of a pension plan that
 - (i) contemplates that an actual or notional account will be maintained to record what is provided by
 - (A) contributions, other than additional voluntary contributions, made by or on behalf of a member, and
 - (B) interest and any other amounts allocated to the account, and
 - (ii) provides that the benefits to which the member is entitled under the provision are determined solely by reference to the amount of that account;
- (q) “designated beneficiary” means a beneficiary designated under section 71(2) of the *Wills and Succession Act*;
- (r) “effective date of the termination”, in relation to a pension plan, means,
 - (i) for a termination elected under section 117, the date that under section 117(5) is the effective date of the termination of the plan,
 - (ii) for a termination directed under section 118, the date specified by the Superintendent as the effective date of the termination of the plan, or
 - (iii) for a termination that is neither elected under section 117 nor directed under section 118,

- (A) subject to paragraph (B), the first date on which benefits cease to accrue under the plan, or
- (B) if the Superintendent consents under section 115(1) to the continuation of the plan and later withdraws that consent and directs that the plan be terminated, the date that under section 115(6) is the effective date of the termination of the plan;
- (s) “employee” means an individual who is employed by an employer;
- (t) “employer” means a person or organization, whether incorporated or not, from whom an employee receives or received remuneration;
- (u) “excess contributions”, in relation to a member of a pension plan, means the excess referred to in section 57(2) that is attributable to that member;
- (v) “federally regulated employment” has the same meaning as “included employment” has in the *Pension Benefits Standards Act, 1985* (Canada);
- (w) “file”, except where a contrary intention appears, means file with the Superintendent;
- (x) “financial institution” means a bank, trust corporation, credit union or treasury branch;
- (y) “fundholder”, in relation to the pension fund of a pension plan, means the entity or combination of entities referred to in section 50(2) that holds the pension fund;
- (z) “funding requirements” means
 - (i) in the case of a pension plan the plan text document of which contains a benefit formula provision, the requirements relating to the funding of the plan that are referred to in section 52, or
 - (ii) in the case of a pension plan the plan text document of which contains a defined contribution provision, the requirements relating to the funding of the plan that are referred to in the plan text document;

- (aa) “initial legislation date” means,
 - (i) subject to subclause (ii), in respect of employment in Alberta, January 1, 1967, or
 - (ii) in respect of federally regulated employment or employment in any other province, the date prescribed for that employment;
- (bb) “insurance company” means a corporation authorized to carry on life insurance business in Canada;
- (cc) “interest” means interest, gains and losses provided for under section 63;
- (dd) “jointly sponsored plan” means a pension plan
 - (i) that meets the prescribed criteria,
 - (ii) the plan text document of which contains a benefit formula provision,
 - (iii) in which the participating employers and active members are required to make contributions, including, without limitation, contributions to meet the funding requirements applicable to the plan, and
 - (iv) in which responsibility for the governance of the plan is shared among
 - (A) the participating employers,
 - (B) the active members of the plan, and
 - (C) the other classes of members, if any, that are authorized under the plan documents to share in that responsibility;
- (ee) “life income fund” means a RRIF that is prescribed to be a life income fund;
- (ff) “locked-in retirement account” means an RRSP that is prescribed to be a locked-in retirement account;
- (gg) “member” means
 - (i) an active member,

- (ii) a deferred member, or
- (iii) a retired member;
- (hh) “Minister” means the Minister determined under section 16 of the *Government Organization Act* as the Minister responsible for this Act;
- (ii) “multi-employer plan” means a pension plan administered for employees of 2 or more participating employers that are not affiliates within the meaning of the *Business Corporations Act*;
- (jj) “multilateral jurisdiction” means a province that is a party to an agreement under section 154 and is prescribed to be a multilateral jurisdiction;
- (kk) “negotiated cost plan” means a pension plan
 - (i) that is established under a collective agreement, and
 - (ii) contributions to which are determined and limited by the collective agreement;
- (ll) “non-collectively bargained multi-employer plan” means a multi-employer plan established other than through a collective agreement, unless under section 28 the Superintendent designates the plan as a collectively bargained multi-employer plan or as a single employer plan, and includes any plan the Superintendent designates as a non-collectively bargained multi-employer plan under section 28;
- (mm) “OAS Act” means the *Old Age Security Act* (Canada);
- (nn) “optional ancillary benefits” means enhanced benefits under a benefit formula provision of the plan text document of a pension plan that are
 - (i) selected by a member or his or her surviving pension partner, and
 - (ii) funded through optional ancillary contributions made by the member;
- (oo) “optional ancillary contributions” means contributions

- (i) that are made voluntarily by a member under a benefit formula provision of the plan text document of a pension plan,
- (ii) that are additional to the contributions the member is required to make under the plan, and
- (iii) that result or may result in optional ancillary benefits being payable,

and includes interest on those contributions;

- (pp) “participating employer”, in relation to a pension plan, means an employer that is required to make contributions to the plan;
- (qq) “participation agreement” means an agreement referred to in section 36;
- (rr) “pension” means a series of periodic payments that, under the terms of the plan text document of a pension plan, is payable,
 - (i) in the case of payments under a benefit formula provision, for the life of a retired member, whether or not the pension is continued to another person, and
 - (ii) in the case of payments under a defined contribution provision, until the earlier of
 - (A) the date on which the member dies, and
 - (B) the date on which the balance in the member’s account referred to in clause (p)(i) is zero;
- (ss) “pension commencement date”,
 - (i) in relation to a member of a pension plan, means
 - (A) the date the member selects as the date on which the member’s pension is to start if that date is
 - (I) not earlier than the earliest date provided for in the plan text document of the plan as the date at which a member may start to receive a pension under the plan, and

- (II) not later than the last date on which a person is allowed under the *Income Tax Act* (Canada) to start receiving a pension from a registered pension plan,

or

- (B) if the member does not select a date that complies with subclause (i)(A)(I) or (II), the last date on which the person is allowed under the *Income Tax Act* (Canada) to start receiving a pension from a registered pension plan,

or

- (ii) in relation to a surviving pension partner, means the earlier of

- (A) the date the surviving pension partner selects in accordance with this Act as the date on which the surviving pension partner's pension is to start, and

- (B) the last date on which the surviving pension partner is allowed under the *Income Tax Act* (Canada) to start receiving a pension from a registered pension plan;

- (tt) "pension eligibility date", in relation to a pension plan, means the age or date provided for in the plan text document of the plan in accordance with section 66(1) at which the members of the plan are entitled to begin receiving a pension under the plan without reduction or increase to the pension;

- (uu) "pension fund", in relation to a pension plan, means the assets of the plan;

- (vv) "pension partner" means a person who is a pension partner within the meaning of subsection (3);

- (ww) "pension plan" means a plan, scheme or arrangement organized and administered to provide pensions to members, but does not include a prescribed plan, scheme or arrangement;

- (xx) “plan documents”, in relation to a pension plan, means the plan text document and all supporting plan documents for the plan;
- (yy) “plan text document”, in relation to a pension plan, means the record referred to in section 8(1) that sets out the rights, obligations and entitlements under the plan;
- (zz) “QPP Act” means *An Act Respecting the Quebec Pension Plan* (Quebec);
- (aaa) “qualified trustee group”, in relation to a pension plan, means individuals who are authorized under section 50(2)(b)(ii) to hold the pension fund of the plan;
- (bbb) “reciprocal jurisdiction” means a province that is prescribed to be a reciprocal jurisdiction;
- (ccc) “registration” means registration, under Part 4 of this Act, of a pension plan or of an amendment to a pension plan, and includes registration under the *Employment Pension Plans Act* (RSA 2000 cE-8);
- (ddd) “remuneration” includes wages, salary, pay and commissions;
- (eee) “retired member”, in relation to a pension plan, means an individual who has reached his or her pension commencement date;
- (fff) “retirement income arrangement” means
 - (i) a life income fund, or
 - (ii) any fund, account or other arrangement that is prescribed to be a retirement income arrangement;
- (ggg) “RRIF” means a registered retirement income fund within the meaning of the *Income Tax Act* (Canada);
- (hhh) “RRSP” means a registered retirement savings plan within the meaning of the *Income Tax Act* (Canada);
- (iii) “single employer plan” means a pension plan in which there is only one participating employer or, if there is more than one participating employer, in which all

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

- (jjj) “Superintendent” means the person appointed as the Superintendent of Pensions under section 4;
- (kkk) “supplemental pension plan” means a pension plan if the only persons who are, or are eligible to become, members of the plan are persons who are and continue to be members of another pension plan;
- (lll) “supporting plan document”, in relation to a pension plan, means a record referred to in section 13(a)(ii), (iii), (iv) or (vi);
- (mmm) “surplus” means, in relation to a pension plan that has been terminated, the value of the assets of the plan less the value of the liabilities of the plan, both calculated in the prescribed manner;
- (nnn) “target benefit provision” means a provision of the plan text document of a pension plan that
 - (i) establishes a formula by which the amount of the pension that is intended to be payable to a member is to be determined, and
 - (ii) provides that the actual benefit under the plan may be reduced below the intended benefit under section 20(2)(b);
- (ooo) “temporary absence” means an absence referred to in subsection (4);
- (ppp) “terminate”, in relation to a pension plan, has the meaning set out in subsection (5);
- (qqq) “termination of active membership” means,
 - (i) in relation to an active member of a collectively bargained multi-employer plan that has not terminated, the end of any period of 2 consecutive fiscal years of the plan in which period the member has not completed a total of 350 hours of employment in respect of which contributions are required to be remitted to the plan on his or her behalf,

- (ii) in relation to an active member of a supplemental pension plan that has not terminated, the termination of the active member's membership in the pension plan to which the supplemental pension plan is supplemental,
- (iii) subject to subsection (6), in relation to an active member of any other pension plan that has not terminated, the cessation by the member of the employment in respect of which, under the plan, benefits are accrued or contributions are required to be remitted to the plan on his or her behalf, and
- (iv) in relation to an active member of a pension plan that has terminated, the termination of the plan,

and "terminate active membership" has a corresponding meaning;

- (rrr) "termination report" means the report required to be filed under section 122(a);
- (sss) "trade union" has the same meaning as in the *Labour Relations Code*;
- (ttt) "Tribunal" means the Alberta Employment Pension Tribunal established under section 149;
- (uuu) "winding-up" means, in relation to a pension plan that has been terminated, the process of distributing the pension fund;
- (vvv) "Year's Maximum Pensionable Earnings" has the same meaning as in the CPP Act.

(2) For the purposes of this Act, the actuarial present value of benefits that a person is or may become entitled to receive under a benefit formula provision of a pension plan must be determined

- (a) on the basis of actuarial assumptions and methods that are appropriate and in accordance with accepted actuarial practice,
- (b) in the prescribed manner, and
- (c) in a manner acceptable to the Superintendent.

(3) Persons are pension partners for the purposes of this Act on any date on which one of the following applies:

- (a) they
 - (i) are married to each other, and
 - (ii) have not been living separate and apart from each other for a continuous period longer than 3 years;
- (b) if clause (a) does not apply, they have been living with each other in a marriage-like relationship
 - (i) for a continuous period of at least 3 years preceding the date, or
 - (ii) of some permanence, if there is a child of the relationship by birth or adoption.

(4) The absence of an employee from employment is a temporary absence if all of the following apply:

- (a) no cessation of employment has occurred;
- (b) the period of the absence is not more than 52 consecutive weeks;
- (c) immediately before the absence the employee was in the employment of a participating employer;
- (d) during the absence the employee is not doing work, or providing a service, for a participating employer for remuneration;
- (e) after the absence the employee is again in the employment of a participating employer.

(5) A pension plan terminates on the effective date of the termination of the plan.

(6) If a member of a non-collectively bargained multi-employer plan ceases employment, the cessation of employment does not constitute termination of the member's active membership in the plan if

- (a) the plan text document of the plan establishes a period of not more than one year,

- (b) the plan text document provides that a member's cessation of employment does not constitute termination of the member's active membership in the plan if, before the end of the period referred to in clause (a), the member becomes employed in an employment for which a participating employer is required by the plan to make contributions to that plan on the member's behalf, and
- (c) the member ceasing employment becomes so employed before the end of the period referred to in clause (a).

(7) Subject to subsection (8), for the purposes of this Act, a person is deemed to be employed in the province or territory where his or her employer's establishment is located and to which the person is required to report for work.

(8) A person who is not required to report for work at his or her employer's establishment or who is required to report to establishments in different provinces or territories is deemed to be employed in the province where the employer's establishment is located and from which the person's remuneration is paid.

(9) The following pension legislation applies to determine the benefit entitlement of a member of a pension plan whose membership terminates:

- (a) subject to clauses (c) and (d), if the province in which the member was last employed is a reciprocal jurisdiction or a multilateral jurisdiction, the pension legislation of that province;
- (b) subject to clauses (c) and (d), if the jurisdiction in which the member was last employed is neither a reciprocal jurisdiction nor a multilateral jurisdiction, the pension legislation of the reciprocal jurisdiction or multilateral jurisdiction in which the member was last employed;
- (c) subject to clause (d), if
 - (i) the member is a member of a collectively bargained multi-employer plan that is registered in a reciprocal jurisdiction or a multilateral jurisdiction other than Alberta ("the extraprovincial plan"),

- (ii) the member works for a time with a participating employer in a collectively bargained multi-employer plan registered in Alberta (“the Alberta plan”), and
 - (iii) there is an agreement between the administrator of the extraprovincial plan (“the extraprovincial administrator”) and the administrator of the Alberta plan (“the Alberta administrator”) that contributions for the member will be forwarded from the Alberta administrator to the extraprovincial administrator for so long as the member works with a participating employer in the Alberta plan,
- the pension legislation that, under the extraprovincial plan, is applicable to the member;
- (d) if the member was last employed in federally regulated employment, the *Pension Benefits Standards Act, 1985* (Canada).

Exemption of plans

2 This Act does not apply

- (a) to a pension plan referred to in section 1 of the *Public Sector Pension Plans Act*, except as provided in the regulations under that Act,
- (b) to a Plan within the meaning of the *Teachers’ Pension Plans Act*, except as provided in the regulations under that Act,
- (c) in respect of a pension plan if all of the members of the pension plan are connected with the participating employer within the meaning of section 8500(3) of the *Income Tax Regulations* (Canada), except as provided in the regulations, and
- (d) to any other prescribed plan, except as provided in the regulations.

Publicly funded plans

3(1) In this section, “publicly funded plan” means a pension plan, including a supplemental pension plan, that is

- (a) wholly or partially funded, whether directly or indirectly, from a public entity that operates on a non-profit basis and that is, was or has the potential to be an employer under a pension plan covered by the *Public Sector Pension Plans Act* or the Teachers' Pension Plan under the *Teachers' Pension Plans Act* or from a source related to such an entity, and
 - (b) designated by the Superintendent, by written notice to that entity and the plan's administrator, as a publicly funded pension plan for the purposes of this Act;
- (2) Except as provided in the regulations, this Act and the regulations apply to a publicly funded pension plan.

Part 2

Superintendent of Pensions

Appointment and duties of Superintendent of Pensions

- 4(1)** 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, and a Deputy Superintendent of Pensions.
- (2) Subject to subsection (1), the Deputy Superintendent of Pensions has all of the powers, duties and functions of the Superintendent.

Superintendent's authority to extend time limits

- 5(1)** If the Superintendent considers that there are extenuating reasons, the Superintendent may, on request from the administrator of a pension plan, extend a period imposed under this Act within which or by which some act must be done.
- (2) A request under subsection (1)
- (a) must be made in the form and manner determined by the Superintendent, and
 - (b) may be made before or after the expiry of the time within which or by which the act is to be done.

Terms and conditions

6 The Superintendent may impose conditions on any approval, authorization, extension, consent or permission given by the Superintendent under this Act.

Personal liability protection

7(1) In this section, “protected individual” means any of the following:

- (a) the Superintendent;
- (b) a person designated under section 1(1)(f)(ii);
- (c) an individual acting on behalf of, or under the direction of, the Superintendent.

(2) Subject to subsection (3), no legal proceeding for damages lies or may be commenced or maintained against a protected individual because of anything done or omitted to be done

- (a) in the exercise or intended exercise of any power under this Act, or
- (b) in the performance or intended performance of any duty under this Act.

(3) Subsection (2) does not apply to a protected individual in relation to anything done or omitted to be done in bad faith.

(4) Subsection (2) does not absolve the Government from vicarious liability arising out of anything done or omitted to be done by a protected individual for which the Government would be vicariously liable if this section were not in force.

Part 3 Pension Plan Requirements

General requirements of plan text documents

8(1) Subject to this Part, there must be created for a pension plan a record that provides, in accordance with this Act and the regulations, for the following:

- (a) the administration and maintenance of the plan;

- (b) who is to pay the administration and investment expenses of the plan;
- (c) that the pension fund must be held and invested in accordance with this Act and regulations;
- (d) the conditions for membership in the plan;
- (e) benefits and entitlements on
 - (i) termination of active membership,
 - (ii) death,
 - (iii) pension commencement dates, and
 - (iv) termination of the plan;
- (f) the deadline for selecting any option and the consequences of not meeting the deadline;
- (g) how interest is to be calculated on, and when interest is to be credited or debited to, the contributions referred to in section 63(a);
- (h) the treatment and allocation of actuarial excess and surplus;
- (i) the method for determining benefits, member and participating employer contributions and the allocation of contributions, which method must use formulas that comply with the prescribed criteria;
- (j) the method for converting optional ancillary contributions to optional ancillary benefits;
- (k) any other matter that under this Act must be included in a plan text document.

(2) If, under a plan text document, it is possible for a lump sum to become payable to a person, the plan text document must provide that, when the lump sum is payable, that sum may, if and to the extent that the *Income Tax Act* (Canada) allows, be transferred to an RRSP, with or without conditions, at the option of the person to whom the lump sum is payable.

(3) Unless the plan documents of a pension plan specifically provide otherwise, the administration and investment expenses of the pension plan may be paid from the plan's pension fund.

Plan text documents to reflect Act provisions

9(1) In this section, “applicable provision” means any of the following:

- (a) this Part;
- (b) Part 5;
- (c) Part 7;
- (d) Divisions 1, 5 and 8 of Part 8;
- (e) sections 40, 70, 71, 72 and 127;
- (f) a regulation made under section 159(1)(d).

(2) The plan text document of a pension plan must

- (a) for each benefit contemplated or made available under an applicable provision, for each contribution or obligation required under an applicable provision and for each entitlement or right provided by an applicable provision, include a provision that provides for
 - (i) that benefit, contribution or other entitlement, obligation or right, or
 - (ii) a benefit, contribution or other entitlement, obligation or right that is more favourable, having regard to the intent of this Act, to persons who may receive a benefit under the plan, and
- (b) for each term defined in section 1 that applies to the plan, set out the term's definition.

(3) Despite subsection (2), the plan text document of a pension plan need not include a provision referred to in subsection (2)(a)(i) or a more favourable provision under subsection (2)(a)(ii) if,

- (a) in the opinion of the Superintendent, the provision referred to in subsection (2)(a)(i) is not and will not be applicable to the plan, and

- (b) on application by the administrator, the Superintendent expressly indicates that the plan text document need not include the provision referred to in subsection (2)(a)(i).

(4) To the extent that a plan text document

- (a) does not include a provision referred to in subsection (2)(a)(i) or a more favourable provision under subsection (2)(a)(ii), and
- (b) is not exempted under subsection (3) from including such a provision,

the plan text document is deemed to include the provision referred to in subsection (2)(a)(i).

(5) Nothing in subsection (4) precludes the Superintendent from directing the administrator of a pension plan to amend the plan text document of the plan to expressly incorporate the provision that the plan is deemed by subsection (4) to include.

(6) The absence from a plan text document of a provision referred to in subsection (3) does not affect the application or possible application of that provision to the pension plan.

Provisions relating to gender

10(1) The plan documents of a pension plan must not provide for or allow any of the following:

- (a) different rates or amounts of contributions by the members based on differences in gender;
- (b) different pensions, annuities or benefits based on differences in gender;
- (c) different options as to pensions, annuities or benefits based on differences in gender;
- (d) inclusion in or exclusion from membership in the plan on the basis of gender.

(2) In order to comply with subsection (1), the plan documents may provide for

- (a) a prescribed method of calculation or valuation, or

- (b) a unisex mortality table.

Fiscal year of plan

11(1) Unless otherwise provided in the plan text document of a pension plan, the fiscal year of the plan is January 1 to December 31 in each year.

(2) The fiscal year of a pension plan must not be longer than 12 months without the written consent of the Superintendent.

**Part 4
Registration and
Amendment
of Pension Plans**

**Division 1
Registration of Pension Plans**

Restrictions on administration of plans

12(1) An administrator must not administer a pension plan unless

- (a) the plan is registered,
- (b) an application for registration of the plan has been filed and the administrator has not received a written notice under section 145(2) that the Superintendent refuses to register the plan, or
- (c) the administrator is otherwise entitled, under section 146(4)(a), to administer the plan.

(2) Subsection (1) does not prevent administration of a pension plan during the prescribed period after the establishment of the plan.

Application for registration of plans

13 The administrator of a pension plan must, within the prescribed period after the establishment of the plan, apply for registration of that plan by filing an application, in the form and manner required by the Superintendent, with the following:

- (a) a certified copy of

- (i) the plan text document,
- (ii) the record that authorizes the establishment of the plan or under which the plan is established or, if the record applies to more than the establishment of the plan, the portion of the record that applies to the establishment of the plan,
- (iii) each trust deed or trust agreement, insurance contract, bylaw and resolution relating to the plan,
- (iv) in the case of a non-collectively bargained multi-employer plan, the participation agreement referred to in section 36(1)(a),
- (v) the list referred to in section 36(1)(b), and
- (vi) any other records required by the Superintendent;
- (b) if the plan text document of the plan contains a benefit formula provision,
 - (i) an actuarial valuation report that meets the requirements of section 38(1)(b)(i), and
 - (ii) a cost certificate, in the form required by the Superintendent, that meets the requirements of section 38(1)(b)(ii);
- (c) a statement in the prescribed form that
 - (i) in the opinion of the administrator, the plan documents comply with this Act and the regulations, and
 - (ii) the following have been established in relation to the plan:
 - (A) a governance policy that meets the requirements of section 42(1);
 - (B) a statement of investment policies and procedures that meets the requirements of section 43(1);
 - (C) a funding policy that meets the requirements of section 44.

Superintendent must register plan in appropriate circumstances

14 Unless the Superintendent is of the opinion that the records filed under section 13 in relation to a pension plan do not comply with this Act and the regulations, the Superintendent must

- (a) register the plan, and
- (b) issue to the administrator a certificate of registration for the plan.

If application is refused or withdrawn

15 If the Superintendent refuses to register a pension plan or if the application to register a pension plan is withdrawn before registration of the plan, there must be returned, to each person who made contributions to the plan, the amount of those contributions

- (a) plus interest on the person's contributions, and
- (b) less the person's proportionate share of any reasonable expenses incurred in relation to the application for registration and the return of contributions.

Superintendent may cancel plan registration

16 The Superintendent may cancel the registration of a pension plan that has terminated and wound up in accordance with this Act and the regulations.

Division 2
Amendment of Plan Text Documents

Restrictions on administration of plan if plan text document amended

17 Without limiting section 19(b), an administrator must not administer a pension plan in a manner that reflects an amendment to the plan text document unless

- (a) the application for registration of the amendment has been filed and the administrator has not received a written notice under section 145(2) that the Superintendent refuses to register the amendment, or
- (b) the administrator is otherwise entitled, under section 146(4)(b), to administer the plan in that manner.

Filings required for registration of amendment to plan text documents

18 If an amendment is made to the plan text document of a pension plan, the administrator must, within the prescribed period and in the form and manner required by the Superintendent, file

- (a) a certified copy of the amendment,
- (b) a statement in the prescribed form that, in the opinion of the administrator, the amendment complies with this Act and the regulations, and
- (c) any other records required by the Superintendent.

Restrictions on administration of plan if amendments severed

19 If, under section 22(3), the Superintendent has severed a portion of an amendment to the plan text document of a pension plan, the administrator of the plan

- (a) must administer the plan in a manner that reflects the remaining portion of the amendment, and
- (b) must not administer the plan in a manner that reflects the severed portion of the amendment unless the administrator is entitled, under section 146(4)(b), to administer the plan in a manner that reflects the amendment including the severed portion.

Restrictions on amendments to reduce benefits

20(1) An amendment to the plan text document of a pension plan must not

- (a) reduce a person's benefits relating to employment in which the person engaged on or after the initial legislation date and before the later of the date on which the records referred to in section 18 are filed in relation to the amendment and the effective date of the amendment,
- (b) reduce a person's benefits in respect of remuneration, employment or membership before January 1, 1966 by taking into account the person's pension under the CPP Act or the QPP Act, or

- (c) reduce a person's ancillary benefits if the person has met all the requirements of the plan text document that are necessary to exercise the right to receive the benefit.

(2) Despite subsection (1), the administrator of a pension plan,

- (a) if the plan is either a negotiated cost plan or a jointly sponsored plan and the plan text document of the plan does not contain a target benefit provision, may, with the written consent of the Superintendent, amend the plan text document to reduce benefits if the circumstances of the plan require reduced benefits,
- (b) if the plan text document of the plan contains a target benefit provision, must, in the prescribed circumstances and within the prescribed period, amend the plan text document to do one or more of the following:
 - (i) reduce or eliminate the ancillary benefits under the plan in accordance with section 92(3);
 - (ii) reduce the benefit that, under the target benefit provision, was intended to be paid, which reduction may, but need not, apply to accrued benefits;
 - (iii) increase the amount of the contributions payable under the plan,

or

- (c) may amend the plan text document to reduce benefits if the amendment is for the purpose of compliance with the *Income Tax Act* (Canada).

**Amendment to temporarily improve benefits
under target benefit provision**

21(1) In this section, “temporary improvement in benefits”, in relation to a target benefit provision, means a temporary increase to the pensions to which retired members are entitled under the provision.

(2) If the plan text document of a pension plan contains a target benefit provision, that plan text document may, in the prescribed circumstances, be amended to provide, for not longer than the

period within which those prescribed circumstances continue to exist, a temporary improvement in benefits.

(3) If the Superintendent is of the opinion that the prescribed circumstances referred to in subsection (2) no longer exist, the Superintendent may direct the administrator to cease providing the temporary improvement in benefits referred to in the amendment.

Superintendent must register amendment to plan text document in appropriate circumstances

22(1) After the filing, under section 18, of a certified copy of an amendment to the plan text document of a pension plan, the Superintendent, subject to subsection (2) of this section, must

- (a) register the amendment, and
- (b) issue to the administrator a notice of registration for the amendment.

(2) Without limiting any other basis on which the Superintendent may refuse to register an amendment to the plan text document of a pension plan, the Superintendent may refuse to register the amendment

- (a) if the Superintendent is of the opinion that the amendment does not comply with this Act or the regulations,
- (b) if the Superintendent is of the opinion that the administrator has not complied with this Act in respect of the amendment, or
- (c) in the prescribed circumstances.

(3) For the purposes of this section, the Superintendent may sever from an amendment referred to in subsection (1) that portion of the amendment that does not comply with this Act or the regulations, and register in accordance with subsection (1) the remaining portion of the amendment.

Revocation of registration of amendment

23(1) The Superintendent may revoke the registration of an amendment to a plan text document if the amendment does not comply with this Act or the regulations.

(2) A revocation under subsection (1) has effect from a date that is not earlier than the date determined by the Superintendent to be the date on which the non-compliance under subsection (1) occurred or began.

Transactions may be reversed

24 If an amendment to the plan text document of a pension plan has been filed for registration and the Superintendent notifies the administrator of the plan in writing that the registration of the amendment has been refused or revoked, the Superintendent may

- (a) direct that all or part of the refusal or revocation has retroactive effect, and
- (b) direct the administrator to reverse any transactions that were based on the assumption that the amendment would be registered or would remain registered, as the case may be.

Division 3
Amendment of Supporting
Plan Documents

Restrictions on administration of plan if supporting plan document amended

25 An administrator must not administer a pension plan in a manner that reflects an amendment to a supporting plan document unless a certified copy of a record setting out the amendment has been filed.

Amendment to supporting plan documents

26(1) If an amendment is made to a supporting plan document, the administrator must, within the prescribed period and in the form and manner required by the Superintendent, file

- (a) a certified copy of a record setting out the amendment,
- (b) a statement in the prescribed form that, in the opinion of the administrator, the amendment complies with this Act and the regulations, and
- (c) any other records required by the Superintendent.

(2) If a new supporting plan document is made, whether or not it replaces an existing supporting plan document, subsection (1) applies as if the new supporting plan document were an amendment to a supporting plan document.

Division 4

Registration of Plan or Amendment

Effective date of plan or amendment

27(1) Subject to section 20(1), a pension plan or an amendment to a plan text document of a pension plan may be made effective on a date that is before, on or after the date on which the plan or amendment is registered.

(2) An amendment to a supporting plan document may be made effective on a date that is before, on or after the date on which a certified copy of a record setting out the amendment is filed.

Designation of plan

28 On or after the registration of a pension plan or of an amendment to the plan text document of a pension plan, the Superintendent may designate the plan as a collectively bargained multi-employer plan, a non-collectively bargained multi-employer plan or a single employer plan.

Part 5

Membership in Pension Plans

Entitlement of employees to join plan

29(1) Each employee in each class of employees for whom a pension plan is maintained is, on application, entitled to become a member of the plan if,

- (a) in the case of a single employer plan,
 - (i) the employee has completed 2 years of employment with the participating employer, including any temporary absences from that employment in that period, and has not, during that 2-year period, ceased to be employed by that participating employer, and

- (ii) the employee has earned from that employment, in each of 2 consecutive calendar years, not less than 35% of the Year's Maximum Pensionable Earnings,
- (b) in the case of a non-collectively bargained multi-employer plan,
 - (i) the employee has completed 2 years of employment with a participating employer, or if the plan text document of the plan allows, with 2 or more participating employers, including any temporary absences from that employment in that period, and has not, during that 2-year period, ceased to be employed by the participating employer or participating employers, and
 - (ii) the employee has earned from that employment, in each of 2 consecutive calendar years, not less than 35% of the Year's Maximum Pensionable Earnings,

or

- (c) in the case of a collectively bargained multi-employer plan,
 - (i) 2 years has elapsed since the employee was first employed with a participating employer, and
 - (ii) the employee has earned from employment with one or more participating employers, in each of 2 consecutive calendar years, not less than 35% of the Year's Maximum Pensionable Earnings.
- (2)** Despite subsection (1), the plan text document of a pension plan may provide that, as part of the terms and conditions of an employee's employment,
- (a) the employee must be a member of the plan, or
 - (b) the employee becomes a member of the plan if the employee
 - (i) receives the prescribed notice, and
 - (ii) does not, within the prescribed period after receiving that notice, elect in the prescribed manner not to be a member.

(3) If an employee is eligible to join 2 or more of his or her employer's pension plans, the plan text documents of one or more of the plans may limit the employee's eligibility for membership to only one of those plans.

(4) Except in a situation described in the prescribed rules referred to in section 110, a person must not be required, as part of the terms and conditions of his or her employment or prospective employment, to transfer to any pension plan any of the commuted value of a benefit under another plan.

Dispute as to member of class of employees

30 If there is a dispute as to whether or not an employee is a member of a class of employees for whom a pension plan is established or maintained and the Superintendent is of the opinion that, based on the nature of the employment or of the terms of employment of the employee, the employee is a member of that class, the Superintendent may require the administrator to accept the employee as a member.

Suspension of membership

31(1) The plan text document of a pension plan may provide that an active member may suspend his or her membership in the plan while continuing to do work, or to provide a service, in an employment covered by the plan.

(2) If the plan text document of a pension plan allows an active member to suspend his or her membership,

(a) it may provide that there will be no accrual of benefits during the suspension, and

(b) it must provide that the suspended member has the right to lift the suspension at any of the times prescribed.

(3) If a person suspends his or her membership in a pension plan,

(a) the suspended member is not entitled to receive or transfer any benefits from the plan until the plan, or his or her membership in the plan, is terminated, and

(b) the suspension of membership does not constitute a termination of active membership.

Vesting of pension

32(1) If a member's termination of active membership in a pension plan occurs while the member is employed in Alberta in employment other than federally regulated employment, there immediately vests in the member, despite any other enactment or any provision of the plan documents, an entitlement to receive a pension in respect of the entire period during which he or she was an active member of the plan, whether or not the member was employed in Alberta during all of that period.

(2) The pension payable to a member under subsection (1) must not be less than the pension that, under the terms of the plan text document as it read at the date of the member's termination of active membership, is payable for that employment.

(3) If the commuted value of the pension to which a member is entitled as a result of employment in the period from the initial legislation date to January 1, 1987 is less than the value of the member's contributions, with interest, made to the pension plan toward the pension, the pension must be increased so that the commuted value of the increased pension is not less than the value of the member's contributions with interest.

Part 6 Administration of Pension Plans

Division 1 Plan Requirements

Plan requirements

33 Every pension plan must have

- (a) an administrator who meets the applicable prescribed criteria,
- (b) at least one participating employer, and
- (c) a fundholder.

Retention of records

34 An administrator of a pension plan, a participating employer, a fundholder and any other prescribed person who has within the person's custody or control any record relating to the plan must,

subject to and in accordance with the regulations, retain the record or a copy of it in Canada.

Division 2 Administrator

Responsibilities of administrator

35(1) The administrator of a pension plan must ensure that the plan and the pension fund are administered in accordance with this Act, the regulations and the plan documents.

(2) While acting in the capacity of administrator of a pension plan, the administrator stands in a fiduciary capacity in relation to

- (a) the members, and
- (b) others entitled to benefits.

(3) Without limiting subsection (2), the administrator, while acting in the capacity of administrator of a pension plan, must

- (a) act honestly, in good faith and in the best interests of
 - (i) the members, and
 - (ii) others entitled to benefits,

and

- (b) exercise the care, diligence and skill that a person of ordinary prudence would exercise when dealing with the property of another person.

(4) The administrator of a pension plan or, if the administrator is a board of trustees, a member of that board, must not, while acting in the capacity of administrator, knowingly allow his or her interests to conflict with the administrator's powers and duties in respect of the pension plan.

(5) For the purpose of subsection (4), an administrator does not knowingly allow the interests of the administrator to conflict with the administrator's powers and duties in respect of the pension plan merely because the administrator is or may become entitled to a pension or other benefit under the plan.

(6) In addition to any other responsibilities under this Act, an administrator of a pension plan must

- (a) ensure that the plan documents comply with this Act and the regulations,
- (b) if the plan is terminated, ensure that the plan is wound up in accordance with this Act and the regulations,
- (c) ensure that any agreement respecting the transfer of money or benefits between the plan and any other pension plan does not contain any provision, relating to a benefit, that a pension plan is prohibited by this Act from containing, and
- (d) perform any other duties the administrator is obligated under the regulations to perform.

(7) If an administrator employs an agent to exercise one or more of the powers or to perform one or more of the duties of the administrator, the administrator must

- (a) be satisfied that the agent is qualified to exercise the powers or to perform the duties for which the agent is employed, and
- (b) carry out reasonable and prudent supervision of the agent.

Administrator must enter into participation agreement

36(1) The administrator of a non-collectively bargained multi-employer plan must

- (a) enter into a written participation agreement with the participating employers in the plan, which agreement must
 - (i) meet the prescribed criteria, and
 - (ii) provide for the roles and responsibilities of the parties to the agreement,
- and
- (b) prepare a list of all participating employers who have signed that agreement.

(2) An administrator referred to in subsection (1) must, in the form and manner required by the Superintendent, notify the Superintendent of any participating employer who, after the agreement has been filed, signs the agreement or ceases to be a party to the agreement.

Administrator must disclose information and records

37(1) Subject to and in accordance with the regulations, the administrator of a pension plan must, without charge, provide prescribed information, including records,

- (a) to members,
- (b) in the case of a member who is entitled to a benefit who is deceased, to whichever of the following is entitled to receive the benefit:
 - (i) the surviving pension partner of the deceased, or
 - (ii) the person who is, in relation to the benefit, the designated beneficiary,or, if no person referred to in subclause (i) or (ii) is entitled to the benefit, the personal representative of the estate of the deceased,
- (c) to employees who are, or are about to be, eligible to become active members of the plan, and
- (d) to prescribed persons.

(2) Subject to and in accordance with the regulations, if any of the persons referred to in subsection (1)(a), (b), (c) or (d) requests access to prescribed information, the administrator of the pension plan in relation to which the request was made must, at the option of the administrator, either

- (a) allow the person to examine the prescribed information without charge at a prescribed place, or
- (b) provide to the person, without charge, a copy of the prescribed information that the person has requested.

(3) Despite subsections (1) and (2)(a), if a person who is allowed to examine information in accordance with subsection (2)(a) instead requests, in writing, a copy of the information, the

administrator must, within the prescribed period, provide a copy of the information to that person on payment of a charge not exceeding the reasonable costs incurred in making and providing the copy.

(4) Subject to and in accordance with the regulations, an administrator of a pension plan, after receiving a written request from

- (a) a participating employer in the plan,
- (b) a trade union whose membership includes or consists of members of the plan, or
- (c) a prescribed person,

must provide to the requesting person or body a copy of any prescribed record on payment of a charge not exceeding the reasonable costs incurred in making and providing the copy.

(5) Unless otherwise directed by the Superintendent, an administrator is not required to comply with a person's request under subsection (2), (3) or (4) for information if the administrator has already provided that information to that person in compliance with a request made under one of those subsections within the 12 months immediately preceding receipt of the most current request.

Administrator must file reports and returns

38(1) Subject to this section, the administrator of a pension plan must, at the times prescribed and in the form and manner required by the Superintendent, file

- (a) returns containing prescribed information relating to the plan,
- (b) if the plan text document of the plan contains a benefit formula provision,
 - (i) actuarial valuation reports that
 - (A) contain the prescribed information,
 - (B) are prepared by a Fellow of the Canadian Institute of Actuaries,

- (C) are prepared on the prescribed basis and on the basis of actuarial assumptions and methods that are appropriate and in accordance with accepted actuarial practice,
- (D) identify the contributions that are sufficient to meet the funding requirements applicable to the plan,
- (E) are satisfactory to the Superintendent, and
- (F) if applicable, contain a certification by the preparer that the results of the independent valuation prepared under subsection (2)(b) have been incorporated into the report,

and

(ii) cost certificates that

- (A) are signed by a Fellow of the Canadian Institute of Actuaries,
- (B) are satisfactory to the Superintendent,
- (C) include information necessary for the Superintendent to be able to determine whether the plan will meet the funding requirements applicable to the plan, and
- (D) contain prescribed information,

and

(c) prescribed financial statements prepared in accordance with prescribed standards.

(2) Subject to this section, at the written request of the Superintendent, the administrator of a pension plan must file any record required by the Superintendent at the time or times, and in the form and manner, required by the Superintendent, including, without limitation, the following:

- (a) if contributions to or benefits from the plan are determined under the provisions of a collective agreement or an arbitration award, a copy of those provisions and of any amendments to them;

- (b) an independent valuation of the market value of the plan's assets or of a specific asset or category of assets;
- (c) an actuarial valuation report and a cost certificate, prepared as at a date specified by the Superintendent, that meet the requirements set out in subsection (1)(b).

(3) If the Superintendent considers that the actuarial valuation report or cost certificate filed by an administrator under subsection (1)(b) or (2)(c) does not comply with the subsection under which it is filed,

- (a) the Superintendent must notify the administrator, in writing, of that fact, and
- (b) the administrator must promptly have the report or certificate amended to comply with the subsection under which it is filed.

Administrator must disclose insolvency proceedings

39 If there is, in respect of a participating employer in a pension plan other than a collectively bargained multi-employer plan, a proceeding

- (a) under the *Companies' Creditors Arrangement Act* (Canada),
- (b) under the *Winding-up and Restructuring Act* (Canada) or similar provincial legislation,
- (c) in relation to liquidation, receivership or secured creditor enforcement, or
- (d) under the *Bankruptcy and Insolvency Act* (Canada),

the administrator of the plan must, immediately after becoming aware of the commencement of the proceeding, provide to the Superintendent written notice of that proceeding.

Repayment of contributions or transfer of benefits

40 If a person becomes entitled or obligated to receive a lump sum payment or a transfer of benefits from a pension plan, the administrator must, in accordance with the regulations, make the payment or transfer.

Review of plan

41(1) The administrator of a pension plan must, at the times and in the manner required by the regulations, assess the administration of the plan, including, without limitation,

- (a) the plan's compliance with this Act and the regulations,
- (b) the plan's governance,
- (c) the funding of the plan,
- (d) the investment of the pension fund,
- (e) the performance of the trustees, if any, and
- (f) the performance of the administrative staff and any agents of the administrator.

(2) The administrator must prepare the assessment required under subsection (1) in writing and must retain that written assessment and make it available to the Superintendent on the Superintendent's request.

Division 3 Administrator Must Ensure Policies Established

Administrator must ensure governance policy established

42(1) The administrator of a pension plan must ensure that a written governance policy that meets the prescribed criteria is established in respect of the structures and processes for overseeing, managing and administering the plan.

(2) The administrator of a pension plan must ensure that the plan is administered in accordance with the governance policy established under subsection (1).

Administrator must ensure statement of investment policies and procedures established

43(1) The administrator of a pension plan must ensure that a written statement of investment policies and procedures that meets the prescribed criteria is established in respect of the plan's portfolio of investments.

(2) The administrator of a pension plan must ensure that the pension fund is invested in accordance with the statement of investment policies and procedures established under subsection (1).

(3) If the plan text document of a pension plan contains a benefit formula provision, the administrator of the plan must provide to the actuary engaged to prepare the actuarial valuation report for the plan under section 38 a copy of the statement of investment policies and procedures on or before the later of

- (a) the date that is 60 days after the establishment of or amendment to the statement, and
- (b) the effective date of the actuary's engagement.

Administrator must ensure funding policy established

44 If the plan text document of a pension plan contains a benefit formula provision, the administrator of the plan must

- (a) ensure that a written funding policy is established that meets the prescribed criteria respecting funding objectives and sets out the intended method for achieving those objectives, and
- (b) provide to the actuary engaged to prepare the actuarial valuation report for the plan a copy of the funding policy on or before the later of
 - (i) the date that is 60 days after the establishment or amendment of the funding policy, and
 - (ii) the effective date of the actuary's engagement.

Division 4 Participating Employers

Funding responsibilities of participating employer

45(1) The participating employers in a pension plan must comply with the funding requirements applicable to the plan.

(2) Without limiting subsection (1), the participating employers in a pension plan must, in accordance with section 56, the regulations and the plan documents, remit to the pension fund the contributions

that are required to meet the funding requirements applicable to the plan.

Participating employer must provide information and records to administrator

46(1) On the written request of the administrator of a pension plan, a participating employer or a former participating employer must, within any reasonable period that is specified in the request, provide the administrator with information or records required by the administrator for the purpose of administering the plan in compliance with this Act, the regulations and the plan documents.

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

(3) If the participating employer or former participating employer requests that any records provided under subsection (1) be returned, the administrator must return those records within a reasonable period.

(4) The administrator may make copies of or take extracts from any records provided under subsection (1).

Trust agreement applies to all participating employers

47 Despite any other law, if a multi-employer plan has been established by or under a trust agreement, the participating employers in the plan are bound by the trust agreement and by any amendments to it, whether or not they were parties to the agreement under which the trust was established or amended.

Participating employer must enter into participation agreement

48 An employer must, within the prescribed period after becoming a participating employer in a non-collectively bargained multi-employer plan, enter into a participation agreement that complies with section 36(1) with the administrator.

Compelling compliance

49(1) If a participating employer or former participating employer does not comply with a requirement of section 46, the administrator may apply to the Court for an order to compel compliance and, in that event, must give notice of the application to the Superintendent

in addition to any other notice that must be provided under the *Alberta Rules of Court*.

(2) The Court may, subject to any conditions that the Court considers appropriate, make an order compelling the participating employer or former participating employer to comply with section 46 if the Court is satisfied that the information or records requested by the administrator are

- (a) within the participating employer's or former participating employer's possession, power or control, and
- (b) required for the purpose referred to in section 46(1).

Division 5 Fundholders

Who may act as fundholder

50(1) In this section, "significant shareholder", in relation to a participating employer that is a corporation, means an individual who, alone or in combination with his or her parent, brother, sister, pension partner or child, owns or has, directly or indirectly, a beneficial interest in shares that represent 10% or more of the voting entitlement attached to all the shares of the participating employer.

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

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

- (c) a board, agency, commission, corporation or other entity that, under an enactment, is responsible for holding the pension fund,
- (d) a prescribed person or entity, or
- (e) a combination of the persons or entities referred to in clauses (a) to (d).

Responsibilities of fundholder

51 The fundholder of a pension plan must

- (a) hold the pension fund in accordance with this Act and the regulations, and
- (b) perform any other duties provided for in this Act and the regulations.

Part 7 Funding, Contributions and Assets

Division 1 Funding of the Plan

Funding requirements for benefit formula provisions

52(1) This section applies only to plan text documents that contain a benefit formula provision.

(2) The plan text document of a pension plan must provide that the plan must be funded by the participating employers, or in the case of a jointly sponsored plan, by the participating employers and the active members, in accordance with

- (a) the funding requirements prescribed for the purposes of this section, and
- (b) the most current actuarial valuation report and cost certificate, filed in relation to the plan, as amended in accordance with any notification of the Superintendent under section 38(3).

(3) For a negotiated cost plan, the liability of a participating employer, or in the case of a jointly sponsored pension plan, the

liability of the participating employers and the active members, for funding the benefits under the plan is limited to the amount that the participating employer is, or the participating employers and active members are, contractually required to contribute to the plan.

(4) For a pension plan the plan text document of which contains a target benefit provision, the liability of a participating employer, or in the case of a jointly sponsored pension plan, the liability of the participating employers and the active members, for funding the benefits under the target benefit provision is limited to the amount that the participating employer is, or the participating employers and active members are, contractually required to contribute to the plan.

Funding requirements for defined contribution provisions

53 If the plan text document of a pension plan contains a defined contribution provision, the participating employers in the plan must fund the plan in accordance with the contributions required by the plan documents.

Solvency reserve account

54(1) In this section, “solvency reserve account” means the separate account set up under subsection (2).

(2) If the plan text document of a pension plan contains a benefit formula provision other than a target benefit provision, the administrator may set up a separate account within the plan’s pension fund.

(3) The only funds that may be deposited to a solvency reserve account are payments made in respect of a solvency deficiency.

(4) Without limiting subsection (3), assets must not be transferred from an account in a pension fund to a solvency reserve account in the same pension fund.

(5) Despite any wording in the plan text document of a pension plan, prescribed actuarial excess or surplus in the solvency reserve account may be withdrawn, subject to and in accordance with the regulations, by a prescribed person.

Letters of credit

55(1) The participating employers in a pension plan, other than participating employers in a collectively bargained multi-employer plan, may, instead of making some or all of the payments required with respect to a solvency deficiency, provide to the fundholder a letter of credit made out to the fundholder for the benefit of the plan, but only if the letter of credit and the bank or credit union obligated under the letter of credit satisfy the prescribed criteria.

(2) A fundholder to which a letter of credit is provided under subsection (1) holds the letter of credit in trust for members of the pension plan and for any other persons entitled to benefits under the plan in accordance with their respective interests under that plan.

(3) In prescribed circumstances, the fundholder must demand payment of the amount of the letter of credit into the pension fund by the issuer of that letter of credit.

Division 2 Contributions to the Plan

Remitting of contributions

56(1) The participating employers in a pension plan must, within the prescribed period, remit member and participating employer contributions due to the pension fund as follows:

- (a) in the case of a single employer plan, to the fundholder;
- (b) in the case of a collectively bargained multi-employer plan, to the administrator;
- (c) in the case of a non-collectively bargained multi-employer plan, to the administrator or the fundholder as set out in the plan text document.

(2) If the administrator of a multi-employer plan is not the fundholder, the administrator must, promptly after receiving contributions remitted under subsection (1)(b) or (c), remit the contributions to the fundholder.

(3) If the participating employers do not remit contributions in compliance with subsection (1) within 30 days after the end of the prescribed period referred to in that subsection, the administrator or the fundholder to whom the contributions ought to have been remitted must, within 15 days, provide to the Superintendent,

whether or not the contributions were subsequently remitted, a written notice

- (a) advising of the failure of the participating employers to remit,
- (b) setting out any other information required by the regulations, and
- (c) setting out any other information necessary to allow the Superintendent to exercise his or her powers or perform his or her duties under this Act.

(4) Subsection (3) does not apply to a collectively bargained multi-employer plan.

(5) The administrator of a pension plan, other than a collectively bargained multi-employer plan, must provide to the fundholder, at the prescribed time and in the form required by the Superintendent, a summary of the contributions required to be made in respect of the plan.

**Maximum employee contributions for funding
pension under benefit formula provision**

57(1) This section applies to contributions applicable to, and to benefits under, a benefit formula provision other than contributions applicable to and benefits under a jointly sponsored plan.

(2) Subject to subsections (3), (5), (6) and (7), if the total of

- (a) the contributions made by a member of a pension plan on and after January 1, 1987, and
- (b) the interest that has accrued on those contributions

exceeds 1/2 of the commuted value of that portion of the member's benefit that relates to his or her membership in the plan during the period in which the member was required to make contributions on and after January 1, 1987, the excess must be allocated or distributed in the manner required under subsection (4).

(3) Subsection (2) does not apply to the following contributions or to the benefits resulting from them:

- (a) additional voluntary contributions;

- (b) optional ancillary contributions;
- (c) contributions made to secure improvements in, or to purchase, benefits related to past service before or after the initial legislation date if the benefit improvement is provided entirely from the member's contributions;
- (d) contributions made by an active member of a collectively bargained multi-employer plan in any fiscal year of the plan to increase the pension to which the member is entitled up to the maximum allowed for that year.

(4) Subject to subsection (6), if the excess referred to in subsection (2) exists at one of the prescribed times, the excess must be allocated or distributed in whichever of the following manners the member elects:

- (a) paid as a lump sum to the member or to a person who is to receive a benefit under section 89;
- (b) transferred to another pension plan, if and to the extent that the other plan allows the transfer;
- (c) transferred to an RRSP or an RRIF;
- (d) transferred to an insurance company to purchase a deferred pension;
- (e) used to increase the amount of the pension, if and to the extent that the plan text document of the pension plan provides for that election.

(5) If the plan text document of a pension plan contains a benefit formula provision, the plan text document may provide, in relation to deferred members to whom the excess referred to in subsection (2) is to be allocated or distributed under subsection (4), that if such a member's pension commencement date does not immediately follow the termination of his or her active membership or the conversion of the benefit formula provision to a defined contribution provision, the excess

- (a) is to be recalculated as of the member's pension commencement date, and
- (b) is not to be allocated or distributed until that recalculation is done.

(6) If a member to whom the excess referred to in subsection (2) is to be allocated or distributed dies before reaching his or her pension commencement date, the excess must be allocated or distributed as follows:

(a) if there is a surviving pension partner and both of the following apply:

(i) the pension partner had not provided a waiver under section 89(1)(b) before the member's death, and

(ii) section 84 does not apply to the pension partner,

the excess must be allocated or distributed in whichever of the manners referred to in subsection (4)(a) to (e) that the pension partner elects;

(b) if there is a surviving pension partner to whom clause (a) does not apply, or if there is no surviving pension partner, the excess must be provided

(i) to the designated beneficiary, or

(ii) if there is no designated beneficiary living, to the personal representative of the member's estate in that person's capacity as personal representative.

(7) If the plan text document of a pension plan contains a target benefit provision and a member of the plan who is eligible under section 96 to elect a transfer under Division 8 of Part 8 transfers an amount under section 97(b), the lump sum payment to which the member is entitled under subsection (4) of this section must be reduced in the prescribed manner.

Deemed trust

58(1) A participating employer in a pension plan is deemed to hold the following in trust for members of the plan and for any other persons entitled to benefits under the plan in accordance with their respective interests under the plan:

(a) all contributions that are due or owing to the plan by the participating employer;

(b) all amounts that have been deducted by the participating employer from members' remuneration as contributions to

the plan and that have not yet been remitted as required under section 56(1);

- (c) all contributions to the pension plan that have been received by the participating employer with respect to members and that have not yet been remitted as required under section 56(1).

(2) An administrator who is required to remit contributions under section 56(2) is deemed to hold in trust for the members of the pension plan and for the other persons entitled to benefits under the plan an amount equal to those contributions that remain to be remitted.

(3) Subsections (1) and (2) apply whether or not the contributions have been kept separate and apart from other money or property of the participating employer or the administrator.

Refund of contributions to avoid revocation

59 Despite anything in this Act but subject to Division 4 of Part 8, the administrator of a pension plan may return to a person a contribution made by the person if

- (a) the Superintendent consents in writing to the return after receiving
 - (i) a written request from the administrator for the return, and
 - (ii) all supporting information required by the Superintendent,
- and
- (b) the return is necessary to avoid the revocation of the plan's registration under the *Income Tax Act* (Canada).

Deemed trust for unremitted contributions

60(1) In this section, "security interest" has the same meaning as in the *Personal Property Security Act*.

(2) Subject to subsection (3) and section 61, money held by an employer in respect of a member or other person entitled to benefits under the plan subject to a trust under section 58 is secured

by a security interest on the property and assets of the employer to a maximum of \$5000 whether or not that property or those assets are subject to other security interests and is payable, without registration or other perfection of that security interest, in equal priority to claims or rights under section 109 of the *Employment Standards Code* as applied with respect to the money so held.

(3) This section and sections 58 and 61 apply notwithstanding any other Act but with the same force as sections 109 and 111 of the *Employment Standards Code*.

(4) The security interest under this section may be enforced by the administrator, who may commence and conduct a proceeding to enforce it.

Registration of claim for contributions

61(1) If the administrator of a pension plan makes a written claim on an employer on behalf of any person entitled to a benefit under the plan for payment of an amount held subject to a trust under section 58, the administrator may file that claim in a land titles office.

(2) The registration of the claim creates a secured charge in favour of the administrator, on behalf of the person entitled to the benefit, for the amount payable under section 58 set out in the claim, against all estates and interests in land owned or held by the employer.

(3) The secured charge has the same priority it would have if it were a mortgage registered against the estates and interests in the land.

(4) On payment of the amount that is the subject of the secured charge, the plan administrator shall have the registration under this section discharged.

Division 3 Investing Plan Assets

Investment requirements

62(1) Investments, including loans and financial decisions, respecting a pension plan must be made

(a) in accordance with this Act and the regulations, and

- (b) in the best financial interests of plan members and other persons entitled to benefits under the plan.

(2) Pension plan assets must be invested in a manner that a reasonable and prudent person would adopt if investing the assets on behalf of a person to whom the investing person owed a fiduciary duty to make investments

- (a) without undue risk of loss, and
- (b) with a reasonable expectation of a return on the investments commensurate with the risk,

having regard to the plan's liabilities.

(3) Pension plan assets must be held and invested

- (a) in the name of the plan, or
- (b) in the name of a custodian or trustee in accordance with a custodial agreement, trust agreement or Act, in which case the custodial agreement, trust agreement or Act must clearly indicate that the investments are held for the benefit of the plan.

Interest, gains and losses on contributions and benefits

63 Interest, gains and losses, calculated in the prescribed manner, must be credited or debited to the following at the prescribed rates and prescribed times:

- (a) all contributions to a pension plan, other than participating employer contributions required under a benefit formula provision;
- (b) the commuted value of benefits that are payable but not yet paid.

Division 4 Use of Actuarial Excess and Surplus

Transfer of actuarial excess or surplus

64(1) An administrator or a fundholder of a pension plan must not distribute any actuarial excess or surplus of the plan, other than actuarial excess or surplus in a solvency reserve account as defined in section 54(1), unless, in a distribution of actuarial excess, the

conditions referred to in clauses (a) to (c) are met or, in a distribution of surplus, conditions referred to in clauses (a) to (d) are met:

- (a) consent to the proposed distribution is obtained under subsections (3) and (4) or the plan text document of the plan provides for the distribution;
- (b) the administrator complies with the prescribed conditions;
- (c) the administrator receives written notice from the Superintendent consenting to the distribution;
- (d) in the case of a distribution of surplus, all of the benefits to which members of the plan are entitled on the termination of the plan have been paid.

(2) If the plan text document of a pension plan provides for distribution of actuarial excess or surplus to members, the reference to members includes the pension partners and designated beneficiaries of deceased members if those pension partners and designated beneficiaries still have an entitlement to receive a benefit under the plan.

(3) If the plan text document of a pension plan does not provide for the distribution of actuarial excess or surplus or to whom it may be distributed, the administrator may, subject to and in accordance with the regulations, present to the members and to the persons, if any, prescribed for the purposes of this subsection a proposal

- (a) to distribute actuarial excess or surplus, to the person or persons, and on the basis, set out in the proposal, and
- (b) to seek the consent of the persons referred to in subsection (4) to the proposed distribution.

(4) If, after being presented with a proposal referred to in subsection (3), at least

- (a) 2/3 of the active members of the pension plan, and
- (b) 2/3 of the group of persons comprising
 - (i) deferred and retired members, and

- (ii) the persons, if any, prescribed for the purposes of subsection (3),

notify the administrator, in writing, that they consent to the proposal, the participating employer may apply to the Superintendent in writing for consent to the distribution of the actuarial excess or surplus.

Use of actuarial excess

65(1) If an actuarial valuation report or cost certificate filed in relation to a pension plan reveals that the plan has actuarial excess, other than actuarial excess or surplus in a solvency reserve account as defined in section 54(1), the actuarial excess may, subject to and in accordance with the regulations, be applied to do one or both of the following in relation to contribution funding requirements:

- (a) to reduce or eliminate contributions of the participating employers, or, in the case of a jointly sponsored plan, to reduce or eliminate contributions of the participating employers and the active members, that would otherwise be required to comply with the funding requirements applicable to the plan;
- (b) if the plan text document of the plan contains a benefit formula provision and a defined contribution provision, to reduce or eliminate contributions of the participating employers that are required in relation to the defined contribution provision,

unless the plan documents specifically provide that those contributions may not be reduced or eliminated by the use of actuarial excess.

(2) If the Superintendent is of the opinion that it is appropriate to do so, the Superintendent may direct the administrator to cease applying actuarial excess to reduce or eliminate contributions.

(3) Nothing in this section precludes actuarial excess from being

- (a) left in the pension plan,
- (b) used to increase benefits, or
- (c) used or applied in any other way contemplated by the plan text document or under this Act.

Part 8 Benefits and Transfers

Division 1 Pension Eligibility Date

Age requirements of plan text document

66(1) The plan text document of a pension plan must provide for

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

at which the active members or deferred members of the plan, and surviving pension partners, if section 89(1)(a) applies, are entitled to start receiving a pension under the plan without reduction or increase to the pension.

(2) The plan text document of a pension plan must require an active member or a deferred member and, if section 89(1)(a) applies, surviving pension partner, to start receiving his or her pension no later than the last date on which a person is allowed under the *Income Tax Act* (Canada) to start receiving a pension from a registered pension plan.

Pension may start before pension eligibility date

67(1) A plan text document of a pension plan must allow a member to start receiving his or her pension on a reduced basis at any time within 10 years before he or she reaches the plan's pension eligibility date.

(2) A pension that starts before the pension plan's pension eligibility date may be reduced in comparison with what would have been payable had the pension started at the plan's pension eligibility date, but only if the actuarial present value of the reduced pension is at least equal to the aggregate of

- (a) the actuarial present value of the pension that would have been payable had the pension started at the plan's pension eligibility date, and
- (b) the actuarial present value of any other benefit to which the member would have been entitled had the member terminated active membership and elected to start to receive the pension at the plan's pension eligibility date.

If employment continues after pension eligibility date

68(1) Subject to section 75, the plan text document of a pension plan must provide that a member who has reached the plan's pension eligibility date may, for so long as he or she remains in an employment covered by the plan, continue to accrue benefits under the plan in the same manner and to the same extent as he or she could have done in that employment before reaching that date.

(2) Without limiting subsection (1), the plan text document may provide one or more of the following in relation to a member referred to in subsection (1):

- (a) that the member may, if he or she so elects in writing, cease accruing benefits and start receiving a pension;
- (b) that the member may, if he or she so elects in writing, cease accruing benefits and delay receiving a pension until a later age, in which case the pension must be actuarially increased to reflect the delay;
- (c) if and to the extent allowed by the *Income Tax Act* (Canada), that the member may, if he or she so elects in writing, start receiving a pension and continue to accrue benefits.

(3) A member referred to in subsection (1) must not select more than one of the options included in the plan text document under subsection (2).

Division 2
Restrictions on Access to Benefits

Evidence of entitlement to benefit

69(1) A person claiming to be entitled to receive a benefit under a pension plan has the onus of proving to the satisfaction of the administrator that the claimant is entitled to the benefit.

(2) The administrator may require the claimant to provide evidence to establish the claim, including evidence by way of affidavit, declaration or certificate.

Locking in commuted value of benefits

70 Subject to Divisions 7 and 8 and sections 57 and 71, the commuted value of benefits that have been earned on and after the

initial legislation date must be applied towards the provision of a pension, and except for that purpose,

- (a) a member must not withdraw, surrender or receive the commuted value of any or all of that portion of the commuted value of his or her benefits that relates to his or her membership in the pension plan on and after the initial legislation date, and
- (b) a surviving pension partner entitled to a pension under section 89 or 90 that relates to the deceased pension partner's membership in the plan on and after the initial legislation date must not withdraw, surrender or receive the commuted value of any or all of those benefits.

Exceptions to locking in commuted value of benefits

71(1) The plan text document of a pension plan must provide that a deferred member or, if the deferred member is deceased, the deferred member's surviving pension partner, is entitled to receive payment of a lump sum amount equal to the total of the commuted values of the benefits to which the deferred member or surviving pension partner is entitled under the plan if that total does not exceed the prescribed amount.

(2) The contract in relation to a locked-in retirement account or retirement income arrangement must provide that the owner of the account or arrangement or, if the owner is deceased, the owner's surviving pension partner, is, if the prescribed conditions are met, entitled to receive payment of a lump sum amount equal to the commuted value of the benefit to which the owner or surviving pension partner is entitled.

(3) The plan text document of a pension plan must provide the following:

- (a) if a member of the plan, other than a retired member in receipt of benefits under a benefit formula provision, who has a current entitlement to receive a benefit under the plan, has an illness or a disability that is certified by a medical practitioner to be terminal or to likely shorten the member's life considerably, that member may, subject to and in accordance with the regulations,

- (i) elect to convert all or part of the benefit on the prescribed basis to a series of payments for a fixed term to that member, or
 - (ii) elect to withdraw as a lump sum an amount equal to the commuted value of the benefit or any lesser amount that the member may select;
- (b) a person who is entitled under Division 8 to receive a benefit under the plan may, subject to and in accordance with the regulations, withdraw as a lump sum an amount equal to the commuted value of the benefit on providing to the administrator written evidence that the Canada Revenue Agency has confirmed the person's status as a non-resident for the purposes of the *Income Tax Act* (Canada).
- (4)** If a benefit has been transferred to a locked-in retirement account or a retirement income arrangement, the contract for the locked-in retirement account or retirement income arrangement must provide the following:
- (a) if a person who is the owner of the account or arrangement has an illness or a disability that is certified by a medical practitioner to be terminal or to likely shorten the person's life considerably, the person may, subject to and in accordance with the regulations, withdraw all or part of the money held in the account or arrangement by way of a lump sum payment, or a series of payments for a fixed term, to that person;
 - (b) a person who is the owner of the account or arrangement, or his or her surviving pension partner, may, subject to and in accordance with the regulations, withdraw as a lump sum the money held in the account or arrangement on providing to the person who maintains the account or arrangement written evidence that the Canada Revenue Agency has confirmed the status of the owner or his or her surviving pension partner as a non-resident for the purposes of the *Income Tax Act* (Canada);
 - (c) if a person who is the owner of the account or arrangement is suffering from financial hardship, the person may, subject to and in accordance with the regulations, withdraw as a lump sum an amount, up to the prescribed amount, from the account or arrangement.

(5) For the purpose of transferring locked-in funds to a retirement income arrangement or for the purposes of providing life income type benefits from a pension plan pursuant to section 77, and subject to prescribed conditions,

- (a) a member of a pension plan may elect to unlock up to 50% of the commuted value of the benefit in a pension plan, or
- (b) the owner of a locked-in retirement account may elect to unlock up to 50% of the account balance in the locked-in retirement account.

(6) If a person who is eligible to make an election under subsection (3), (4) or (5) has a pension partner, the person must not make that election unless the administrator or, in the case of a locked-in retirement account or retirement income arrangement, the person who maintains the account or arrangement, has received a statement from the pension partner in the prescribed form that

- (a) states that the pension partner is aware of the pension partner's entitlements under the pension plan,
- (b) waives those entitlements, and
- (c) was signed by the pension partner in the presence of a witness and outside the presence of the person eligible to make the election.

No disposition or attachment of benefits and money

72(1) Subject to subsections (3) to (6), the following must not be assigned, charged, alienated or anticipated and are exempt from execution, seizure or attachment:

- (a) benefits;
- (b) all or any portion of the pension fund;
- (c) money transferred under
 - (i) section 57(4)(b), (c) or (d) or 89(1)(a)(i) or (3),
 - (ii) Division 8, or
 - (iii) Part 9.

(2) A transaction purporting to assign, charge, alienate or anticipate benefits or other assets referred to in subsection (1) is void.

(3) Subsection (1) does not apply in respect of the execution, seizure or attachment of a retirement savings vehicle within the meaning of and under section 17.1 of the *Maintenance Enforcement Act*.

(4) Subsections (1) and (2) do not apply

(a) subject to subsection (5), to

(i) additional voluntary contributions, or

(ii) optional ancillary contributions,

or

(b) to an agreement or matrimonial property order, as defined in Division 4, providing for a transfer of entitlement between a member and a pension partner or former pension partner because of a breakdown of their relationship.

(5) Additional voluntary contributions and optional ancillary contributions are exempt from execution, seizure or attachment unless

(a) the additional voluntary contributions or optional ancillary contributions were made after, on or within 12 months before the date on which a debt came due and the execution, seizure or attachment is to enforce payment of that debt,

(b) the additional voluntary contributions or optional ancillary contributions have been or are being withdrawn from a pension plan, or

(c) the execution, seizure or attachment was initiated against the additional voluntary contributions or optional ancillary contributions before October 1, 2009.

(6) For the purposes of subsection (5)(b),

(a) if additional voluntary contributions or optional ancillary contributions are transferred by a person to any of that

person's registered plans within the meaning of section 92.1 of the *Civil Enforcement Act*, that transfer does not constitute a withdrawal of those additional voluntary contributions or optional ancillary contributions from a pension plan, and

- (b) if execution, seizure or attachment is pursued against additional voluntary contributions or optional ancillary contributions being withdrawn from a pension plan by a member, those additional voluntary contributions or optional ancillary contributions are deemed, for the purposes of that execution, seizure or attachment and Part 8 of the *Civil Enforcement Act*, to be a debt due to the member for or with respect to the member's salary or wages.

(7) A transaction purporting to effect a withdrawal, surrender or commutation referred to in section 70(a) or (b) is void.

(8) If this Act requires an amount to be withheld, deducted, paid or credited, an agreement or arrangement not to withhold, deduct, pay or credit that amount, made by the person on whom the requirement is imposed, is void.

Income and asset testing

73 If a person is entitled under this Act to withdraw money from a pension plan, a locked-in retirement account or a retirement income arrangement,

- (a) that entitlement is not to be considered when determining income or assets available to the person for the purpose of any Government program or service, and
- (b) that person shall not be required to withdraw, or to exercise a specific option under this Act or the pension plan to withdraw, money or to commence a series of payments, in order to become eligible for any Government program or service.

Restrictions on transfer of assets

74(1) Assets of a pension plan must not be transferred from the plan to another plan unless

- (a) the transfer is made under section 57(4) or 89(1) or (3), under Division 8 or under Part 9,
 - (b) the transfer is effected under an agreement referred to in section 35(6)(c), or
 - (c) the written consent of the Superintendent is obtained.
- (2)** Assets of a pension plan must not be transferred from one fundholder of the plan to another fundholder of the plan, other than by way of providing benefits under the plan, unless
- (a) the insurance contract under section 50(2)(a) or trust agreement under section 50(2)(b) of the fundholder who is receiving the transfer is filed and the plan and any relevant amendment providing for the transfer are registered, or
 - (b) the written consent of the Superintendent is obtained.
- (3)** Despite subsection (1), an administrator of a pension plan must not, without the consent of, or without being directed to do so by, the Superintendent, transfer assets out of the pension fund under section 89(1) or (3), under Division 8 or under Part 9 if the transfer would impair the solvency of the plan.
- (4)** The Superintendent may, in writing, consent to or direct a transfer referred to in subsection (3) on terms and conditions the Superintendent considers appropriate in the circumstances.

Division 3

Benefits May Be Affected

Maximum years and amounts

75 A plan text document of a pension plan may, in relation to the pension that may be paid under the plan, set a maximum number of years of employment that may be taken into account in calculating the pension or set a maximum amount for the pension and, in either case, must provide that when an active member reaches that maximum, no further contributions are payable by the member.

Adjustments in pension for CPP Act, QPP Act and OAS Act

76(1) The plan text document of a pension plan may provide that a member may elect to have his or her pension payments increased for a prescribed period by an amount determined by reference to

any amounts payable under the CPP Act or the QPP Act or both, as the case may be, if

- (a) the election is made on or before the member's pension commencement date, and
- (b) the commuted value of the pension payable after the increased benefits have ceased is not less than the prescribed amount.

(2) The amount of pension being paid under a pension plan must not be reduced as a result of any change in the amounts being paid under the CPP Act or the QPP Act.

(3) The plan text document of a pension plan must not provide that the pension that a person is entitled to receive from the plan will be reduced if the person receives payments under the OAS Act in respect of service on and after January 1, 1987.

(4) If the plan text document of a pension plan provides for the reduction of a pension because of a member's entitlement to any payments under one or more of the CPP Act, the QPP Act and the OAS Act, the reduction must not exceed an amount determined by the prescribed formula.

Flexibility for life income type benefits

77 Subject to the regulations, the plan text document of a pension plan may authorize payment of life income type benefits to be made in any manner that

- (a) is authorized by the *Income Tax Act* (Canada), and
- (b) is in accordance with the regulations.

Division 4 Marriage Breakdown

Definitions

78 In this Division,

- (a) "agreement" means a written agreement that provides for the division and distribution of a benefit and that meets the requirements of section 37 of the *Matrimonial Property Act*, and that is enforceable under section 38 of that Act;

- (b) “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;
- (c) “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;
- (d) “pension partner” means a pension partner, including a former pension partner, to whom this Division applies;
- (e) “share” means, with respect to a member pension partner or the non-member pension partner, that person’s share of the total pre-division benefit resulting from the division under this Division and that, in the case of the non-member pension partner, is to be distributed under this Division;
- (f) “total pre-division benefit” means the total benefit, or the value of that benefit, accrued to the member pension partner immediately before the division under this Division and on which that division is to be based pursuant to this Division.

Prevalence of this Division in relation to benefits

79(1) Despite the *Matrimonial Property Act* or any other rule of law or equity to the contrary, a matrimonial property order or an agreement shall not divide or distribute a benefit or any portion of a benefit except in a manner that complies with this Division.

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

Application of matrimonial property orders and agreements

80(1) This Division applies with respect to the division and distribution of benefits where, as between a member pension partner and the non-member pension partner, a matrimonial property order or agreement is filed with an administrator, and this Division applies despite any other provision of this Act, except as

specifically stated, and despite any other rule of law or equity to the contrary.

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

- (a) on or after March 1, 2000, or
- (b) before March 1, 2000 if there is filed with the administrator a written election by both pension partners to have this Division apply.

(3) For the purposes of this Division, 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 156, with the onus of proving proper service being on the server.

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

Division and distribution of benefits

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

Valuation of benefits

82(1) The value of the total pre-division benefit and the non-member pension partner's share must be calculated in the prescribed manner.

(2) Where a benefit is to be paid from a pension plan, the division of a benefit between the pension partners must not reduce the member pension partner's share of the total pre-division benefit by more than 50% of the actuarial present value of the benefit earned during the joint accrual period.

(3) With respect to a benefit described in subsection (2), the total pre-division benefit and the value of the non-member pension

partner's share are to be based only on the prescribed proportion of the total period for which the benefit was accruing.

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

(5) Where a benefit is to be paid from a locked-in retirement account or a life income fund, the division of the pre-division benefit between the pension partner and the owner of the account must not reduce the owner's share of the account balance by more than 50%.

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

Locking-in of non-member pension partner's share

83(1) A provision of a pension plan that prohibits terminating members from transferring their pension entitlements if they are within 10 years of pensionable age does not apply with respect to a non-member pension partner's share.

(2) Sections 69 and 70, as they apply with respect to a member pension partner, also apply with respect to the non-member pension partner's share.

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

Bar against further claims

84(1) If the full amount of the non-member pension partner's share has been distributed pursuant to this Division,

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

(2) A matrimonial property order or agreement that provides that

- (a) a pension partner has no share of benefits, or
- (b) a pension partner's share is satisfied by a means other than by dividing benefits under this Division

is to be treated for the purposes of subsection (1) as if the matrimonial property order or agreement provides that the benefits are subject to division under this Division, unless the matrimonial property order or agreement provides otherwise.

(3) In this section, "benefit" includes a benefit that has been transferred to a locked-in retirement account or a retirement income arrangement.

Adjustment of member's share

85 After the division, the administrator shall adjust the member pension partner's share in the prescribed manner.

Application to Court for clarification, etc.

86(1) If, on the filing of a matrimonial property order or agreement with the administrator, the administrator is unable to comply with the matrimonial property order or agreement because

- (a) it is incomplete, or
- (b) it does not comply with this Division or the plan or there is doubt as to what exactly the administrator must do to comply with it,

the administrator may apply to the Court to redress the situation arising from that inability to comply.

(2) An application to the Court under subsection (1) must be made on 7 days' notice or on any shorter period that the Court allows.

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

Fees

87 The administrator may charge a fee for the services provided under this Division in an amount not exceeding the prescribed amount.

**Division 5
Death Benefits****Definition**

88 In this Division, “joint and survivor pension” means a pension payable during the lives of the member and the member’s pension partner and, after the death of one of them, to the survivor for life.

Survivor’s benefits if member dies before pension commencement

89(1) If a member dies before reaching his or her pension commencement date,

- (a) subject to clause (b), if there is a surviving pension partner, the following amounts must be provided as follows:
 - (i) the pension to which the member was entitled must be provided to the surviving pension partner as a pension, and subject to subsection (3), the surviving pension partner may transfer all of the commuted value of the pension by way of a transfer that complies with the requirements of section 99;
 - (ii) any additional voluntary contributions and optional ancillary contributions made by the member, and any excess contributions to which the member was entitled, must be provided to the surviving pension partner, and the surviving pension partner has, in relation to those benefits, the same transfer rights and obligations, if any, that would have applied to the member had the member survived,
- (b) if there is a surviving pension partner and that pension partner has provided to the administrator a statement in the prescribed form that waives the entitlement referred to in clause (a), the total of the commuted value of the pension referred to in clause (a)(i) and the value of the

benefits referred to in clause (a)(ii) is payable by way of a lump sum payment

- (i) to the designated beneficiary, or
- (ii) if there is no living designated beneficiary, to the personal representative of the member's estate in his or her capacity as personal representative,

but in no case is the surviving pension partner entitled to receive any benefit as designated beneficiary under subclause (i) or from the estate under subclause (ii), or

- (c) if there is no surviving pension partner, the total of the commuted value of the pension referred to in clause (a)(i) and the value of the benefits referred to in clause (a)(ii) is payable by way of a lump sum payment
 - (i) to the designated beneficiary, or
 - (ii) if there is no living designated beneficiary, to the personal representative of the member's estate in his or her capacity as personal representative.

(2) If optional ancillary contributions were made by a member and the member dies before reaching his or her pension commencement date and leaves a surviving pension partner, the amount of those contributions may, at the option of the pension partner, be applied, in the manner specified by the plan text document of the pension plan, to the optional ancillary benefits selected by the pension partner to increase the benefits to which the pension partner is entitled under the plan up to the maximum amount allowed by the *Income Tax Act* (Canada) or the regulations under that Act.

(3) The plan text document of a pension plan may provide that if a member dies before reaching his or her pension commencement date, a surviving pension partner of the member must make the applicable transfer referred to in Division 8.

(4) If a pension partner who is entitled to a benefit under subsection (1)(a) dies before his or her pension commencement date, the total of the commuted value of the pension referred to in subsection (1)(a)(i) and the value of the benefits referred to in subsection (1)(a)(ii) is payable by way of a lump sum payment to

- (a) the pension partner's designated beneficiary, or

- (b) if there is no living designated beneficiary, to the personal representative of the pension partner's estate in his or her capacity as personal representative.

Survivor's benefits if retired member dies after pension commencement

90(1) A plan text document that contains a benefit formula provision must provide that the pension payable to a retired member who had a pension partner at the member's pension commencement date is a joint and survivor pension.

(2) A joint and survivor pension may, by reason of the death of the member or pension partner referred to in subsection (1), be reduced to an amount that is not less than 60% of the amount of the pension that would have been payable in respect of the member had the death not occurred.

(3) The actuarial present value of a joint and survivor pension must not be less than the actuarial present value of the pension that would have been payable to the member if he or she had no pension partner.

(4) A member may elect to receive a pension that does not comply with this section by providing to the administrator, not more than 90 days before the member's pension commencement date,

- (a) a statement in the prescribed form by the member's pension partner that
 - (i) states that the pension partner is aware of his or her entitlement to a joint and survivor pension under subsection (1),
 - (ii) waives that entitlement, and
 - (iii) was signed by the pension partner in the presence of a witness and outside the presence of the member,

or

- (b) confirmation, in a form and manner satisfactory to the administrator, that section 84 applies.

(5) A pension partner who has validly signed a statement under subsection (4) is deemed to be the sole designated beneficiary of

the member, despite any actual designation of beneficiary and any other law relating to such an actual designation.

(6) Subsection (5) does not apply if the administrator, before the member reached the member's pension commencement date and before the member's death, received

- (a) a statement in the prescribed form by the pension partner that
 - (i) states that the pension partner is aware of his or her entitlement under subsection (5),
 - (ii) waives that entitlement, and
 - (iii) was signed by the pension partner in the presence of a witness and outside the presence of the member,

or

- (b) confirmation, in a form and manner satisfactory to the administrator, that section 84 applies.

(7) If a pension partner who is the deemed beneficiary by virtue of subsection (5) does not survive the member, another person who has actually been designated as the designated beneficiary is the designated beneficiary of the member.

(8) A waiver under subsection (4) or (6) of an entitlement to a benefit is void if the member dies before reaching his or her pension commencement date.

(9) In the event of a conflict between this section and section 84, section 84 applies.

(10) This section does not apply if payment of the pension began before January 1, 1987.

Pension partner's change in status

91(1) A pension payable to the surviving pension partner of a deceased member of a pension plan does not cease on the pension partner's acquiring a new pension partner on or after January 1, 1987.

(2) If a member's pension partner has validly signed a waiver statement referred to in section 90(4) to allow the member to elect

a joint and survivor pension other than the joint and survivor pension referred to in section 90(2) and (3), the pension partner's entitlement to the payment of the joint and survivor pension does not, despite any provision to the contrary in the plan documents, cease merely because that person ceases to be the pension partner of the member at any subsequent date.

Division 6

Ancillary and Phased Retirement Benefits

Ancillary benefits

92(1) A pension plan may provide any of the following benefits as ancillary benefits:

- (a) disability benefits;
- (b) bridging benefits;
- (c) supplementary benefits, other than bridging benefits, payable for a temporary period;
- (d) cost of living adjustments;
- (e) to the extent that they exceed the minimum requirements of this Part,
 - (i) pre-retirement death benefits,
 - (ii) early retirement benefits,
 - (iii) enhancements to the pension of a member who continues in employment after reaching the plan's pension eligibility date to the extent that those enhancements increase the pension that would otherwise be payable to him or her, and
 - (iv) a joint and survivor pension;
- (f) other benefits that are prescribed to be ancillary benefits.

(2) The plan text document of a pension plan must establish, as the basis on which payment of ancillary benefits is to be made,

- (a) one or both of age and years of plan membership, or

- (b) another factor consented to by the Superintendent on application.

(3) If the plan text document of a pension plan contains a target benefit provision, the administrator may, in the circumstances referred to in section 20(2)(b), amend the plan text document to reduce or eliminate the ancillary benefits.

Phased retirement benefit

93(1) In this section,

- (a) “eligible person” means a member of a pension plan who
 - (i) is at least 60 years of age, or
 - (ii) is at least 55 years of age and entitled under the plan to receive a pension without reduction;
- (b) “eligible person’s pension”, in respect of an eligible person, means the pension that is payable to the eligible person on his or her reaching the plan’s pension eligibility date;
- (c) “phased retirement benefit” means periodic payments of an amount to an eligible person out of the pension plan of which the eligible person is a member for a period other than the life of the eligible person.

(2) A phased retirement benefit that is paid to an eligible person does not constitute the eligible person’s pension and must not be construed as that pension.

(3) A phased retirement benefit must not be paid from a pension plan to an eligible person unless all of the prescribed conditions have been met.

(4) The amount of any phased retirement benefit payment must not be greater than the prescribed portion of the amount that would be paid for any one payment of the eligible person’s pension were those pension payments to be made on the same dates as the phased retirement benefit payments.

(5) The pension to which the eligible person is entitled under section 66(1) or 67(1) is to be calculated without regard to the amount of the phased retirement benefit received.

Lump sum payments - pre-retirement

94(1) The plan text document of a pension plan may provide that an active member

- (a) whose working time and remuneration are reduced by agreement with a participating employer,
- (b) who has not reached his or her pension commencement date, and
- (c) who is within 10 years of the pension eligibility date,

is entitled to receive from the plan, when the prescribed conditions have been met, a lump sum payment in an amount not exceeding the prescribed amount representing partial compensation for the reduction in remuneration for each year covered by the agreement.

(2) When a member referred to in subsection (1) terminates his or her active membership in the plan, the amount of the pension to which he or she is entitled must be adjusted in accordance with the regulations.

Division 7 Additional Voluntary Contributions and Optional Ancillary Contributions

Payment out of additional voluntary contributions and optional ancillary contributions

95(1) The plan text document may provide that some or all of one or both of the following may be refunded to an active member as a lump sum:

- (a) additional voluntary contributions;
- (b) optional ancillary contributions.

(2) The plan text document must provide that one or both of the following are refundable to a member as a lump sum on his or her termination of active membership:

- (a) additional voluntary contributions;
- (b) optional ancillary contributions.

(3) The plan text document must provide that on a member's pension commencement date,

- (a) the member's optional ancillary contributions are converted to optional ancillary benefits, and
- (b) the member may elect that additional voluntary contributions
 - (i) be used to provide the additional benefits selected by the member in relation to those additional voluntary contributions, or
 - (ii) be refunded to the member as a lump sum.

Division 8 **Transfer of Commuted Value by** **Members**

When a transfer may be made under this Division

96(1) Subject to this Division, a member of a pension plan is eligible to elect a transfer under this Division in any of the following circumstances:

- (a) subject to subsection (2), after the member's termination of active membership;
- (b) the member is authorized under section 125 to elect a transfer under this Division;
- (c) the plan is a collectively bargained multi-employer plan and
 - (i) the plan text document of the plan specifies that a member may elect a transfer under this Division if, at the time of the election, the member is no longer employed by any participating employer, and
 - (ii) the member makes that election when no longer employed by a participating employer.

(2) The plan text document of a collectively bargained multi-employer plan may provide that a member is not eligible to elect a transfer under this Division after his or her termination of active membership if

- (a) the member, after the 2-year period referred to in section 1(1)(qqq), again becomes an active member in the plan, and

- (b) an application for the transfer referred to in subsection (1)(a) is not received by the administrator before the accrual of further benefits.

(3) A member of a pension plan who is entitled to a pension under a benefit formula provision is not eligible to elect a transfer under this Division if the member has reached the member's pension commencement date.

What may be transferred

97 Subject to and in accordance with this Division and the regulations, a member of a pension plan who is eligible under section 96 to elect a transfer under this Division may elect to transfer the following from the plan:

- (a) if the member is entitled to a benefit under a provision other than a target benefit provision, all of the commuted value of that benefit;
- (b) if the member is entitled to a benefit under a target benefit provision, the product of
 - (i) all of the commuted value of that benefit, and
 - (ii) the lesser of 1 and the target benefit funded ratio, as calculated in accordance with the regulations, that is set out in the actuarial valuation report that has most recently been filed in relation to the plan.

Transfer may be restricted or postponed

98(1) The plan text document of a pension plan may restrict a person from making a transfer of the commuted value of the benefit under a benefit formula provision if the plan or the person's membership in it terminates within 10 years before the person would have reached the plan's pension eligibility date.

(2) The plan text document of a pension plan to which an employer is required to contribute may provide that, if a person who was an active member of the plan (the "first plan") terminates membership in that plan in order to become an active member of another pension plan (the "second plan") to which the same employer is required to contribute, the person's right to transfer the commuted value of the benefit under this Division is postponed until the earliest of

- (a) the date of the member's termination of active membership in the second plan,
- (b) the date on which the first plan terminates, and
- (c) the date on which the second plan terminates.

(3) Without limiting subsections (1) and (2), the regulations may restrict the right of a person to effect a transfer under this Division.

How transfer may be made

99(1) Subject to this section and the regulations, a transfer under this Division may be made from a pension plan to one or more of the following:

- (a) at any time,
 - (i) to another pension plan, if the plan text document of the other plan
 - (A) allows the transfer, and
 - (B) requires that the transferred money be paid out of that other plan in the form of a pension that is required or allowed by this Act,
 - (ii) to a locked-in retirement account on the prescribed conditions, or
 - (iii) if the plan text document of the plan from which the transfer is to be made so provides, to an insurance company to purchase a deferred annuity that
 - (A) will not start, in relation to a member, earlier than the date on which the member reaches 50 years of age, and
 - (B) will be in the form of a pension that is required or allowed by this Act;
- (b) if the plan text document of the plan from which the transfer is to be made so provides in relation to a deferred member, at any time after the member reaches 50 years of age,

- (i) to an insurance company to purchase an annuity in the form of a pension that is required or allowed by this Act, or
- (ii) to a retirement income arrangement on the prescribed conditions.

(2) A transfer under this Division must not be severed into 2 or more transfers if

- (a) the money to be transferred is subject to section 70 or 83(2), and
- (b) the severance would result in all or any portion of the transferred money ceasing to be subject to section 70 or 83(2).

(3) A transfer under this Division must be made in full at one time unless a single payment would impair the solvency of the fund, and in that event, the transfer may be made as a series of 2 or more payments.

(4) If the transfer is made as a series of 2 or more payments, no transfer is deemed to be made until the last payment in the series, being the remaining balance of the commuted value of the benefit being transferred, is made.

When plan can require transfer to be made

100(1) Despite this Division, the plan text document of a pension plan containing a defined contribution provision may provide that,

- (a) on a member's termination of active membership, the member, or
- (b) the surviving pension partner of a member,

must elect a transfer under this Division if the only entitlement the member or the surviving pension partner has to benefits under the plan arises under the defined contribution provision.

(2) Despite this Division, the plan text document of a pension plan containing a benefit formula provision may provide that

- (a) on a member's termination of active membership, the member, or

- (b) on the death of an active or deferred member, the surviving pension partner of the deceased active or deferred member,

must, if the commuted value of the benefit to which the member or the surviving pension partner is entitled on that termination or on the member's death does not exceed the prescribed amount, elect a transfer of that commuted value under this Division.

Division 9 Missing Persons

Interpretation

101(1) In this Division,

- (a) "Minister" means the Minister responsible for the *Unclaimed Personal Property and Vested Property Act*;
- (b) "unlocked benefit" means a benefit under section 71(1).

(2) For the purposes of this Division, a person is missing if the Superintendent is satisfied, in accordance with the regulations, that the administrator has been unable to locate the person after having attempted to locate the person in accordance with the prescribed requirements.

(3) Amounts to be transferred under sections 102 and 103 are deemed to be unclaimed personal property for the purposes of the *Unclaimed Personal Property and Vested Property Act* and are presumed to be abandoned under section 4 of that Act.

Transfer of benefits

102(1) Where a person entitled under a pension plan to one or more of the following is missing, the administrator of the plan may, in accordance with and subject to this Division and the regulations, transfer the benefit or the amount, less any amounts referred to in section 104, to the Minister in accordance with the *Unclaimed Personal Property and Vested Property Act*:

- (a) an unlocked benefit
 - (i) to which a person who terminated active membership in the plan is entitled,

- (ii) to which a person who is a surviving pension partner is entitled, or
- (iii) to which a person who is a former pension partner is entitled under a matrimonial property order or agreement filed with the administrator;
- (b) the amount of an actuarial excess allocated to a person;
- (c) a death benefit to which a designated beneficiary is entitled;
- (d) the commuted value of a pension payable to a person whose pension has not commenced but the person is required under the *Income Tax Act* (Canada) to commence to receive a pension.

(2) This section does not apply to a benefit or amount referred to in section 103.

Transfer of benefits on winding-up

103 Where a person entitled to a benefit or an amount of allocated surplus under a winding-up of a pension plan under section 125 is missing, the administrator of the plan must, in accordance with and subject to this Division and the regulations, transfer the benefit or the amount, less any amounts referred to in section 104, to the Minister in accordance with the *Unclaimed Personal Property and Vested Property Act*.

Deductions from amounts to be transferred

104 In determining the amount that may be transferred under section 102 or 103, the following must be deducted:

- (a) any withholding tax,
- (b) any amount payable under a matrimonial property order or agreement, and
- (c) any fees payable to the Minister under the *Unclaimed Personal Property and Vested Property Act*.

Entitlement to claim under the Unclaimed Personal Property and Vested Property Act

105 A person entitled to an amount transferred under section 102 or 103 is entitled to make a claim to the amount in accordance with Part 6 of the *Unclaimed Personal Property and Vested Property Act*.

Minimum amount to be transferred

106(1) Where the amount that may be transferred under section 102 is less than the minimum amount that may be transferred under the *Unclaimed Personal Property and Vested Property Act*, the amount remains in the pension fund, and subject to subsection (3), the fundholder of the pension fund must, if a person entitled to the amount or a portion of the amount makes a claim, pay to that person the amount to which that person is entitled.

(2) Where the amount that may be transferred under section 103 is less than the minimum amount that may be transferred under the *Unclaimed Personal Property and Vested Property Act*, the administrator must transfer the amount,

- (a) in the case of a collectively bargained multi-employer pension plan, to the trade union of which the member was last a member or a successor trade union, or
- (b) in the case of any other plan, to the participating employer with whom the member was last employed or a successor employer,

and subject to subsection (3), the trade union, employer or successor, as the case may be, receiving the amount must, if a person entitled to the amount or a portion of the amount makes a claim, pay to that person the amount to which that person is entitled.

(3) A person entitled to an amount or portion of an amount referred to in subsection (1) or (2) may make a claim to the amount, but if no claim is made by that person within 10 years after the transfer, that person ceases to have any further claim to the amount.

Confirmation to Superintendent

107 The administrator shall, in accordance with the regulations, provide to the Superintendent a confirmation that the whole amount

of the benefit of the missing person has been dealt with in accordance with this Division.

Act no longer applies

108 Where an amount is dealt with under this Division, this Act, except section 105, no longer applies with respect to the amount.

Use of personal information

109 The Superintendent may provide any personal information within the meaning of the *Freedom of Information and Protection of Privacy Act* to the Minister responsible for the *Unclaimed Personal Property and Vested Property Act* that is necessary or advisable to enable the Minister to deal with a transfer or a claim under this Division and may collect any such personal information from the Minister that is incidental to the process set out in this Division.

Part 9 Changes in Plan Benefit Type or Plan Structure

Prescribed rules apply to predecessor and successor plans

110 The rules prescribed for the purposes of this section apply if a prescribed event or transaction results in there being

- (a) predecessor and successor pension plans, or
- (b) predecessor and successor employers in relation to one or more pension plans.

Rights of members on transfer of membership to another plan

111 If a member of a pension plan has his or her membership transferred to another pension plan in the circumstances set out in section 110 and

- (a) the assets and liabilities of the predecessor plan that relate to the member are transferred to a successor plan, the member's years of employment with the predecessor employer and the member's years of membership in the predecessor plan are deemed to be years of employment with the successor employer and years of plan membership in the successor plan, or

- (b) there are predecessor and successor plans in circumstances other than those referred to in clause (a), years of employment and years of plan membership must be applied to one or both of those plans in the prescribed circumstances, for the prescribed purposes and in the prescribed manner.

Prescribed rules apply when benefits are converted from one type to another

112(1) The rules prescribed for the purposes of this section apply if the plan text document of a pension plan is amended to convert a plan provision of one type to a plan provision of a different type.

(2) The following constitute types of plan provisions for the purposes of subsection (1) :

- (a) a defined benefit provision;
- (b) a defined contribution provision;
- (c) a target benefit provision;
- (d) a provision prescribed to be a benefit formula provision.

Participating employer's withdrawal from a collectively bargained multi-employer plan

113 The plan text document of a collectively bargained multi-employer plan must specify what the consequences to the funding of benefits are if a participating employer withdraws from the plan.

Participating employer's withdrawal from a non-collectively bargained multi-employer plan

114 If a participating employer withdraws from a non-collectively bargained multi-employer plan and does not join or establish a successor plan that assumes responsibility for the employer's liabilities under the non-collectively bargained multi-employer plan,

- (a) the prescribed provisions of Part 10 apply to that employer as if

- (i) the employer were the only participating employer in the plan, and
 - (ii) the employer were terminating that plan,
- and
- (b) the rules prescribed for the purposes of this section apply.

Continuation of pension plan despite cessation of benefit accrual

115(1) If benefits cease to accrue under a pension plan, the Superintendent may, in the circumstances referred to in subsection (2), consent to the continuation of the plan, subject to any conditions the Superintendent considers appropriate, after receiving

- (a) an application for continuation from the administrator, and
- (b) all other documents and information required by the Superintendent in support of that application.

(2) The Superintendent may consent to the continuation of a pension plan under subsection (1) if

- (a) there are no active members of the plan, and
- (b) the participating employer continues, or intends to continue, in operation.

(3) If the Superintendent consents under subsection (1) to the continuation of a pension plan, the administrator remains obligated to administer the plan in accordance with this Act, the regulations and the plan documents.

(4) The Superintendent may, by notice to the administrator, withdraw his or her consent given under subsection (1) and direct the administrator to terminate the pension plan, in which case Divisions 3 to 5 of Part 10 apply.

(5) If benefits resume accruing under the plan, the administrator of the plan must provide notice to the Superintendent of the date on which the resumption occurred.

(6) If the Superintendent withdraws his or her consent under subsection (4) and directs that the plan be terminated, the effective date of the termination of the plan is,

- (a) if the Superintendent specifies in the notice referred to in section 145(2) an effective date of the termination of the plan, the specified date, or
- (b) if the Superintendent does not specify in the notice an effective date of the termination of the plan, the date of the notice.

Part 10 Termination and Winding-up of Plan

Division 1 Definition

Definition

116 In this Part, “responsible person”, in relation to a pension plan, means

- (a) the person who, under the plan documents, is authorized to terminate the plan, or
- (b) if the plan documents do not expressly authorize a person to terminate the plan,
 - (i) in the case of a single employer plan, the participating employer, or
 - (ii) in the case of a multi-employer plan, the administrator.

Division 2 Terminating Pension Plans

Voluntary termination

117(1) A responsible person may elect to terminate a pension plan.

(2) After making an election under subsection (1), a responsible person must

- (a) file written notice of that election, and
- (b) give a copy of that notice to the prescribed persons.

(3) The notice required under subsection (2) must

- (a) set out the intended effective date of the termination, and
- (b) be filed under subsection (2)(a) and given under subsection (2)(b)
 - (i) immediately after the election to terminate, or
 - (ii) if the election is more than 60 days before the intended effective date of the termination, at least 60 days before the intended effective date of the termination.

(4) The Superintendent, by order, may specify as the effective date of the termination a different date than the intended effective date set out in the notice under subsection (3) if the Superintendent is of the opinion that there are reasonable grounds for the change.

(5) If an election is made under this section to terminate a pension plan, the effective date of the termination of the plan is,

- (a) subject to clause (b), the later of
 - (i) the intended effective date of the termination set out in the notice required under subsection (2), and
 - (ii) the date that is 60 days after the date on which the notice required under subsection (2) is filed,

or

- (b) if the Superintendent specifies a different date under subsection (4), that specified date.

Termination by direction of Superintendent

118(1) The Superintendent may direct the administrator of a pension plan to terminate the plan if

- (a) one or more of the plan documents of the plan do not comply with this Act or the regulations, or
- (b) the administrator has not complied with this Act, the regulations, the plan documents or a direction issued under section 133.

(2) If the Superintendent makes a direction under subsection (1), the Superintendent must specify a date as the effective date of the termination.

Division 3

After Effective Date of Termination

Benefits cease to accrue

119 On and after the effective date of the termination of a pension plan, no further benefits accrue under the plan.

Required amounts must be remitted

120 Within 30 days after the effective date of the termination of a pension plan, each participating employer must remit all amounts that that participating employer is required to remit by this Act, the regulations or the plan documents, including, without limitation, amounts that

- (a) are due from the participating employer to the plan but remain unpaid at the effective date of the termination, and
- (b) have accrued to the effective date of the termination but are not yet due,

and for that purpose, section 56(1) applies as if the amounts to be remitted under this section were member and participating employer contributions due to the pension fund.

Solvency deficiency must be eliminated

121 If a pension plan, other than a negotiated cost plan, a jointly sponsored plan or a pension plan of which the plan text document contains a target benefit provision, has a solvency deficiency on the effective date of the termination of the plan,

- (a) the participating employers must eliminate the solvency deficiency as prescribed, and
- (b) the administrator must continue to file information returns as required by section 38(1)(a) until the solvency deficiency has been eliminated.

Termination report required

122 The administrator must

- (a) file, within the prescribed period after the effective date of the termination of a pension plan, a report prepared by a prescribed person setting out the following as at the effective date of the termination:
 - (i) the nature of the benefits to be provided;
 - (ii) the assets and liabilities of the plan;
 - (iii) the intended allocation and distribution of the assets of the plan;
 - (iv) any other information the Superintendent may require to ensure that the termination and winding-up of the plan comply with this Act and the regulations,
- (b) file, within the prescribed period after the effective date of the termination of a pension plan, any other record required by the Superintendent, and
- (c) obtain from the Superintendent notice of acceptance of the termination report filed in relation to the pension plan.

Limitations on payments of pension or benefits

123(1) Subject to subsection (2), the assets of a pension plan must not, after the effective date of the termination of the plan, be applied towards the provision of any benefit unless

- (a) the Superintendent provides notice that the termination report filed in relation to the plan is acceptable, or
- (b) before the Superintendent provides notice of acceptance of the termination report filed in relation to the plan, the Superintendent provides written consent to the provision of that benefit.

(2) Subsection (1) does not prevent the payment of a pension or of any other benefit if the entitlement to that payment arose before the effective date of the termination of the plan.

(3) Despite subsection (2), if, after the effective date of the termination of the plan, the Superintendent considers that payments of a pension or other benefits referred to in subsection (2) would unfairly prejudice members of the plan, the Superintendent may

direct the administrator to reduce, or refrain from making, those payments.

Division 4 Winding-up

When plan must be wound up

124(1) Subject to this section, the winding-up of a pension plan must begin immediately after the Superintendent has provided notice that the termination report filed in relation to the plan is acceptable.

(2) The Superintendent may, by notice in writing, consent to the winding-up of a pension plan beginning on a date later than the date contemplated by subsection (1), in which case the winding-up must begin

- (a) on that later date, or
- (b) if that consent is withdrawn under subsection (3), in accordance with subsections (4) and (5).

(3) At any time, the Superintendent may, by notice in writing, withdraw the consent given under subsection (2) and may, in that notice, require the administrator to prepare and file a new termination report in relation to the pension plan.

(4) If the Superintendent withdraws the consent given under subsection (2) and does not require the administrator to prepare and file a new termination report in relation to the pension plan, the winding-up of the plan must begin immediately after the withdrawal of the consent.

(5) If the Superintendent withdraws the consent given under subsection (2) and requires the administrator to prepare and file a new termination report in relation to the pension plan, the administrator must, within 60 days after the date of the notice, file an additional termination report in relation to the plan that meets the requirements of section 122(a), but with updated information, and the winding-up of the plan must begin as provided in this section.

Transfer rights on winding-up

125 Subject to the rules prescribed for the purposes of section 110, as part of the winding-up of a pension plan,

- (a) an active member and a deferred member may elect a transfer under Division 8 of Part 8, and
- (b) despite section 96(3), a retired member may elect a transfer under Division 8 of Part 8 in the prescribed circumstances.

Allocation and distribution of assets if insufficient to satisfy benefits

126 If, at the time that the assets of a pension plan are to be distributed as a result of the winding-up of that plan, the assets of that plan are not sufficient to pay all benefits, the assets of the plan must be allocated and distributed in accordance with the regulations.

Surplus on winding-up

127 Without limiting section 8(1)(h), the plan text document of a pension plan must provide for the allocation of any surplus on the winding-up of the plan

- (a) to the members and to their pension partners, designated beneficiaries and estates,
- (b) to the participating employers, or
- (c) to any combination of the persons referred to in clauses (a) and (b).

Division 5

Appointment of Administrator

Superintendent's authority to appoint administrator on plan termination or winding-up

128(1) The Superintendent may remove and replace an administrator of a pension plan for the purposes of the termination and winding-up of the plan if, after the effective date of the termination of the plan,

- (a) the administrator cannot be located, is insolvent or is unable or unwilling to perform his or her duties under this Act or the plan documents, or

- (b) the Superintendent considers that it is in the best interests of the members and other persons entitled to benefits under the plan.

(2) The Superintendent may appoint himself or herself as administrator for the purposes of subsection (1) instead of appointing another person.

(3) A person appointed as an administrator of a pension plan under this section

- (a) may, in accordance with Divisions 2 and 3 of Part 4, amend the plan documents
 - (i) to ensure compliance of the plan documents with this Act and the regulations, or
 - (ii) to maximize the benefits that may, given the assets in the plan, be made available to the persons who may receive a benefit under the plan,

and

- (b) subject to this Act and the regulations, assumes, in relation to any contract that had been entered into by any person contracting on behalf of the plan, the rights and duties of that person under the contract.

(4) If an administrator is replaced under subsection (1), any person in possession or control of records or information related to the pension plan, including its administration and functioning, must provide the new administrator with records or information requested by the new administrator to assist the new administrator in administering the plan in compliance with this Act, the regulations and the plan documents.

Expense of termination and winding-up

129 Despite any contrary provision in the plan documents of a pension plan, if an administrator has been appointed by the Superintendent under section 128, reasonable expenses incurred in relation to the termination and winding-up of the plan may be paid out of the plan in priority to benefits.

Part 11

Monitoring and Enforcement

Inspection and production of documents

130(1) In this section, “compliance evaluation” means an evaluation undertaken to determine if a person is complying, or has complied, with this Act, the regulations or the plan documents of a pension plan.

(2) An authorized person may, at any reasonable time, for the purpose of a compliance evaluation, engage in an inspection under this section.

(3) In an inspection under this section, an authorized person may do one or more of the following:

- (a) inspect any records relevant to the compliance evaluation that are in the possession or control of any person and that
 - (i) relate to a pension plan, including its administration and functioning,
 - (ii) relate to benefit entitlements and payments, or
 - (iii) relate to money that has been transferred in accordance with section 99, including, without limitation, to that money’s investment or further transfer and the management or administration of the locked-in retirement account or retirement income arrangement to which it has been transferred;
- (b) by written notice served on a person,
 - (i) demand that the person provide to the authorized person, within a reasonable period specified in the notice, any of the records that the authorized person is entitled to inspect under clause (a),
 - (ii) whether or not the notice is served in connection with an inspection of records under clause (a), demand that the person provide to the authorized person, within a reasonable period stipulated in the notice, any other information, in a form acceptable to the authorized person, that is relevant to the making of the compliance evaluation, and

- (iii) demand that the person prepare, or cause to be prepared, and provide to the authorized person, within a reasonable period specified in the notice, any other records that the authorized person requires for the purposes of this subsection.

(4) For the purposes of subsection (3)(a), the authorized person may, subject to subsection (5), enter the premises of a person referred to in subsection (3) if the authorized person has reasonable grounds to believe that records referred to in subsection (3)(a) are likely to be found on those premises.

(5) If the premises referred to in subsection (4) are a dwelling house, the authorized person must not enter those premises without the consent of the occupant, except under the authority of a search warrant issued by a judge or justice of the peace.

(6) If a person has been served with a notice to provide records or information under subsection (3)(b) and has not provided the records or information in accordance with the notice, the Superintendent may apply to the Court for an order to compel the person to provide the records or information.

(7) On an application under subsection (6), the Court may make an order compelling the person to provide the records or information, subject to any conditions that the Court considers appropriate, if the Court is satisfied that

- (a) the records or information are in the custody or control of that person, and
- (b) the records or information are relevant to the making of the compliance evaluation.

(8) The authorized person to whom records are provided in response to a demand under subsection (3)(b) or an order under subsection (7) may, on giving a receipt for them, remove those records for the purpose of making copies of or taking extracts from them.

(9) If records are removed under subsection (8), the authorized person must return the records within a reasonable period.

(10) A person must not prevent or obstruct, or attempt to prevent or obstruct, an authorized person from doing anything that the authorized person is authorized by this section to do.

Superintendent may request documents

131 The Superintendent may require an administrator to provide certified and consolidated copies of plan documents, with all amendments to date incorporated.

Superintendent may apply for order

132 The Superintendent may apply to the Court on 3 days' notice for

- (a) an order compelling a person to do anything that the person is required by this Act, the regulations or the plan documents of a pension plan to do, or
- (b) an order prohibiting a person from
 - (i) doing anything that the person is prohibited by this Act, the regulations or the plan documents of a pension plan from doing, or
 - (ii) doing anything in relation to a pension plan that the person is prohibited by law from doing.

Directions for compliance

133(1) If, in the opinion of the Superintendent,

- (a) the plan documents of a pension plan do not comply with this Act or the regulations,
- (b) the administrator has acted, is acting or is likely to act in breach of the Act or the regulations, or
- (c) the plan is otherwise being administered not in compliance with this Act, the regulations or the plan documents,

the Superintendent may

- (d) direct the administrator, a participating employer or any person, in writing,
 - (i) to cease or refrain from committing the act or pursuing the course of conduct that constitutes the breach or non-compliance, and

- (ii) to perform such acts, including, without limitation, payment or repayment of money, as in the opinion of the Superintendent are necessary to remedy the situation,

or

- (e) institute any action that could be initiated by
 - (i) a member of the plan, or
 - (ii) any other person entitled to a benefit under the plan.

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

(3) If, in the opinion of the Superintendent, a person has failed to comply with a direction made under this section, the Superintendent may apply to the Court for either or both of the following:

- (a) an order directing the person to comply with the direction or restraining the person from violating the direction;
- (b) an order directing the directors and officers of the person to cause the person to comply with or to cease violating the direction.

(4) On an application under subsection (3), the Court may make any order it considers appropriate.

Superintendent's authority to appoint administrator

134(1) In this section, "temporary administrator" means an administrator appointed under subsection (2).

(2) Without limiting section 128, the Superintendent may remove and temporarily replace an administrator of a pension plan if

(a) one of the following applies:

- (i) the administrator cannot be located, is insolvent or is unable or unwilling to perform his or her duties under this Act or the plan documents;
- (ii) the plan or its administration fails in a substantial manner to comply with this Act,

and

(b) in the opinion of the Superintendent, it is in the best interests of the persons entitled to benefits under the plan.

(3) Without limiting subsection (2), the Superintendent may appoint a temporary administrator for a pension plan that does not have an administrator.

(4) The Superintendent may appoint himself or herself as the temporary administrator under subsection (2) instead of appointing another person.

(5) The temporary administrator of a pension plan temporarily holds office in the capacity of administrator of the plan until the Superintendent

- (a) is satisfied that the person or body who will be the administrator after the temporary administrator's appointment terminates is fully willing and able to perform the administrator's duties, and
- (b) rescinds the temporary administrator's appointment made under this section.

(6) If the Superintendent is removing and replacing an administrator under subsection (2), the Superintendent must serve on the administrator notice of

- (a) the removal,
- (b) the appointment of the temporary administrator, and
- (c) the effective date of the removal and replacement.

(7) Despite anything in this section, the Superintendent may, in the instrument by which a temporary administrator is appointed under subsection (2),

- (a) restrict the powers or duties that the temporary administrator would otherwise have under this Act, or
- (b) impose any terms or conditions on the appointment.

(8) A person appointed as temporary administrator of a pension plan

- (a) may, subject to any restrictions under subsection (7) and in accordance with Divisions 2 and 3 of Part 4, amend the terms of the plan documents to ensure compliance of the plan documents with this Act and the regulations, and
- (b) assumes, in relation to any contract entered into by any person contracting on behalf of the pension plan, the powers and duties of that person under the contract.

(9) If an administrator is replaced by a temporary administrator under subsection (2), any person in possession or control of records or information related to the pension plan, including its administration and functioning, must provide the temporary administrator with records or information requested by the temporary administrator to assist the temporary administrator in administering the plan in compliance with this Act, the regulations and the plan documents.

Designation of actuary

135(1) In this section, “applicable report” means the report an actuary is designated to prepare under subsection (2)(a).

(2) If the Superintendent is of the opinion that the assumptions or methods used in the preparation of an actuarial valuation report or a termination report required under this Act in respect of a pension plan are inappropriate for the plan in the circumstances, whether or not those assumptions or methods are otherwise consistent with accepted actuarial practice, the Superintendent may designate an actuary to

- (a) prepare, in relation to the plan,
 - (i) an actuarial valuation report that meets the requirements set out in section 38(1)(b), or
 - (ii) a termination report that meets the requirements set out in section 122, and

- (b) provide the applicable report to the administrator within the period specified by the Superintendent.
- (3) The Superintendent must notify the administrator in writing of any designation of an actuary under subsection (2), and the administrator must notify each participating employer in writing.
- (4) If a designated actuary is of the opinion that the administrator or a participating employer has any information the designated actuary considers necessary for the preparation of the applicable report, the designated actuary may request that the information be provided, and the administrator or participating employer to whom the request is made must provide that information to that designated actuary promptly after receiving that request.
- (5) Before finalizing the applicable report, the designated actuary must provide a copy of a draft of the report to the administrator and give the administrator an opportunity to submit comments.
- (6) The administrator must file the applicable report within the period specified by the Superintendent.
- (7) If the administrator fails to file the applicable report within the specified period, the Superintendent may require the designated actuary to file a copy of the applicable report.
- (8) The applicable report, prepared as at a date, replaces any other filed actuarial valuation report or termination report, as the case may be, previously prepared as at the same date.
- (9) After the applicable report has been filed under subsection (6) or (7) in respect of a pension plan, the plan must be funded in accordance with the report.
- (10) The reasonable fees and expenses of the designated actuary that are associated with the preparation of the applicable report form part of and must be paid in the same manner as administrative costs payable under the plan documents in relation to the pension plan.

Administrative penalties

136(1) If, in the opinion of the Superintendent, a person has

- (a) contravened a prescribed provision of this Act,

- (b) contravened a prescribed provision of the regulations,
- (c) contravened this Act by failing to file, within the period required by the regulations for that filing, a record that is required to be filed under this Act,
- (d) contravened this Act by failing to provide to an authorized person, within the period required by the regulations for that provision, information or a record requested by the authorized person,
- (e) contravened this Act by failing to disclose information to persons within the period required by the regulations for that disclosure, or
- (f) contravened this Act by failing to make contributions to the pension fund within the period required by the regulations for the making of those contributions,

the Superintendent may, by order, impose on the person an administrative penalty and, in that event, must give notice of that decision by serving a notice of administrative penalty on that person.

(2) If in the opinion of the Superintendent a corporation has committed a contravention referred to in subsection (1), the Superintendent may, in accordance with this section, impose an administrative penalty on an officer, director or agent of the corporation who, in the opinion of the Superintendent, directed, authorized, assented to, acquiesced in or participated in the contravention, whether or not the corporation is liable for or pays an administrative penalty.

(3) A notice of administrative penalty under subsection (1) or (2) must specify all of the following:

- (a) the contravention;
- (b) the amount of the administrative penalty;
- (c) the date by which the person must pay the administrative penalty, which date must be not less than 30 days after the date on which the notice is served;
- (d) the right of the person, within 30 days after the notice is served, to dispute one or both of the imposition and the amount of the administrative penalty;

(e) any prescribed information.

(4) An administrative penalty for a contravention must not exceed the amount prescribed for that contravention, and in any event must not exceed

(a) \$250 000, in the case of a corporation or administrator, and

(b) \$50 000, in the case of an individual other than an administrator.

(5) The Superintendent must not serve a notice of administrative penalty under subsection (1) or (2) more than 3 years after the date on which the Superintendent first had knowledge of the facts on which the notice is based.

(6) A statement by the Superintendent as to the date on which the Superintendent first had knowledge of the facts on which the notice is based is admissible in evidence as proof of the facts in the statement without proof of the appointment or signature of the Superintendent.

(7) The person on whom an administrative penalty is imposed must pay the administrative penalty

(a) by the date specified in the notice of administrative penalty under subsection (3)(c), or

(b) if the person requests a reconsideration by serving a notice of objection under section 146(1), within the period specified in the written notification of the reconsideration served by the Superintendent under section 146(2).

(8) The pension fund must not be used to pay any portion of an administrative penalty imposed under this section.

Enforcement of administrative penalty

137(1) If an administrative penalty is imposed under section 136, the following apply:

(a) if no notice of objection is served under section 146(1) within the period referred to in section 146(1), the penalty constitutes a debt payable by the person on whom the penalty is imposed;

- (b) if a notice of objection is served under section 146(1) and a notice of reconsideration is served under section 146(2) that indicates that the decision to impose the penalty is confirmed, the penalty constitutes a debt payable by the person on whom the penalty is imposed;
- (c) if a notice of objection is served under section 146(1) and a notice of reconsideration is served under section 146(2) that indicates that the decision to impose the penalty is varied to change the amount of the penalty, the penalty set out in the notice of reconsideration constitutes a debt payable by the person on whom the penalty is imposed;
- (d) if a notice of objection is served under section 146(1) and a notice of reconsideration is served under section 146(2) that indicates that the decision to impose the penalty is rescinded, the penalty ceases to apply to the person.

(2) If a person fails to pay an administrative penalty as required under section 136(7), the Superintendent may file with the Court a certified copy of the notice of administrative penalty, and on being filed with the Court under this subsection, the notice has the same force and effect, and all proceedings may be taken on the notice, as if it were a judgment of the Court.

Expenses of inspections

138(1) This section applies if, as a result of an inspection under section 130, the Superintendent

- (a) takes an action under section 133(1), (2) or (3), or
- (b) imposes an administrative penalty on a person.

(2) The Superintendent may, by order, require the person against whom an action is taken under subsection (1)(a) or on whom an administrative penalty is imposed under subsection (1)(b) to pay all or part of the expenses of either or both of the following:

- (a) the inspection under section 130;
- (b) a reconsideration under section 146 of
 - (i) the action referred to in subsection (1)(a), or
 - (ii) the imposition referred to in subsection (1)(b).

(3) Expenses under subsection (2)

- (a) must be for the prescribed matters and must not exceed the prescribed amounts, and
- (b) may include remuneration for employees, officers or agents of the Superintendent engaged in the inspection or reconsideration.

(4) If a person who is required by an order under subsection (2) to pay expenses fails to pay the expenses by the date specified in the order or, if an appeal is brought under section 147 against the requirement to pay expenses, by the date specified in the order made on appeal, the Superintendent may file with the Court a certified copy of the applicable order requiring the expenses to be paid, and on being filed with the Court, the order has the same force and effect and all proceedings may be taken on the order as if it were a judgment of the Court.

(5) The pension fund must not be used to pay any portion of expenses required to be paid under this section.

Remedies preserved

139 Each of the powers of the Superintendent under sections 133, 136, 137 and 138 is in addition to and not in substitution for the other powers of the Superintendent under those sections, and any 2 or more of those powers may be exercised by the Superintendent in response to the same opinion, determination or situation.

Limitation on proceedings

140(1) A person who pays an administrative penalty in respect of a contravention may not be prosecuted for an offence in respect of the same contravention.

(2) The Superintendent may not make an order under section 136(1) or (2) in respect of a contravention if the person has been charged with an offence under this Act for the same contravention.

Failure to pay administrative penalty

141 If a person on whom an administrative penalty is imposed by an order under section 136 fails to pay the administrative penalty in accordance with section 136(7) or, if an appeal is brought under section 147 against the imposition of the administrative penalty, by

the date specified in the order made on appeal, the Superintendent may file with the Court a certified copy of the order imposing the administrative penalty, and on being filed with the Court, the order has the same force and effect and all proceedings may be taken on the order as if it were a judgment of the Court.

Remedies preserved

142 Subject to section 140, a proceeding, conviction or penalty for an offence under this Act does not relieve a person from any other liability.

Offences and penalties

143(1) A person commits an offence who

- (a) contravenes this Act or the regulations, or
- (b) does any of the following contrary to or to avoid compliance with this Act or the regulations:
 - (i) destroys, alters, mutilates, secretes or otherwise disposes of records;
 - (ii) makes a false or misleading statement or entry in any record;
 - (iii) fails to state anything relevant in any records;
 - (iv) omits from any written or oral statement any material fact if the omission of that fact renders the statement misleading in the light of the circumstances in which it is made.

(2) The maximum penalty that may be imposed on a person who commits an offence under this Act is

- (a) \$500 000, in the case of a corporation or administrator, and
- (b) \$100 000, in the case of an individual other than an administrator.

(3) If a corporation commits an offence under this Act, an officer, director or agent of the corporation who directed, authorized, assented to, acquiesced in or participated in the commission of the

offence commits an offence, and is liable to a fine of not more than \$100 000, whether or not the corporation has been prosecuted for the contravention.

(4) The pension fund must not be used to pay any portion of a fine imposed under this section.

(5) Without limiting section 133(3), if a person is convicted of an offence under this Act, the Court, in addition to any punishment it may impose, may order the person to comply with the provisions of this Act and the regulations.

Limitation period for prosecution

144(1) A prosecution under this Act must not commence later than 3 years after the date when the Superintendent first had knowledge of the facts on which the prosecution is based.

(2) A statement by the Superintendent as to the date when the Superintendent first had knowledge of the facts on which the prosecution is based is admissible in evidence in respect of the prosecution as proof of the facts in the statement without proof of the appointment or signature of the Superintendent.

Part 12 Reconsiderations and Appeals

Superintendent must provide notice of decision

145(1) If the Superintendent

- (a) specifies, by order under section 117(4), a date as the effective date of the termination of a pension plan,
- (b) issues a direction under section 133(1)(d) or (2), or
- (c) orders the payment of expenses under section 138(2),

the Superintendent must promptly serve on the person subject to the order under clause (a) or (c) or a direction under clause (b) a written notice of the Superintendent's decision, and give reasons for the decision.

(2) If the Superintendent

- (a) refuses to register a pension plan or an amendment of a plan text document filed for registration,
- (b) severs, under section 22(3), a portion of a plan text document amendment filed for registration,
- (c) revokes a registration of an amendment to a plan text document under section 23(1),
- (d) withdraws a consent and directs termination of a plan under section 115,
- (e) directs the termination of a pension plan under section 118, or
- (f) makes an order splitting liabilities and assets under section 154(9),

the Superintendent must promptly serve on the administrator a written notice of the Superintendent's decision, and give reasons for the decision.

Notice of objection

146(1) Within 30 days after service of the notice under section 136(1) or (2) or 145(1) or (2), the person on whom the notice was served may serve on the Superintendent a notice of objection setting out the reasons for the objection and all relevant facts.

(2) Promptly after receipt of the notice of objection under subsection (1), the Superintendent must

- (a) reconsider the decision referred to in section 136 or 145,
- (b) rescind, vary or confirm that decision, and
- (c) serve on the person who served the notice of objection a written notice of that reconsideration.

(3) A notice of reconsideration under subsection (2) must be accompanied with reasons unless the Superintendent rescinds the decision referred to in section 136 or 145.

(4) If an administrator of a pension plan who has been served with a notice under section 145(2) respecting a decision of the Superintendent serves a written notice on the Superintendent

stating an intention to serve a notice of objection under subsection (1), the administrator may, despite the Superintendent's decision,

- (a) administer the plan, or
- (b) in the case of an amendment the registration of which was refused or revoked, administer the plan in a manner that reflects the amendment,

until the earlier of

- (c) the date on which a written notification of the reconsideration is served on the administrator under subsection (2), and
- (d) the expiration of the period referred to in subsection (1) without the notice of objection having been served.

Appeal to Tribunal

147(1) A person on whom a notice of reconsideration is served under section 146(2) may appeal the reconsideration decision to the Tribunal by filing a notice of appeal with the Tribunal no later than 30 days after the person received the notice of reconsideration.

(2) A person who, under subsection (1), appeals a decision of the Superintendent must provide a copy of the notice of appeal to the Superintendent.

(3) Despite subsection (1), the Tribunal may extend the time to file a notice of appeal, even if the time has expired, if the Tribunal is satisfied that special circumstances exist.

(4) A notice of appeal must be in the prescribed form containing the prescribed information and must be accompanied with any prescribed fee.

(5) If a notice of appeal is deficient or if the prescribed fee is outstanding, the chair or the vice-chair of the Tribunal may allow a reasonable period within which the notice may be corrected or the fee is to be paid.

Appointment of an appeal panel

148(1) On receipt of a notice of appeal and any prescribed fee, the chief appeals commissioner shall convene a panel of 2 or more

appeals commissioners to hear the appeal, and that panel has all the powers of the Tribunal for that purpose.

(2) The Superintendent is a party to an appeal of the Superintendent's decision.

(3) At any time after an appeal is filed, the Tribunal may dismiss all or part of it if the Tribunal determines that any of the following applies:

- (a) the matter being appealed is not within the jurisdiction of the Tribunal;
- (b) the notice of appeal was not filed within the applicable time limit;
- (c) the appeal is frivolous, vexatious or trivial or gives rise to an abuse of process;
- (d) the appeal was made in bad faith or filed for an improper purpose or motive.

(4) Before dismissing all or part of an appeal under subsection (3), the Tribunal must give the appellant an opportunity to make written submissions or otherwise be heard.

(5) If an appellant withdraws all or part of an appeal or the parties advise the Tribunal that they have reached a settlement of all or part of an appeal, the Tribunal may order that the appeal or part of it is dismissed.

(6) The Tribunal may confirm, reverse or vary a decision under appeal or may send the matter back for reconsideration, with or without directions, to the Superintendent.

(7) The Tribunal must give its decisions under this section in writing and give reasons for the decisions.

(8) The Tribunal must provide a copy of its decisions to the parties.

Part 13

Alberta Employment Pension Tribunal

Establishment of Tribunal

149(1) The Alberta Employment Pension Tribunal is established consisting of the following members:

- (a) a chief appeals commissioner, who shall be the chair, and a deputy chief appeals commissioner, who shall be the vice-chair, both of whom are to be appointed by the Lieutenant Governor in Council, and
- (b) 2 or more appeals commissioners, to be appointed by the Minister.

(2) Persons appointed under subsection (1) must meet the prescribed qualifications.

(3) A person appointed as a member under subsection (1) may be appointed for a term not exceeding 3 years and may be reappointed for further terms not exceeding 3 years so long as the reappointment would not result in the person serving as a member for more than 12 consecutive years.

(4) Members of the Tribunal must faithfully, honestly and impartially perform their duties and must not, except in the proper performance of those duties, disclose to any person any information obtained in the course of performing their duties.

(5) The Minister may authorize, fix or provide for the payment of remuneration and expenses to the members of the Tribunal.

Jurisdiction and powers of Tribunal

150(1) In respect of this Act, the Tribunal has exclusive jurisdiction

- (a) to inquire into, hear and determine all matters and questions of fact and law arising or requiring determination, and
- (b) to make any order referred to in section 148.

(2) Subject to section 152, a decision of the Tribunal on a matter in respect of which the Tribunal has exclusive jurisdiction is final and conclusive and is not open to question or review in any court.

(3) In respect of an appeal to the Tribunal, the Tribunal may, on application, stay the decision under appeal for any length of time, with or without conditions.

(4) The Lieutenant Governor in Council may make rules governing the practice and procedure applicable to proceedings before the Tribunal.

(5) The *Regulations Act* does not apply to rules made under subsection (4).

(6) The Tribunal has the same powers as the Court for compelling the attendance of witnesses and examining them under oath and for compelling the production and inspection of books, papers, documents and things.

Amending decision

151(1) If a party applies, or on the Tribunal's own initiative, the Tribunal may amend a final decision to correct any of the following:

- (a) a clerical or typographical error;
- (b) an accidental or inadvertent error, omission or other similar mistake;
- (c) an arithmetical error made in a computation.

(2) Unless the Tribunal determines otherwise, an amendment under subsection (1) must not be made more than 30 days after all parties have been served with the final decision.

(3) Within 30 days of being served with the final decision, a party may apply to the Tribunal for clarification of the final decision, and the Tribunal may amend the final decision only if the Tribunal considers that the amendment will clarify the final decision.

(4) The Tribunal may not amend a final decision other than in the circumstances described in subsections (1) to (3).

Appeal to the Court

152(1) An appeal lies to the Court from a decision of the Tribunal on a question of law or a question of jurisdiction, and on hearing the matter, the Court may make any order, including the awarding of costs, that the Court considers proper.

(2) An appeal under subsection (1) must be made by application within 30 days from the date that the decision of the Tribunal is served on the person appealing.

(3) In respect of an appeal to the Court, the Court may, on application, stay the decision under appeal for any length of time, with or without conditions.

Part 14

Relationships with Other Canadian Jurisdictions

Reciprocal powers and agreements with other governments

153(1) Despite the repeal of section 6 of the *Employment Pension Plans Act*, RSA 2000 cE-8, an agreement made under that section that is in force on the date this section comes into force continues in force as if that section were still in force for as long as the agreement applies in Alberta.

(2) If pension standards legislation of a reciprocal jurisdiction or of Canada is substantially similar to this Act,

- (a) that pension standards legislation, as amended from time to time before or after the coming into force of this subsection, is deemed to apply with those modifications as the circumstances require for the purposes of this Act as though it had been enacted as a part of this Act, but only in respect of persons in Alberta who are members of pension plans that are subject to that pension standards legislation in accordance with an agreement referred to in subsection (1), and
- (b) the regulatory authority acting under that pension standards legislation is authorized to administer the legislation made applicable under clause (a), but only in respect of persons in Alberta who are members of pension plans that are subject to that pension standards legislation in accordance with an agreement referred to in subsection (1).

Agreements respecting multi-jurisdictional plans

154(1) In this section,

- (a) “jurisdiction” means Canada or a multilateral jurisdiction;
- (b) “pension legislation” means an Act of a jurisdiction, and legislation subordinate to such an Act,
 - (i) dealing with pension standards, and
 - (ii) identified as pension legislation in an agreement under this section,

and includes amendments to that Act and subordinate legislation;

- (c) “regulatory authority”
 - (i) in relation to Alberta, means the Superintendent, and
 - (ii) in relation to a jurisdiction, means the person, agency, department or ministry that under the pension legislation of that jurisdiction has supervisory authority with respect to pension plans;
- (d) “specified multi-jurisdictional plan” means a pension plan to which the following apply:
 - (i) this Act and the regulations;
 - (ii) the pension legislation of a jurisdiction.

(2) With the prior approval of the Lieutenant Governor in Council, the Minister may enter into an agreement with the Government of Canada or the government of a province or territory respecting specified multi-jurisdictional plans.

(3) An agreement referred to in subsection (2) may provide for

- (a) the application of this Act and the regulations to specified multi-jurisdictional plans,
- (b) the application of a jurisdiction’s pension legislation to those plans,
- (c) the application of the agreement to those plans, and

(d) the supervision and regulation of those plans.

(4) Without limiting subsection (3), an agreement referred to in subsection (2) may do any of the following:

- (a) provide that the regulatory authority of another jurisdiction may,
 - (i) in accordance with the agreement, and
 - (ii) in relation to a specified multi-jurisdictional plan, assume, exercise and perform any of the powers and duties that, under this Act, the Superintendent may assume, exercise or perform in relation to the plan;
- (b) provide that the Superintendent may
 - (i) in accordance with the agreement, and
 - (ii) in relation to a specified multi-jurisdictional plan, assume, exercise and perform any of the powers and duties that the regulatory authority of another jurisdiction may, under the pension legislation of that jurisdiction, assume, exercise or perform in relation to the plan;
- (c) incorporate by reference into the law of Alberta, in relation to a specified multi-jurisdictional plan, specified pension legislation of another jurisdiction;
- (d) for the purposes of determining the benefits that a member of a specified multi-jurisdictional plan has accrued under the plan,
 - (i) deem the member's benefit accrual to have been subject to the pension legislation of a particular jurisdiction, and
 - (ii) establish the manner in which that particular jurisdiction is to be determined;
- (e) impose duties or requirements in relation to a specified multi-jurisdictional plan on any person who has responsibilities with respect to
 - (i) the funding or administration of the plan, or

- (ii) the investment of some or all of its pension fund;
- (f) establish how, in circumstances specified in the agreement, the assets constituting the pension fund of a specified multi-jurisdictional plan are to be allocated between jurisdictions;
- (g) for the purposes of a reconsideration, review or appeal of a decision in relation to a specified multi-jurisdictional plan, deem a decision of the regulatory authority of one jurisdiction in relation to the plan to be a decision of the regulatory authority of another jurisdiction;
- (h) establish, in relation to a specified multi-jurisdictional plan, the basis on which and the circumstances in which this Act and the regulations, or pension legislation referred to in clause (c), will apply or not apply to the plan.

(5) If, under an agreement referred to in subsection (2), a specified multi-jurisdictional plan is to be supervised and regulated by the Superintendent, the Superintendent may exercise or perform in relation to the plan the powers and duties of the regulatory authority of another jurisdiction if and to the extent that the Superintendent is authorized to do so under the pension legislation of that jurisdiction or under the agreement.

(6) If pension legislation of another jurisdiction is, by an agreement referred to in subsection (2), incorporated by reference into the law of Alberta in relation to a specified multi-jurisdictional plan to which the agreement applies, that pension legislation prevails in the event of any inconsistency between that pension legislation, as it applies to a matter relating to that plan, and this Act and the regulations, as they apply to that matter.

(7) If an agreement referred to in subsection (2)

- (a) establishes additional requirements that apply with respect to a specified multi-jurisdictional plan,
- (b) imposes duties on a person that are not imposed on the person under this Act,
- (c) imposes requirements in relation to the funding of a specified multi-jurisdictional plan that are not imposed under this Act, or

- (d) establishes rules respecting any matter not otherwise dealt with under this Act,

those requirements are deemed to be established, those duties or requirements are deemed to be imposed and those rules are deemed to be established under this Act.

(8) An agreement referred to in subsection (2) has the force of law in Alberta to the extent that it is authorized under this Act, and in the event of an inconsistency between a provision of the agreement and a provision of this Act or the regulations, other than this section or the regulations made under it, the provision of the agreement prevails.

(9) The Superintendent may order that the liabilities and assets of a specified multi-jurisdictional plan to which an agreement referred to in subsection (2) applies be allocated and split so that the following are separated from the other liabilities and assets of the plan:

- (a) the liabilities that apply to members of the plan whose entitlement to benefits would be determined under this Act in the absence of the agreement;
- (b) the assets related to the funding of those liabilities.

(10) An order under subsection (9) takes effect when

- (a) the remedies under Part 12 that apply to that order have been exhausted, or
- (b) the time limit for serving a notice of an objection to that order under section 146 or for appealing that order under section 147 has expired without a notice of objection having been served or an appeal having been made.

(11) On an order under subsection (9) taking effect under subsection (10),

- (a) the agreement referred to in subsection (2) ceases to apply to the specified multi-jurisdictional plan and those of its members referred to in subsection (9)(a), and
- (b) the administrator of the plan must apply to register the plan in accordance with the requirements under this Act.

(12) If, in accordance with an agreement referred to in subsection (2), a specified multi-jurisdictional plan becomes registered under the pension legislation of another jurisdiction and was, immediately before that registration, registered in Alberta, the Superintendent may disclose to the regulatory authority of the other jurisdiction personal information, as defined in the *Freedom of Information and Protection of Privacy Act*, collected under this Act in respect of members of the plan if that information is relevant to that other regulatory authority's regulation of the plan.

(13) If, in accordance with an agreement referred to in subsection (2), the Superintendent acquires supervisory authority of a specified multi-jurisdictional plan under subsection (15), the Superintendent may collect from the regulatory authority of the jurisdiction in which the plan was previously registered personal information, as defined in the *Freedom of Information and Protection of Privacy Act*, collected in respect of members of the plan if that information is relevant to the Superintendent's regulation of the plan.

(14) Subject to subsection (15), a specified multi-jurisdictional plan that is registered under the pension legislation of another jurisdiction in accordance with an agreement referred to in subsection (2) need not be registered under this Act and need not comply with the requirements respecting registration under this Act.

(15) Despite section 13, a specified multi-jurisdictional plan is registered under this Act when the Superintendent acquires supervisory authority with respect to the plan

- (a) under an agreement referred to in subsection (2) that applies to the plan, or
- (b) on an order under subsection (9) taking effect under subsection (10) in relation to the plan.

Transitional regulations

155(1) The Lieutenant Governor in Council may make regulations the Lieutenant Governor in Council considers necessary or advisable for the purpose of more effectively bringing into operation an agreement referred to in section 154(2), including, without limitation, regulations

- (a) requiring the Minister to publish the agreement and specifying the manner of publication, or
 - (b) modifying provisions of this Act or the regulations to ensure consistency with the agreement.
- (2)** A regulation under subsection (1)(b) of this section modifying a provision of this Act
- (a) may be made only during the 5-year period after the date on which Alberta enters into the agreement,
 - (b) may not be made if a regulation having the same effect has been made under subsection (1)(b), and
 - (c) expires 2 years after the date the regulation is made.

Part 15 Regulations and Miscellaneous

Service of documents

156 Service of a document that may or must be served under this Act is to be effected as follows:

- (a) service on an individual must be effected
 - (i) personally on the individual or by leaving the document at the individual's last or most usual place of residence with a person who is or appears to be at least 16 years of age, or
 - (ii) by mailing the document by registered mail to the individual's last known postal address;
- (b) service on a corporation must be effected
 - (i) personally on a director, manager or officer of the corporation, or
 - (ii) by leaving the document at, or by sending the document by registered mail to, the office of the corporation at the postal address stated on the most recent return filed under section 38(1)(a);
- (c) service on a qualified trustee group must be effected,

- (i) if individual trustees are to be served, in accordance with clause (a)(i) or (ii), or
 - (ii) if the trust has an official office and that office is to be served, in accordance with clause (b)(ii);
- (d) service on the Superintendent must be effected
 - (i) by leaving the document at the Superintendent's office, or
 - (ii) by mailing the document by registered mail to the Superintendent's office;
- (e) service on a municipal corporation must be effected
 - (i) by leaving the document with the municipal corporate officer, or
 - (ii) by mailing the document by registered mail addressed to the municipal corporate officer;
- (f) service on the Government must be effected in the manner required by the *Proceedings Against the Crown Act*;
- (g) in addition to any of the means of service referred to in clauses (a) to (f), service may be effected on any person in a prescribed manner.

Proof of date of service

157 If it is necessary in the course of a proceeding or prosecution under this Act to prove the date of service of a document referred to in section 156, the date of service is,

- (a) if service is effected personally or by leaving the document in accordance with section 156, the actual date on which the document is served, or
- (b) if service is effected by registered mail, the date that is 7 days after the date of mailing.

Fees, levies or other assessments

158 In accordance with the regulations, fees, levies or other assessments may be imposed on administrators for the purpose of administering this Act.

Regulations

159(1) The Lieutenant Governor in Council may make regulations

- (a) applying all or any portion of this Act and the regulations to pension plans of which all of the members are connected with the participating employer within the meaning of section 8500(3) of the *Income Tax Regulations* (Canada);
- (b) respecting fees, including, without limitation, regulations
 - (i) setting and respecting fees that must be paid for the filing of a return referred to in section 38(1)(a), including fees for late filing of returns under section 38(1)(a), or for the filing of an application for the registration of a pension plan, and
 - (ii) prescribing the manner in which and the period within which those fees must be paid;
- (c) establishing time limits for the exercise of options relating to benefits;
- (d) prescribing matters that must be included or dealt with in the plan text document of a pension plan;
- (e) respecting the notice referred to in section 29(2)(b), including, without limitation, respecting the form, contents, timing and manner of delivery of the notice and the person by whom the notice must or may be provided;
- (f) respecting the benefits and membership of a retired member of a pension plan who returns to work or service in an employment covered by that plan;
- (g) respecting the retention of records relating to pension plans, including, without limitation, the location at which, the manner and form in which and the period within which any or all of those records must be retained;
- (h) requiring the auditing of investments and the submission to the Superintendent of lists of investments and audited reports on investments, including, without limitation, providing to the Superintendent the discretion to determine who must pay the costs of complying with that requirement;

- (i) respecting the actuarial excess or surplus, in the solvency reserve account of a pension plan, that may be withdrawn from the plan under section 54(5), including, without limitation, the amount of the actuarial excess that may be withdrawn, the conditions on which that amount may be withdrawn, the basis on which that amount may or must be calculated, the manner in which, the times at which and the period within which that amount may be withdrawn and any notice that may or must be provided in relation to that withdrawal;
- (j) respecting conversions of benefits under a pension plan, or withdrawals from a pension plan, locked-in retirement account or retirement income arrangement, under section 71(3)(a)(i) or (ii) or (4)(a), (b) or (c), including, without limitation, establishing requirements for the provision of waivers or medical certificates before a conversion or withdrawal may be made;
- (k) authorizing the Superintendent to establish, on criteria determined by the Superintendent to be appropriate, and maintain a list of savings institutions or other entities that are authorized to offer locked-in retirement accounts or retirement income arrangements to which transfers may be made;
- (l) prescribing conditions on which transfers to a locked-in retirement account or a retirement income arrangement may be made, including, without limitation, requiring that the transfer be to an entity on the list referred to in clause (k), and establishing terms and conditions that must be included in the contract for the locked-in retirement account or retirement income arrangement before a transfer to that account or arrangement may occur;
- (m) prescribing rules for the purposes of sections 110, 112 or 114, including
 - (i) respecting the powers and duties of persons, including, without limitation, administrators, participating employers, members and fundholders, involved in or affected by the event, transaction, conversion or withdrawal,

- (ii) respecting how, when and under what circumstances any such power and duty may, may not, must or must not be exercised or performed, and
- (iii) respecting the conditions or criteria on which any of those powers and duties may, may not, must or must not be exercised or performed;
- (n) respecting the obligation of a participating employer to eliminate a solvency deficiency under section 121, including, without limitation, the period within which, the manner in which and the basis on which that deficiency is to be eliminated and the records that must be filed while that deficiency is being eliminated and afterwards;
- (o) respecting the assumption by a person appointed as an administrator of a pension plan of contractual rights and duties under section 128, including, without limitation, limiting the rights and duties that may be assumed or must not be assumed by that person in relation to a contract and imposing conditions on that assumption;
- (p) exempting on conditions or otherwise any employees, employers, members or pension plans, or any class of them, from the application of all or any portion of this Act or the regulations;
- (q) respecting appointments to the Tribunal, including eligibility and qualifications for appointment;
- (r) respecting conflict of interest guidelines, codes of conduct and any other guidelines and policies in respect of the members of the Tribunal;
- (s) authorizing the charging and collecting from administrators of fees, levies or other assessments for the administration of this Act, including, without limitation, regulations respecting the amount of the fees, levies and other assessments and the manner in which and the times at which they must be paid;
- (t) respecting the use of electronic means to create, communicate, make available, collect, receive, store or otherwise deal with records or information under this Act;

- (u) defining a word or expression used but not defined in this Act;
 - (v) for meeting or removing any difficulty arising out of the transition to this Act from the *Employment Pension Plans Act*, RSA 2000 cE-8, and for that purpose providing that any provision of this Act does not apply or is varied in its application.
- (2)** Without limiting subsection (1),
- (a) the Lieutenant Governor in Council may make regulations respecting any matter for which regulations are contemplated by this Act, and
 - (b) regulations may be specific or general in their application and may make different provision for different kinds, categories or classes of prescribed matters, including, without limitation, different persons, pension plans, circumstances, acts, benefits or other matters for which regulations are contemplated by this Act.
- (3)** The Lieutenant Governor in Council may, in making a regulation under section 38(1)(c),
- (a) adopt one or more standards, codes and rules
 - (i) published by a provincial, national or international body or standards association, or
 - (ii) enacted as or under a law of Alberta or another jurisdiction,
 and
 - (b) adopt the standard, code or rule under clause (a)
 - (i) in whole, in part or with any changes considered appropriate, and
 - (ii) as it stands at a specific date, as it stands at the time of adoption or as amended from time to time.
- (4)** Regulations made under this section may delegate a matter to or confer discretion on the Superintendent.

Consequential amendments

160(1) The *Employment Standards Code* is amended by repealing section 109(5) and substituting the following:

(5) This section and section 111 apply despite any other Act but with the same force as sections 58, 60 and 61 of the *Employment Pension Plans Act*.

(2) The *Maintenance Enforcement Act* is amended in section 17.1(1)

- (a) by repealing clause (d);
- (b) in clause (f) by striking out “LIF, LIRA or LRIF” and substituting “LIF or LIRA”.

(3) The *Public Sector Pension Plans Act* is amended

- (a) by repealing section 6;
- (b) in Schedule 1
 - (i) by repealing section 1(1)(b) and substituting the following:
 - (b) “funding requirements” means the minimum funding requirements determined under the regulations, excluding any solvency funding requirements;
 - (ii) by repealing section 1(1)(i.1) and substituting the following:

Explanatory Notes

160(1) Amends chapter E-9 of the Revised Statutes of Alberta 2000. Section 109(5) presently reads:

(5) This section and section 111 apply despite any other Act but with the same force as sections 51, 52 and 53 of the Employment Pension Plans Act.

(2) Amends chapter M-1 of the Revised Statutes of Alberta 2000. Section 17.1(1)(d) and (f) presently read:

17.1(1) In this section,

(d) “LRIF” means a retirement income arrangement, known as a locked-in retirement income fund, that is a RRIF that will not commence before the person entitled to it attains the age of 50 years;

(f) “retirement savings vehicle” means a LIF, LIRA or LRIF;

(3) Amends chapter P-41 of the Revised Statutes of Alberta 2000.

- (i.1) “solvency deficiencies” means solvency deficiencies determined in accordance with the regulations;
- (iii) **by repealing section 6(3)(a) and substituting the following:**
 - (a) invest the assets of the plan fund in accordance with the regulations notwithstanding anything to the contrary in the *Financial Administration Act*, and
- (iv) **in section 12 by adding the following after clause (g.1):**
 - (g.2) respecting minimum funding requirements for the purpose of section 1(1)(b);
 - (g.3) respecting the determination of solvency deficiencies for the purpose of section 1(1)(i.1);
- (c) **in Schedule 2**
 - (i) **by repealing section 1(1)(b) and substituting the following:**
 - (b) “funding requirements” means the minimum funding requirements determined under the regulations, excluding any solvency funding requirements;
 - (ii) **by repealing section 1(1)(i.1) and substituting the following:**
 - (i.1) “solvency deficiencies” means solvency deficiencies determined in accordance with the regulations;
 - (iii) **by repealing section 6(3)(a) and substituting the following:**
 - (a) invest the assets of the plan fund in accordance with the regulations notwithstanding anything to the contrary in the *Financial Administration Act*, and

(iv) in section 12 by adding the following after clause (g.1):

- (g.2) respecting minimum funding requirements for the purpose of section 1(1)(b);
- (g.3) respecting the determination of solvency deficiencies for the purpose of section 1(1)(i.1);

(d) in Schedule 4

(i) by repealing section 1(1)(b) and substituting the following:

- (b) “funding requirements” means the minimum funding requirements determined under the regulations, excluding any solvency funding requirements;

(ii) by repealing section 1(1)(i.1) and substituting the following:

- (i.1) “solvency deficiencies” means solvency deficiencies determined in accordance with the regulations;

(iii) in section 4(1)(k) by striking out “subject to the *Employment Pension Plans Act*,”;

(iv) in section 4(9) by striking out “and the *Employment Pension Plans Act*”;

(v) by repealing section 6(3)(a) and substituting the following:

- (a) invest the assets of the plan fund in accordance with the regulations notwithstanding anything to the contrary in the *Financial Administration Act*, and

(vi) in section 12 by adding the following after clause (g.1):

- (g.2) respecting minimum funding requirements for the purpose of section 1(1)(b);

- (g.3) respecting the determination of solvency deficiencies for the purpose of section 1(1)(i.1);

(e) in Schedule 5

(i) by repealing section 1(1)(b) and substituting the following:

- (b) “funding requirements” means the minimum funding requirements determined under the regulations, excluding any solvency funding requirements;

(ii) by repealing section 1(1)(i.1) and substituting the following:

- (i.1) “solvency deficiencies” means solvency deficiencies determined in accordance with the regulations;

(iii) by repealing section 6(3)(a) and substituting the following:

- (a) invest the assets of the plan fund in accordance with the regulations notwithstanding anything to the contrary in the *Financial Administration Act*, and

(iv) in section 12 by adding the following after clause (g.1):

- (g.2) respecting minimum funding requirements for the purpose of section 1(1)(b);
- (g.3) respecting the determination of solvency deficiencies for the purpose of section 1(1)(i.1);

(f) in Schedule 6

(i) by repealing section 6(3)(a) and substituting the following:

- (a) invest the assets of the plan fund in accordance with the regulations, notwithstanding anything to the contrary in the *Financial Administration Act*, and

(ii) in section 12(1) by adding the following after clause (b):

- (c) respecting the plan fund, including the management and investment of its assets,

(4) The *Public Trustee Act* is amended by repealing section 7.1 and substituting the following:

Missing persons and pension benefits

7.1(1) Section 7(1) does not apply with respect to amounts referred to in Division 9 of Part 8 of the *Employment Pension Plans Act*.

(2) Where the Public Trustee has received money received under section 77.1 of the *Employment Pension Plans Act*, RSA 2000 cE-8, the Public Trustee shall not pay out the money 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.

(5) The *Teachers' Pension Plans Act* is amended

(a) by repealing section 1(1)(p) and substituting the following:

- (p) “solvency deficiencies” means solvency deficiencies determined in accordance with the regulations;

(b) by repealing section 15;

(c) by repealing section 16(1)(a) and substituting the following:

- (a) “funding requirements” means the minimum funding requirements determined under the regulations, excluding any solvency funding requirements;

(d) by repealing section 17(3) and substituting the following:

(3) The Board shall

- (a) invest or lend the assets of a Pension Fund in a manner that is not excluded by the regulations, and
- (b) manage those assets

(4) Amends chapter P-44.1 of the Statutes of Alberta, 2004.

Section 7.1 presently reads:

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.

(5) Amends chapter T-1 of the Revised Statutes of Alberta 2000.

Sections 1(1)(p), 15, 16(1)(a) and 17(3) presently read:

1(1) In this Act,

(p) “solvency deficiencies” means solvency deficiencies within the meaning of, and as calculated according to the methods set out in, the regulations under the Employment Pension Plans Act;

15 The Lieutenant Governor in Council may make regulations for the purposes described in section 4 of the Employment Pension Plans Act.

16(1) In this section,

(a) “funding requirements” means the minimum funding requirements, excluding any requirements for the funding of solvency deficiencies, of the Employment Pension Plans Act and the regulations under it;

17(3) The Board shall

(a) invest or lend the assets of a Pension Fund in a manner that is not excluded by the Employment Pension Plans Act or the regulations under it, and

for the sole benefit of the persons entitled to the respective benefits.

(e) in section 23(1) by adding the following after clause (o):

- (o.1) respecting the determination of solvency deficiencies for the purpose of section 1(1)(p);
- (o.2) respecting the minimum funding requirements for the purpose of section 16(1)(a);
- (o.3) respecting restrictions on the investment or lending of the assets of a Pension Fund for the purpose of section 17(3)(a);

(6) The *Unclaimed Personal Property and Vested Property Act* is amended by repealing section 3(4)(c)(i).

Repeal

161 The *Employment Pension Plans Act*, RSA 2000 cE-8, is repealed.

Commencement

162 This Act comes into force on Proclamation.

(b) manage those assets
for the sole benefit of the persons entitled to the respective benefits.

(6) Amends chapter U-1.5 of the Statutes of Alberta, 2007.
Section 3(4)(c)(i) presently reads:

- (4) This Act does not apply*
- (c) to any funds held or benefits payable pursuant to the following enactments, unless the enactment specifies otherwise:*
- (i) the Employment Pension Plans Act;*

161 Repeals chapter E-8 of the Revised Statutes of Alberta 2000.

162 Coming into force.

RECORD OF DEBATE

Stage	Date	Member	From	To

		Questions and Comments	From	To

Stage	Date	Member	From	To

		Questions and Comments	From	To

Stage	Date	Member	From	To

		Questions and Comments	From	To

Stage	Date	Member	From	To

		Questions and Comments	From	To