

[Pension Benefits Standards Act, 1985](#) (R.S. 1985, c. 32 (2nd Supp.))

Disclaimer: These documents are not the official versions ([more](#)).

Source: <http://laws.justice.gc.ca/en/P-7.01/text.html>

Updated to August 31, 2004

Subject: Pensions

Pension Benefits Standards Act, 1985

R.S., 1985, c. 32 (2nd Supp.)

An Act respecting pension plans organized and administered for the benefit of persons employed in connection with certain federal works, undertakings and businesses

[1986, c. 40, assented to
27th June, 1986]

SHORT TITLE

Short title

1. This Act may be cited as the *Pension Benefits Standards Act, 1985*.

INTERPRETATION

Definitions

2. (1) In this Act,

"additional voluntary contribution"
«*cotisation facultative*»

"additional voluntary contribution" under a pension plan means an optional contribution by a member that does not give rise to an obligation on the employer to make additional contributions;

"administrator"
«*administrateur*»

"administrator", in relation to a pension plan, means the administrator referred to in section 7, and includes the replacement administrator appointed under subsection 29.1(1);

"cessation of membership" «*fin de participation*»

"cessation of membership" in a pension plan has the meaning assigned by subsection (2);

"collective agreement"
«*convention collective*»

"collective agreement" means an agreement in writing entered into between an employer and a bargaining agent containing provisions respecting terms and conditions of employment and related matters;

"common-law partner"
«*conjoint de fait*»

"common-law partner", in relation to an individual, means a person who is cohabiting with the individual in a conjugal relationship, having so cohabited for a period of at least one year;

<p>"common-law partnership" « <i>union de fait</i> »</p>	<p>"common-law partnership" means the relationship between two persons who are common-law partners of each other;</p>
<p>"continuous" « <i>continu</i> »</p>	<p>"continuous", in relation to membership in a pension plan or to employment, means without regard to periods of temporary interruption of the membership or employment;</p>
<p>"deferred pension benefit" « <i>prestation de pension différée</i> »</p>	<p>"deferred pension benefit" means a pension benefit other than an immediate pension benefit;</p>
<p>"defined benefit plan" « <i>régime à prestations déterminées</i> »</p>	<p>"defined benefit plan" means a pension plan that is not a defined contribution plan;</p>
<p>"defined benefit provision" « <i>disposition à prestations déterminées</i> »</p>	<p>"defined benefit provision" means a provision of a pension plan under which pension benefits for a member are determined in any way other than that described in the definition "defined contribution provision";</p>
<p>"defined contribution plan" « <i>régime à cotisations déterminées</i> »</p>	<p>"defined contribution plan" means a pension plan that consists of defined contribution provisions and does not contain defined benefit provisions, other than</p> <p>(a) a defined benefit provision relating to pension benefits accrued in respect of employment before the effective date of the pension plan, or</p> <p>(b) a defined benefit provision that provides for a minimum pension benefit whose additional value is not significant in the Superintendent's opinion;</p>
<p>"defined contribution provision" « <i>disposition à cotisations déterminées</i> »</p>	<p>"defined contribution provision" means a provision of a pension plan under which pension benefits for a member are determined solely as a function of the amount of pension benefit that can be provided by</p> <p>(a) contributions made by and on behalf of that member, and</p> <p>(b) interest earnings and other gains and losses allocated to that member;</p>
<p>"designated province" « <i>province désignée</i> »</p>	<p>"designated province" means a province prescribed as a province in which there is in force a law substantially similar to this Act;</p>
<p>"employee" « <i>saliés</i> »</p>	<p>"employee" includes an officer;</p>
<p>"employer" « <i>employeur</i> »</p>	<p>"employer", in relation to an employee, means the person or organization, whether incorporated or unincorporated, in respect of employment with which the employee receives his remuneration, and includes the successors or assigns of that person or organization;</p>
<p>"employment" « <i>emploi</i> »</p>	<p>"employment" means the performance by an employee of work for remuneration for an employer under an express or implied contract of service or apprenticeship, and includes the tenure of an office;</p>

<p>"former member" « <i>participant ancien</i> »</p>	<p>"former member", in relation to a pension plan, means</p> <p>(a) except in sections 9.2 and 24, a person who, on or after January 1, 1987, has either ceased membership in the plan or retired,</p> <p>(a.1) in section 9.2, a person who has either ceased membership in the plan or retired and has not transferred their pension benefit credit under section 26 before termination of the plan, or</p> <p>(b) in section 24, a person who, before, on or after January 1, 1987, has either ceased membership in the plan or retired;</p>
<p>"full-time basis" « <i>à temps plein</i> »</p>	<p>"full-time basis", in relation to an employee of a particular class, means engaged to work, throughout the year, all or substantially all of the normally scheduled hours of work established for persons in that class of employees;</p>
<p>"immediate pension benefit" « <i>prestation de pension immédiate</i> »</p>	<p>"immediate pension benefit" means a pension benefit that is to commence within one year after the member becomes entitled to it;</p>
<p>"included employment" « <i>emploi inclus</i> »</p>	<p>"included employment" has the meaning assigned by section 4;</p>
<p>"joint and survivor pension benefit" « <i>prestation réversible</i> »</p>	<p>"joint and survivor pension benefit" means an immediate pension benefit that continues at least until the death of the member or former member or the death of the survivor of the member or former member, whichever occurs later;</p> <p style="text-align: center;">"marriage" and "remarriage" [Repealed, 2000, c. 12, s. 254]</p>
<p>"member" « <i>participant</i> »</p>	<p>"member", in relation to a pension plan, means a person who has become a member of the pension plan and has neither ceased membership in the plan nor retired;</p>
<p>"Minister" « <i>ministre</i> »</p>	<p>"Minister" means the Minister of Finance;</p>
<p>"multi-employer pension plan" « <i>régime interentreprises</i> »</p>	<p>"multi-employer pension plan" means a pension plan organized and administered for employees of two or more employers who contribute to the plan pursuant to an agreement, by-law or statute, where the pension plan provides pension benefits that are determined by periods of employment with any or all of the participating employers, but does not include a pension plan where more than ninety-five per cent of the plan members are employed by participating employers who are incorporated and are affiliates within the meaning of the <i>Canada Business Corporations Act</i>;</p>
<p>"office" and "officer" « <i>fonctions</i> » et « <i>cadre</i> »</p>	<p>"office" means the position of an individual entitling that individual to a fixed or ascertainable stipend or remuneration, and includes the position of an officer or director of a corporation or other organization and of an agent acting for a principal, and "officer" means a person holding such a position;</p>
<p>"participating employer" « <i>employeur participant</i> »</p>	<p>"participating employer", in relation to a multi-employer pension plan, means an employer who is required to contribute to that plan;</p>

"part-time basis" «à temps partiel»	"part-time basis", in relation to an employee, means engaged to work on other than a full-time basis;
"pension benefit" « prestation de pension »	"pension benefit" means a periodic amount to which, under the terms of a pension plan, a member or former member, or the spouse, common-law partner, survivor or other beneficiary or estate or succession of a member or former member, is or may become entitled;
"pension benefit credit" «droit à pension»	"pension benefit credit", in relation to any person, means the aggregate value at a particular time of that person's pension benefit and other benefits provided under a pension plan, calculated in prescribed manner;
"pension fund" «fonds de pension»	"pension fund", in relation to a pension plan, means a fund maintained to provide benefits under or related to the pension plan;
"pension plan" «régime de pension»	"pension plan" has the meaning assigned by subsection 4(2);
"pensionable age" «âge admissible»	"pensionable age", in relation to a member, means the earliest age (taking into account the period of employment with the employer or the period of membership in the pension plan, if applicable) at which a pension benefit, other than a benefit in respect of a disability (as defined in the regulations), is payable to the member under the terms of the pension plan without the consent of the administrator and without reduction by reason of early retirement;
"prescribed" Version anglaise seulement	"prescribed" means prescribed by regulation;
"registered pension plan" «régime agréé»	"registered pension plan" means a pension plan that is registered and in respect of which a certificate of registration has been issued by the Superintendent under this Act;
"retire" «retraite»	"retire" has the meaning assigned by subsection (3);
"spouse" « époux »	"spouse", in relation to an individual, includes a person who is party to a void marriage with the individual;
	"standards for registration" [Repealed, 1998, c. 12, s. 1]
"Superintendent" «surintendant»	"Superintendent" means the Superintendent of Financial Institutions appointed pursuant to subsection 5(1) of the <i>Office of the Superintendent of Financial Institutions Act</i> ;
"surplus" « excédent »	"surplus" means the amount, determined in the prescribed manner, by which the assets of a pension plan exceed its liabilities;
"survivor" « survivant »	"survivor", in relation to a member or former member, means <p style="margin-left: 40px;">(a) if there is no person described in paragraph (b), the spouse of the member or former member at the time of the member's or former member's death, or</p> <p style="margin-left: 40px;">(b) a person who was the common-law partner of the member or former member at the time of the member's or former member's death;</p>

"termination" « <i>cessation</i> »	"termination", in relation to a pension plan, means the cessation of crediting of benefits to plan members generally, and includes the situations described in subsections 29(1) and (2);
"winding-up" « <i>liquidation</i> »	"winding-up", in relation to a pension plan, means the distribution of the assets of a pension plan that has been terminated;
"Year's Maximum Pensionable Earnings" « <i>maximum des gains annuels ouvrant droit à pension</i> »	"Year's Maximum Pensionable Earnings" has the same meaning as in the <i>Canada Pension Plan</i> .
Cessation of membership in a pension plan	<p>(2) For the purposes of this Act, a member of a pension plan shall be deemed to cease membership in the plan</p> <p>(a) in the case of a multi-employer pension plan, when no contributions have been made in respect of that member by any of the participating employers for a period of twenty-four months, or such shorter period as is provided under the plan, and the member is not in receipt of an immediate pension benefit;</p> <p>(b) in the case of any other pension plan, when the member's employment with the employer terminates and the member is not in receipt of an immediate pension benefit, whether or not contributions by the employer in respect of that member had ceased previously; or</p> <p>(c) in any other prescribed circumstance.</p>
Meaning of "retire"	(3) For the purposes of this Act, a member of a pension plan shall be deemed to retire on commencing to receive an immediate pension benefit, whether the member's employment has terminated or not.
How "spouse or common-law partner" to be read	(4) Except in section 25, where a member or former member has a spouse from whom they are separated and a common-law partner with whom they are cohabiting, a reference to a "spouse or common-law partner" in respect of that member or former member means the common-law partner.
Pension plans may exceed minimum requirements	<p>R.S., 1985, c. 32 (2nd Supp.), s. 2, c. 18 (3rd Supp.), s. 38; 1994, c. 24, s. 34(F); 1998, c. 12, s. 1; 2000, c. 12, s. 254; 2001, c. 34, s. 66.</p> <p>3. The requirements of this Act and the regulations shall not be construed as preventing the registration or operation of a pension plan containing provisions that are more advantageous to members of the plan, former members or potential members or their spouses, common-law partners, beneficiaries, estates or successions.</p>

R.S., 1985, c. 32 (2nd Supp.), s. 3; 2000, c. 12, s. 255.

APPLICATION OF ACT

Application of Act

4. (1) This Act applies in respect of pension plans.

Definition of
"pension plan"

(2) In this Act, "pension plan" means a superannuation or other plan organized and administered to provide pension benefits to employees employed in included employment (and former employees) and to which the employer is required under or in accordance with the plan to contribute, whether or not provision is also made for other benefits or for benefits to other persons, and includes a supplemental pension plan, whether or not the employer is required to make contributions under or in accordance with the supplemental pension plan, but does not include

(a) an employees' profit sharing plan or a deferred profit sharing plan as defined in sections 144 and 147, respectively, of the *Income Tax Act*;

(b) an arrangement to provide a "retiring allowance" as defined in subsection 248(1) of the *Income Tax Act*; or

(c) any other prescribed arrangement.

Definition of
"supplemental
pension plan"

(3) In subsection (2), "supplemental pension plan" means a pension plan for employees whose membership in another pension plan is a condition precedent to membership in the supplemental pension plan and that is an integral part of that other plan.

Definition of
"included
employment"

(4) In this Act, "included employment" means employment, other than excepted employment, on or in connection with the operation of any work, undertaking or business that is within the legislative authority of the Parliament of Canada, including, without restricting the generality of the foregoing,

(a) any work, undertaking or business operated or carried on for or in connection with navigation and shipping, whether inland or maritime, including the operation of a ship and transportation by ship anywhere in Canada;

(b) any railway, canal, telegraph or other work or undertaking connecting a province with another province or extending beyond the limits of a province;

(c) any line of steam or other ships connecting a province with another province or extending beyond the limits of a province;

(d) any ferry between a province and another province or between a province and a country other than Canada;

(e) any aerodrome, aircraft or line of air transportation;

(f) any radio broadcasting station;

(g) any bank or authorized foreign bank within the meaning of section 2 of the *Bank Act*;

(h) any work, undertaking or business that, although wholly situated within a province, is before or after its execution declared by the Parliament of Canada to be for the general advantage of Canada or for the advantage of two or more provinces; and

(i) any work, undertaking or business outside the exclusive legislative authority of

provincial legislatures, and any work, undertaking or business of a local or private nature in Yukon, the Northwest Territories or Nunavut.

Definition of
"excepted
employment"

(5) In this Act, "excepted employment" means

(a) employment by Her Majesty in right of Canada; and

(b) any employment that is excepted from included employment by any regulation made under subsection (6).

Idem

(6) The Governor in Council may make regulations excepting from included employment

(a) employment by an agent of Her Majesty in right of Canada; and

(b) any other employment if the Governor in Council, on a report of the Minister, is satisfied that

(i) provision has been made for the coverage of employees employed in that employment under the terms of a pension plan that is organized and administered for the benefit primarily of employees employed in other than included employment and that is required to be registered under the law of a designated province, or

(ii) in any other case, the exception of that employment is warranted having regard to the existence of other arrangements for the safeguarding of any benefits that are or may become available to employees or other persons in respect of that employment, or having regard to such other circumstances as the Governor in Council deems relevant.

R.S., 1985, c. 32 (2nd Supp.), s. 4; 1993, c. 28, s. 78; 1999, c. 28, s. 172, c. 31, s. 244(F); 2002, c. 7, s. 226.

POWERS OF SUPERINTENDENT

Powers of
Superintendent

5. (1) The Superintendent, under the direction of the Minister, has the control and supervision of the administration of this Act and has the powers conferred by this Act.

Information and
studies

(2) The Superintendent may

(a) collect information to determine the extent to which inflation adjustments and other adjustments to pension benefits are provided;

(b) conduct studies, surveys and research programs and compile statistical and other information relating to pension plans and their operation; and

(c) disclose information gathered under paragraph (a) or (b) or filed under section 10, 10.1 or 12 to any government agency or regulatory body.

R.S., 1985, c. 32 (2nd Supp.), s. 5; 1998, c. 12, s. 3.

AGREEMENTS, ETC.

Agreements, etc.,
respecting
administration

6. (1) The Minister, with the approval of the Governor in Council, may

(a) enter into agreements with the appropriate authority of a designated province respecting

(i) the administration, application and enforcement of pension legislation, and

(ii) the establishment and operation in Canada of an association of pension supervisory authorities;

(a.1) enter into agreements with the appropriate authority of a designated province with respect to any pension plan that is required to be registered under this Act and is registered in the designated province in order to

(i) make applicable the pension law of the designated province, or any part of that law, with such modifications as the Minister deems necessary, in respect of the pension plan, and

(ii) limit the application of this Act and the regulations to the pension plan;

(b) authorize the appropriate authority of a designated province, or the association referred to in subparagraph (a)(ii), to exercise such powers on behalf of the Superintendent or otherwise under this Act as the Minister may determine;

(c) authorize the Superintendent to exercise or perform such powers and duties on behalf of the appropriate authority of a designated province, or on behalf of the association referred to in subparagraph (a)(ii), as the Minister may determine; and

(d) designate an agency for the purposes, among others, of receiving, holding and disbursing pension benefits and pension benefit credits under this Act.

Publication

(2) The Minister shall cause a notice of every agreement entered into under paragraph (1)(a.1) to be published in the *Canada Gazette*.

R.S., 1985, c. 32 (2nd Supp.), s. 6; 1998, c. 12, s. 4.

ADMINISTRATION OF PENSION PLANS

Administrator

7. (1) The administrator of a pension plan shall be

(a) in the case of a multi-employer pension plan established under one or more collective agreements, a board of trustees or other similar body constituted in accordance with the terms of the plan or the collective agreement or agreements to manage the affairs of the plan;

(b) in the case of a multi-employer pension plan not described in paragraph (a), a pension committee constituted in accordance with the terms of the plan, subject to

section 7.1, to manage the affairs of the plan; or

(c) in the case of a pension plan other than a multi-employer pension plan,

(i) the employer, or

(ii) if the plan is established under one or more collective agreements and the terms of the plan or the collective agreement or agreements to manage the affairs of the plan provide for the constitution of a board of trustees or other similar body, that body.

Administrator of
simplified pension
plan

(2) In the case of a simplified pension plan, the administrator of the pension plan shall be the prescribed person or body.

R.S., 1985, c. 32 (2nd Supp.), s. 7; 1998, c. 12, s. 5.

Representative of
members

7.1 A pension committee must

(a) if a majority of the pension plan members so requests, include a representative of the plan members; and

(b) if the pension plan has fifty or more retired members and a majority of the retired members so requests, include a representative of the retired members.

1998, c. 12, s. 5.

Pension council

7.2 (1) An employer who is the administrator of a pension plan may establish a pension council but, if the pension plan has fifty or more members and a majority of the members so requests, the employer shall establish a pension council.

Representative of
members

(2) A pension council must include a representative of the pension plan members and, if the plan has fifty or more retired members and a majority of the retired members so requests, the council must include a representative of the retired members.

Functions of
pension council

(3) The functions of a pension council are the following:

(a) to promote awareness and understanding of the pension plan among members and potential members;

(b) to review, at least once every year, the financial, actuarial and administrative aspects of the plan;

(c) to perform the prescribed administrative functions; and

(d) to perform any other functions that are specified by the pension plan or the employer.

Information

(4) The employer shall provide a pension council with any information that is necessary to enable it to carry out its functions.

1998, c. 12, s. 5.

Choosing

7.3 Pension plan members and retired members shall choose their representatives

representatives

for the purposes of section 7.1 and subsection 7.2(2), directly or indirectly, in the prescribed manner.

1998, c. 12, s. 5.

Duties of administrator

7.4 (1) The administrator of a pension plan shall, in accordance with this Act and the regulations, administer the pension plan and the pension fund and file the required documents.

Employer to provide information

(2) An employer who is not the administrator of its pension plan shall provide the administrator with the information that is required by the administrator in order to comply with the terms of the plan and discharge the duties under subsection (1).

Superintendent to be informed

(3) The administrator of a pension plan shall, within thirty days after being constituted or becoming the administrator, inform the Superintendent of

(a) the administrator's name and address; or

(b) the names and addresses of the persons who together constitute the body that is the administrator.

The administrator shall inform the Superintendent of any change to this information within thirty days after the change.

1998, c. 12, s. 5.

Superintendent may require meeting

7.5 (1) An administrator shall hold a meeting, within the period specified by the Superintendent, to consider any matters set out in a written notice from the Superintendent requiring the administrator to hold a meeting.

Participation

(2) The Superintendent may

(a) participate in the meeting;

(b) require the administrator to invite members, former members or any other persons entitled to pension benefits or refunds under the pension plan to attend the meeting; and

(c) require any other interested persons to attend the meeting.

1998, c. 12, s. 5.

Amounts to be held in trust

8. (1) An employer shall ensure, with respect to its pension plan, that

(a) the moneys in the pension fund,

(b) an amount equal to the aggregate of the prescribed payments that have accrued to date, and

(c) all

(i) amounts deducted by the employer from members' remuneration, and

(ii) other amounts due to the pension fund from the employer

that have not been remitted to the pension fund

are kept separate and apart from the employer's own moneys, and shall be deemed to hold the amounts referred to in paragraphs (a) to (c) in trust for members of the pension plan, former members, and any other persons entitled to pension benefits or refunds under the plan.

Where
bankruptcy, etc.,
of employer

(2) In the event of any liquidation, assignment or bankruptcy of an employer, an amount equal to the amount that by subsection (1) is deemed to be held in trust shall be deemed to be separate from and form no part of the estate in liquidation, assignment or bankruptcy, whether or not that amount has in fact been kept separate and apart from the employer's own moneys or from the assets of the estate.

Administration of
pension plan and
fund

(3) The administrator shall administer the pension plan and pension fund as a trustee for the employer, the members of the pension plan, former members, and any other persons entitled to pension benefits or refunds under the plan.

Standard of care

(4) In the administration of the pension plan and pension fund, the administrator shall exercise the degree of care that a person of ordinary prudence would exercise in dealing with the property of another person.

Manner of
investing assets

(4.1) The administrator shall invest the assets of a pension fund in accordance with the regulations and in a manner that a reasonable and prudent person would apply in respect of a portfolio of investments of a pension fund.

Special
knowledge or skill

(5) Without limiting the generality of subsection (4), an administrator who in fact possesses, or by reason of profession or business ought to possess, a particular level of knowledge or skill relevant to the administration of a pension plan or pension fund shall employ that particular level of knowledge or skill in the administration of the pension plan or pension fund.

Administrator not
liable

(5.1) An administrator is not liable for contravening subsection (4), (4.1) or (5) if the contravention occurred because the administrator relied in good faith on

(a) financial statements of the pension plan prepared by an accountant, or a written report of the auditor or auditors of the plan, that have been represented to the administrator as fairly reflecting the financial condition of the plan; or

(b) a report of an accountant, an actuary, a lawyer, a notary or another professional person whose profession lends credibility to the report.

Conflict of interest

(6) A person shall not accept an appointment to a body referred to in paragraph 7(1)(a) or (b) or subparagraph 7(1)(c)(ii) if there would be a material conflict of interest between that person's role as a member of that body and that person's role in any other capacity.

Not a conflict of
interest

(6.1) For the purposes of subsection (6), merely being entitled to a pension benefit or having an interest in a pension benefit credit does not constitute a conflict of interest.

Eliminating
conflict of interest

(7) A person described in subsection (6) shall, within ninety days after becoming aware that a material conflict of interest exists,

(a) eliminate that conflict of interest; or

(b) resign as a member of that body.

Validity of
documents

(8) A document issued by a board of trustees or other similar body or a pension committee is valid notwithstanding a material conflict of interest of a member thereof.

Removal of
member

(9) If a person contravenes subsection (6) or (7), the Superintendent or any other interested person may apply to a court of competent jurisdiction for an order that that person be replaced, and the court may make an order on such terms as it considers appropriate.

Other conflicts of
interest

(10) If there is a material conflict of interest between the role of an employer who is an administrator, or the role of the administrator of a simplified pension plan, and their role in any other capacity, the administrator

(a) shall, within thirty days after becoming aware that a material conflict of interest exists, declare that conflict of interest to the pension council or to the members of the pension plan; and

(b) shall act in the best interests of the members of the pension plan.

Court order

(11) If an administrator contravenes subsection (10), a court of competent jurisdiction may, on application by the Superintendent or any other interested person, make any order on such terms as the court considers appropriate.

R.S., 1985, c. 32 (2nd Supp.), s. 8; 1998, c. 12, s. 6.

FUNDING AND SURPLUS

Funding of
pension plan

9. (1) A pension plan shall provide for funding, in accordance with the prescribed tests and standards for solvency, that is adequate to provide for payment of all pension benefits and other benefits required to be paid under the terms of the plan.

Actuarial reports

(2) In the case of an actuarial report required pursuant to subsection 12(3), where the Superintendent is of the opinion that the report has not been prepared

(a) on the basis of actuarial assumptions or methods that are adequate and appropriate, and

(b) in accordance with the standards of practice adopted by the Canadian Institute of Actuaries, except as otherwise specified by the Superintendent,

the Superintendent shall notify the administrator in writing of this opinion and shall direct the administrator to cause the appropriate changes to be made to the report, and the administrator shall forthwith comply with such a direction.

Amended report

(3) A pension plan shall be funded in accordance with the report referred to in

subsection (2) as amended pursuant to any direction of the Superintendent under that subsection.

(4) to (6) [Repealed, 1998, c. 12, s. 8]

R.S., 1985, c. 32 (2nd Supp.), s. 9; 1998, c. 12, s. 8.

Notification of remittance

9.1 (1) The administrator of a pension plan shall notify in writing the holder or custodian of the pension fund of all amounts that are to be remitted to the pension fund and the expected date of the remittance.

Effect of late remittance

(2) If a payment to a pension fund is not remitted within thirty days after the date referred to in subsection (1),

(a) the administrator of the pension plan shall immediately notify the Superintendent in writing; and

(b) a holder or custodian of the pension fund shall, if the administrator is the employer, immediately notify the Superintendent in writing.

1998, c. 12, s. 9.

Refund of surplus to the employer

9.2 (1) If an actuarial report filed under subsection 12(3) indicates that there is a surplus, no part of that surplus may be refunded to the employer unless

(a) the employer establishes that

(i) it is entitled to the surplus, or part of it, under the pension plan, or

(ii) it has a claim to the surplus, or part of it, under this section;

(b) the requirements of the regulations made under paragraph 39(h.1) are met; and

(c) the Superintendent consents to the refund.

Consent to surplus

(2) In deciding whether to consent to a refund, the Superintendent shall recognize the claim of the employer to the surplus, or part of it, established under this section.

Claim to surplus

(3) An employer has a claim to the surplus, or part of it, if, after being notified of the employer's proposal for a refund of that surplus or part of it, at least two thirds of the persons in each of the following categories notify the employer that they consent to the proposal:

(a) members of the pension plan; and

(b) former members of the plan and any other persons within a prescribed class.

Submission to arbitration

(4) Subject to subsection (5), if more than one half but fewer than two thirds of the persons in each of the categories referred to in subsection (3) consented to the proposal, the employer may, or if the pension plan is terminated shall, submit the proposal to arbitration. The employer shall notify the Superintendent and the persons in those categories if the proposal is to be submitted to arbitration.

Winding up of employer	<p>(5) The employer's claim to the surplus, or part of it, shall be submitted to arbitration within eighteen months after the termination of the pension plan, or any further period specified by the Superintendent, if</p> <p style="padding-left: 40px;">(a) the employer has not established a claim to the surplus;</p> <p style="padding-left: 80px;">(b) the plan is terminated; and</p> <p style="padding-left: 40px;">(c) the employer is winding up or is in the process of being liquidated.</p> <p>The employer shall notify the Superintendent and the persons in the categories referred to in subsection (3) that the claim will be submitted to arbitration.</p>
Deemed agreement	<p>(6) If a proposal or claim is submitted to arbitration, the employer and all interested persons are deemed to have agreed to have the employer's claim determined by the arbitration.</p>
Choice of arbitrator	<p>(7) The arbitrator shall be chosen by the employer and the persons in the categories set out in subsection (3). If they cannot agree on an arbitrator within the prescribed period, the Superintendent shall choose the arbitrator.</p>
Arbitration	<p>(8) The arbitrator is not bound by any legal or technical rules of evidence in conducting any matter that comes before the arbitrator, and shall deal with it as informally and expeditiously as the circumstances and considerations of fairness and natural justice permit.</p>
Retention of experts	<p>(9) An arbitrator may retain any experts that the arbitrator considers necessary.</p>
Costs of arbitration	<p>(10) Subject to the provisions of the pension plan, the parties to an arbitration shall pay its costs in the amount, subject to the approval of the Superintendent, and in the proportion that the arbitrator determines.</p>
Issuance of decision	<p>(11) The arbitrator shall issue a written decision with reasons, file them with the Superintendent within ten days after issuing them and make them available for inspection by any interested person.</p>
Scheme of division	<p>(12) In respect of a claim submitted to arbitration under subsection (5), the arbitrator may impose a scheme of division of the surplus, or of part of it, between the parties to the arbitration.</p>
Decision binding	<p>(13) An arbitrator's decision is final and binding on the parties and on any other person affected by it.</p>
Notification to unions	<p>(14) All notifications to unionized members under this section must also be made to the executive of their union.</p>
Union represents members	<p>(15) Unless otherwise provided by the relevant collective agreement, the executive of a union shall represent its members, other than former members of the plan, for the purposes of this section.</p>

REGISTRATION OF PENSION PLANS

Duty of administrator to file documents

10. (1) The administrator of a pension plan shall file with the Superintendent, within sixty days after the plan is established,

(a) a copy of the plan;

(b) a copy of every document that creates or supports the plan or the pension fund; and

(c) a declaration (in the form, if any, specified by the Superintendent) signed by the administrator that the plan complies with this Act and the regulations.

Registration of pension plan

(2) Subject to subsection (3), the Superintendent shall register a pension plan and issue a certificate of registration in respect of the plan if the administrator has filed the documents under subsection (1).

Refusal to register

(3) The Superintendent may refuse to register a pension plan if the plan does not comply with this Act or the regulations.

Notification

(4) If the Superintendent refuses to register a pension plan, the Superintendent shall notify the administrator of the particulars of the non-compliance.

Administration of plan prohibited

(5) An administrator shall not administer a pension plan before complying with subsection (1) and shall, while the plan remains in force, ensure that it complies with this Act and the regulations.

Treatment of surplus

(6) Every pension plan that is filed for registration must provide for the use of surplus during the continuation of the plan and on its termination.

R.S., 1985, c. 32 (2nd Supp.), s. 10; 1998, c. 12, s. 10.

Filing of amendments

10.1 (1) The administrator of a pension plan shall file with the Superintendent, within sixty days after making an amendment to any document referred to in subsection 10(1), a copy of the amendment and a declaration (in the form, if any, specified by the Superintendent) signed by the administrator that the plan as amended complies with this Act and the regulations.

Void amendments

(2) Unless the Superintendent authorizes the amendment, an amendment is void if

(a) it would have the effect of reducing

(i) pension benefits accrued before the date of the amendment or pension benefit credits relating to pension benefits accrued before the date of the amendment, or

(ii) an immediate or deferred pension benefit to which a member, former member or any other person was entitled before the date of the amendment; or

(b) the solvency ratio of the pension plan would fall below the prescribed solvency

ratio level.

1998, c. 12, s. 10.

TRANSFER OF FUNDS

No transfer
without
permission

10.2 Subject to section 26, the administrator of a pension plan shall not transfer or permit the transfer of any part of the assets of the pension fund to another pension fund, including a pension fund to which this Act does not apply, without the Superintendent's permission.

1998, c. 12, s. 10.

DIRECTIONS OF COMPLIANCE

Superintendent's
directions to
administrators

11. (1) If, in the opinion of the Superintendent, an administrator, an employer or any person is, in respect of a pension plan, committing or about to commit an act, or pursuing or about to pursue any course of conduct, that is contrary to safe and sound financial or business practices, the Superintendent may direct the administrator, employer or other person to

(a) cease or refrain from committing the act or pursuing the course of conduct; and

(b) perform such acts as in the opinion of the Superintendent are necessary to remedy the situation.

Directions in the
case of non-
compliance

(2) If, in the opinion of the Superintendent, a pension plan does not comply with this Act or the regulations or is not being administered in accordance with this Act, the regulations or the plan, the Superintendent may direct the administrator, the employer or any person to

(a) cease or refrain from committing the act or pursuing the course of conduct that constitutes the non-compliance; and

(b) perform such acts as in the opinion of the Superintendent are necessary to remedy the situation.

Opportunity for
representations

(3) Subject to subsection (4), no direction shall be issued under subsection (1) or (2) unless the Superintendent gives the administrator, employer or other person a reasonable opportunity to make written representations.

Temporary
direction

(4) If, in the opinion of the Superintendent, the length of time required for representations to be made under subsection (3) might be prejudicial to the interests of the members, former members or any other persons entitled to pension benefits or refunds under the pension plan, the Superintendent may make a temporary direction with respect to the matters referred to in subsection (1) or (2) that has effect for a period of not more than fifteen days.

Continued effect

(5) A temporary direction under subsection (4) continues to have effect after the expiry of the fifteen day period referred to in that subsection if no representations are made to the Superintendent within that period or, if representations have been made,

the Superintendent notifies the administrator, employer or other person that the Superintendent is not satisfied that there are sufficient grounds for revoking the direction.

R.S., 1985, c. 32 (2nd Supp.), s. 11; 1998, c. 12, s. 10.

Revocation of registration

11.1 The Superintendent may revoke the registration and cancel the certificate of registration in respect of a pension plan if the administrator of the plan does not comply with a direction under section 11 within sixty days, or such longer period as the Superintendent may determine, after being informed by the Superintendent of the failure to comply. The Superintendent shall notify the administrator of the measures taken, including the date of the revocation and cancellation.

1998, c. 12, s. 10.

GENERAL REQUIREMENTS

Duty to Provide Information

Annual reporting requirements

12. (1) The administrator of a pension plan shall file with the Superintendent annually, or at such other intervals or times and in such form as the Superintendent directs,

(a) an information return relating to that pension plan, containing the prescribed information; and

(b) prescribed information regarding the extent, if any, to which inflation adjustments or other adjustments to pension benefits under that plan have been provided

(i) voluntarily by the employer, or

(ii) pursuant to a collective agreement,

whether or not those adjustments are provided for under the plan.

Other reporting requirements

(2) The administrator of a pension plan shall file with the Superintendent every three years, or at such other intervals or times and in such form as the Superintendent directs,

(a) information regarding the source of the funds used to make any adjustments referred to in paragraph (1)(b); and

(b) information regarding the application of gains, if any, from the pension fund.

Idem

(3) The administrator of a pension plan shall file with the Superintendent actuarial reports, financial statements, and any other information required by or pursuant to regulations made under paragraph 39(j), at such intervals or times as the Superintendent directs.

Actuarial reports
and financial
statements

(3.1) Except as otherwise specified by the Superintendent,

(a) the actuarial reports must be prepared in accordance with the standards of practice adopted by the Canadian Institute of Actuaries; and

(b) the financial statements must be prepared in accordance with generally accepted accounting principles, the primary source of which is the Handbook of the Canadian Institute of Chartered Accountants.

Time limit for
filing

(4) Unless otherwise directed by the Superintendent, every document required to be filed pursuant to this section shall be filed within six months after the end of the plan year to which it relates.

R.S., 1985, c. 32 (2nd Supp.), s. 12; 1998, c. 12, s. 12.

Information to
members

13. The administrator of a pension plan shall provide to the plan members, former members and any other persons entitled to pension benefits or refunds under the plan, at the time and in the manner specified by the Superintendent, any information that the Superintendent specifies.

R.S., 1985, c. 32 (2nd Supp.), s. 13; 1998, c. 12, s. 13.

Eligibility for Membership

Eligibility (full-time
employees)

14. (1) Each employee who is engaged to work on a full-time basis for an employer and is a member of a class of employees for which a pension plan is provided by that employer shall be eligible to become a member of that pension plan on and after

(a) the day on which the employee completes twenty-four months of continuous employment with the employer, in the case of a pension plan other than a multi-employer pension plan; or

(b) in the case of a multi-employer pension plan, the day on which both the following requirements have been fulfilled, namely,

(i) twenty-four months have elapsed since the employee was first employed with a participating employer, and

(ii) the employee has earned, in respect of employment with the participating employers, at least thirty-five per cent of the Year's Maximum Pensionable Earnings in each of two consecutive calendar years after December 31, 1984, or has fulfilled an alternative requirement that, in the Superintendent's opinion, is reasonably equivalent.

Optional provision

(2) Notwithstanding subsection (1), a pension plan may provide, in respect of employees who are engaged to work on a full-time basis, that membership in the plan is compulsory, except for employees who, because of their religious beliefs, object to becoming members of the plan.

Eligibility (part-
time employees)

15. (1) Subject to regulations made under subsection (5), where a pension plan is provided for members of a class of employees who are engaged to work on a full-time

basis for an employer, each employee who is engaged to work on a part-time basis for that employer and is a member of that class of employees shall be eligible to become a member of that pension plan on and after the day on which both the following requirements have been fulfilled, namely,

(a) either

(i) the employee completes twenty-four months of continuous employment with the employer, or

(ii) in the case of a multi-employer pension plan, twenty-four months have elapsed since the employee was first employed with a participating employer; and

(b) the employee has earned, in respect of employment with the employer (or participating employers, in the case of a multi-employer pension plan), at least thirty-five per cent of the Year's Maximum Pensionable Earnings in each of two consecutive calendar years after December 31, 1984, or has fulfilled an alternative requirement that, in the Superintendent's opinion, is reasonably equivalent.

Alternative:
separate plan

(2) An administrator may meet the requirements of subsection (1) by providing a separate pension plan for employees who are engaged to work on a part-time basis that, in the opinion of the Superintendent, is reasonably comparable, on balance, to the plan covering the employees who are engaged to work on a full-time basis.

Drop in income

(3) An employee who is engaged to work on a part-time basis, is a member of a pension plan and is employed continuously shall not cease to be a member of the plan by reason only of having earned less than thirty-five per cent of the Year's Maximum Pensionable Earnings in a calendar year.

Optional provision

(4) Notwithstanding subsections (1) to (3), a pension plan may provide, in respect of employees who are engaged to work on a part-time basis, that membership in the plan is compulsory, except for employees who, because of their religious beliefs, object to becoming members of the plan.

Regulations
altering
subsection (1)
requirement

(5) The Governor in Council may make regulations, in relation to one or more pension plans or to all pension plans, deeming subparagraphs (1)(a)(i) and (ii) to read as if the references therein to "twenty-four months" were references to such longer period as is prescribed and deeming paragraph (1)(b) to read as if the reference therein to "thirty-five per cent" were a reference to such lower percentage, including zero, as is prescribed.

Entitlement to Immediate Pension Benefit

Entitlement at
pensionable age

16. (1) A pension plan shall provide that each member is entitled to an immediate pension benefit on attaining pensionable age.

Early retirement

(2) Notwithstanding the pensionable age specified by a pension plan, members and former members of the plan shall be eligible, commencing ten years before pensionable age, to receive an immediate pension benefit based on the period of employment and salary up to the actual retirement date, but a plan is not required to provide an immediate pension benefit commencing earlier than ten years before pensionable age.

Minimum period
of membership

(3) A pension plan may require a minimum period of membership, not exceeding two years, in order for a member to be eligible to receive an immediate pension benefit.

Pension reduced

(4) An immediate pension benefit that commences before pensionable age pursuant to subsection (2) may be reduced, provided that its actuarial present value is not less than the aggregate of

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

(b) the actuarial present value of any other benefit to which the member would have been entitled had the member remained a member of the pension plan until pensionable age.

Employment after
pensionable age

(5) Where a pension plan provides generally that a member's period of employment or the member's salary during that period, or both, affect the member's pension benefit, it shall provide that, where a member continues employment after attaining pensionable age and is not receiving a pension benefit in respect of employment with the current employer, the member's period of employment after pensionable age or the member's salary during that period, or both, as the case may be, shall be taken into account in calculating the member's pension benefit, subject to any term of the pension plan

(a) fixing a maximum number of years of employment that can be taken into account under the plan for purposes of determining the pension benefit; or

(b) fixing a maximum amount of the pension benefit.

Variable pension
benefit

(6) A pension plan may provide that a member or former member may elect to receive an immediate pension benefit the amount of which

(a) is varied by reference to the amount of any pension payable under

(i) the *Old Age Security Act*, and

(ii) either the *Canada Pension Plan* or a provincial pension plan as defined in section 3 of the *Canada Pension Plan*; or

(b) is varied on any other basis approved by the Superintendent.

Vesting of Benefits

Provision
respecting
vesting

17. (1) A pension plan shall provide that any member of the plan who has been a member for a continuous period of two years is entitled, on cessation of membership in the plan,

(a) to a deferred pension benefit, based on the member's period of employment and salary up to the time of cessation of membership, and calculated in a similar manner and payable on the same terms and conditions as the immediate pension benefit (other than that provided by additional voluntary contributions) that, if the

member had attained pensionable age, the member would have been eligible to receive

(i) under the terms of the plan, in respect of membership in the plan on and after January 1, 1987, in the case of a plan established before that date,

(ii) under the terms of the plan, in the case of a plan established on or after January 1, 1987, and

(iii) by virtue of any amendment to the plan made on or after January 1, 1987, in the case of a plan whenever established; and

(b) to any other benefit or option, based on the member's period of employment and salary up to the time of cessation of membership, and calculated in a similar manner and payable on the same terms and conditions as the benefit or option to which, if the member had remained a member of the plan until pensionable age, the member would have been entitled

(i) under the terms of the plan described in subsection (2), in respect of membership in the plan on and after January 1, 1987, in the case of a plan established before that date, and

(ii) under the terms of the plan described in subsection (2), in the case of a plan established on or after January 1, 1987.

Relevant terms of plan

(2) The relevant terms of the plan for the purpose of subparagraphs (1)(b)(i) and (ii) are those terms that are required or permitted by subsections 16(2), (4) and (6) and sections 22, 23, 24, 25 and 27.

Vesting, in respect of employment before Jan. 1, 1987

(3) A pension plan shall provide that any member of the plan who has been employed by the employer for a continuous period of ten years or has been a member of the plan for a continuous period of ten years, and who has attained forty-five years of age, is entitled, on cessation of membership in the plan, to a deferred pension benefit, based on the member's period of employment and salary up to the time of cessation of membership, and calculated in a similar manner and payable on the same terms and conditions as the immediate pension benefit (other than that provided by additional voluntary contributions) that, if the member had attained pensionable age, the member would have been eligible to receive

(a) under the terms of the plan, in respect of membership in the plan during the period beginning on October 1, 1967 and ending on December 31, 1986, in the case of a plan established before October 1, 1967;

(b) under the terms of the plan, in respect of membership in the plan up to the end of December 1986, in the case of a plan established during the period beginning on October 1, 1967 and ending on December 31, 1986; and

(c) by virtue of any amendment to the plan made during the period beginning on October 1, 1967 and ending on December 31, 1986, in respect of membership in the plan up to the end of December 1986, in the case of any plan established before the end of December 1986.

R.S., 1985, c. 32 (2nd Supp.), s. 17; 2001, c. 34, s. 68(F).

Locking-in

Provisions
respecting
locking-in

18. (1) Subject to subsections 23(5) and 25(4), a pension plan shall provide

(a) that no benefit provided under the plan is capable of being assigned, charged, anticipated or given as security or confers on a member or former member, that person's personal representative or dependant or other person any right or interest therein that is capable of being assigned, charged, anticipated or given as security;

(b) that, except in the case of the unexpired period of a guaranteed annuity, no benefit described in section 16 or 17 is capable of being surrendered or commuted during the lifetime of the member or former member or that person's spouse or common-law partner or confers on a member or former member, that person's personal representative or dependant or other person any right or interest therein that is capable of being surrendered or commuted during the lifetime of the member or former member or that person's spouse or common-law partner; and

(c) that, except as provided in section 26, a person who is entitled to a benefit described in section 16 or 17, or who would be so entitled if that person retired or ceased membership in the plan, is not permitted to withdraw any part of that person's contributions to the plan, other than additional voluntary contributions, in respect of any period of membership in the plan on or after October 1, 1967 for which that person is entitled to a benefit described in section 16 or 17, and that any pension fund moneys attributable to those contributions shall be applied under the terms of the plan toward the payment of the benefit described in section 16 or 17, as the case may be.

Optional
provisions

(2) Notwithstanding subsection (1), a pension plan may provide

(a) for payment to a member in partial discharge of the member's rights under the plan, on or after cessation of membership in the plan before attaining pensionable age, of a lump sum not exceeding twenty-five per cent of the value of the deferred pension benefit referred to in subsection 17(3);

(b) that a member or former member who is entitled to a deferred pension benefit described in section 17 may, before the commencement of payment thereof, elect, or be authorized, to receive a payment or series of payments by reason of disability, as defined by the regulations, partly or wholly in lieu of the deferred pension benefit described in section 17; and

(c) that, if the annual pension benefit payable is less than four per cent of the Year's Maximum Pensionable Earnings for the calendar year in which a member ceases to be a member of the plan or dies, or such other percentage as may be prescribed, the pension benefit credit may be paid to the member or survivor, as the case may be.

R.S., 1985, c. 32 (2nd Supp.), s. 18; 1998, c. 12, s. 14; 2000, c. 12, ss. 256, 263; 2001, c. 34, s. 69(F).

Interest

Interest (defined contribution plans)

19. (1) In the case of a defined contribution plan, the members' accounts shall be credited with such interest, gains and losses as can reasonably be attributed to the operation of the pension fund.

Interest (defined benefit plans)

(2) In the case of a defined benefit plan,

(a) interest shall be credited on members' contributions at a rate equal to or greater than the rate fixed in advance by the Superintendent, or

(b) members' contributions shall be credited with such interest, gains and losses as can reasonably be attributed to the operation of the pension fund,

and the plan shall specify which of paragraph (a) or (b) operates, but the plan may specify that one of those two paragraphs applies to required contributions and the other paragraph applies to additional voluntary contributions, in which case the reference in paragraph (b) to "the operation of the pension fund" shall be read as either "the operation of that portion of the pension fund that relates to required contributions" or "the operation of that portion of the pension fund that relates to additional voluntary contributions", as the case may be.

Superintendent's guideline

(3) The rate fixed by the Superintendent under subsection (2) must be fixed so that it reflects reasonably current interest rates.

Refund of Contributions

Where member may withdraw money

20. On cessation of membership in a pension plan, a member is entitled to withdraw from the plan an amount equal to the aggregate of the member's own contributions, together with interest in accordance with section 19, in respect of any period of membership for which the member is not entitled to a pension benefit under section 16 or 17.

R.S., 1985, c. 32 (2nd Supp.), s. 20; 2001, c. 34, s. 70(F).

Minimum Employer Contributions for Defined Benefit Plans

Minimum pension benefit credit

21. (1) In the case of a defined benefit plan, where

(a) a member retires,

(b) a member ceases to be a member,

(c) a member dies, or

(d) the whole or part of the plan is terminated,

the member's pension benefit credit (or, in the case of paragraph (d), any member's pension benefit credit) shall be not less than the aggregate of the member's required contributions together with interest in accordance with section 19.

Special case

(2) In the case of a defined benefit plan, where

(a) a member retires,

(b) a member who has been a member for a continuous period of at least two years ceases to be a member,

(c) a member dies, or

(d) the whole or part of the plan is terminated,

then, subject to subsection (3) and paragraph 26(3)(b), if

(e) the aggregate of the member's contributions, other than additional voluntary contributions, made after December 31, 1986, together with interest in accordance with section 19

exceeds

(f) fifty per cent of the pension benefit credit in respect of the member's membership in the plan after December 31, 1986, calculated without regard to the operation of subsection (1),

the pension benefit to the member shall be increased by the amount that can be provided by that excess.

Exception

(3) Subsection (2) does not apply to a contribution, or the pension benefit arising therefrom, in respect of any defined contribution provision of a defined benefit plan.

Period before
Jan. 1, 1987

(4) A pension plan may provide that subsection (2) applies as if it contained no references to "after December 31, 1986".

Where plan
provides
indexation

(5) Subsection (2) does not apply where a defined benefit plan provides for annual indexation of a deferred pension benefit, up to the day when that deferred pension benefit commences to be paid, on the basis of

(a) increases of at least seventy-five per cent of the annual increase of the Consumer Price Index, minus one per cent; or

(b) any other formula that, in the Superintendent's opinion, would provide protection that on the average would be comparable to that described in paragraph (a).

Calculation of
annual increase
of Consumer
Price Index

(6) For the purposes of paragraph (5)(a),

(a) the "Consumer Price Index" means the Consumer Price Index for Canada, as published by Statistics Canada under the authority of the *Statistics Act*; and

(b) the annual increase of the Consumer Price Index must be calculated, in prescribed manner, by the comparison between two consecutive and reasonably

current twelve month periods.

R.S., 1985, c. 32 (2nd Supp.), s. 21; 2001, c. 34, s. 71(F).

Post-retirement

Meaning of
"normal form of
the pension
benefit"

22. (1) In this section, "normal form of the pension benefit" means the form of pension benefit under a pension plan that would be paid to a member at pensionable age were it not for this section.

Joint and survivor
pension benefit

(2) A pension benefit that commences to be paid on or after January 1, 1987 to a member or former member of a pension plan who has a spouse or common-law partner at the time the pension benefit commences to be paid shall be in the form of a joint and survivor pension benefit, subject to subsection 25(7).

Reduction by
reason of death

(3) A pension benefit described in subsection (2) may be reduced by reason of the death of either spouse or common-law partner, to an amount not less than sixty per cent of the amount of the pension benefit that would have been payable in respect of the member or former member had the death not occurred.

Initial adjustment

(4) The initial amount of a pension benefit described in subsection (2) may be adjusted, provided that the actuarial present value of that pension benefit is not less than the actuarial present value of the normal form of the pension benefit.

Other forms of
pension benefit

(5) Notwithstanding subsections (2) to (4), a pension plan shall provide that, in respect of a pension benefit that commences to be paid on or after January 1, 1987, a member or former member may elect to receive

(a) the normal form of the pension benefit, or

(b) the pension benefit in any other form provided for under the terms of the plan,

except that, where the member or former member has a spouse or common-law partner, an election as a result of which the pension benefit would reduce on the death of the member or former member, where the member or former member predeceases the spouse or common-law partner, to less than sixty per cent of the amount payable when both were alive, may not be made without the spouse's or common-law partner's written agreement, in prescribed form and deposited with the administrator of the plan.

R.S., 1985, c. 32 (2nd Supp.), s. 22; 2000, c. 12, s. 263.

Pre-retirement Death Benefit

If member dies
before eligible for
early retirement

23. (1) If a member or former member of a pension plan who is entitled to a deferred pension benefit pursuant to subsection 17(1) (or, in the case of a member, would be so entitled if the member ceased membership in the plan) dies before becoming eligible to receive an immediate pension benefit in accordance with subsection 16(2), the survivor, if any, is entitled to that portion of the pension benefit credit, calculated in accordance with section 21, to which the member or former member would have been entitled on the day of death if the member or former member had terminated employment on that day and had not died, that is attributable

to the member's or former member's membership in the plan after December 31, 1986.

Alternative

(2) A pension plan may provide for a survivor, as an alternative to what is provided by subsection (1), an immediate pension benefit equal to or greater than what is provided by subsection (1).

If member eligible
for retirement
dies

(3) A member or former member of a pension plan who is entitled to a deferred pension benefit pursuant to subsection 17(1) (or, in the case of a member, would be so entitled if the member ceased membership in the plan) and dies before commencement of payment of that pension benefit but after becoming eligible to receive an immediate pension benefit in accordance with subsection 16(2) is deemed

(a) to have retired for purposes of the survivor benefit; and

(b) to have been entitled to the joint and survivor pension benefit payable pursuant to section 22, without regard to subsection (5) thereof, in respect of that deferred pension benefit.

Eligibility of
survivor

(4) The survivor of the member or former member described in subsection (3) is entitled to the pension benefit credit to which the member or former member would have been entitled on the day of death if the member or former member had terminated employment on that day and had not died, if the credit in whole or in part results from a defined contribution plan and is attributable to the member's or former member's membership in the plan after December 31, 1986.

Surrender of
pension benefit or
pension benefit
credit

(5) A pension plan may provide that a survivor may, after the death of a member or former member, surrender, in writing, the pension benefit or pension benefit credit to which the survivor is entitled under this section and designate a beneficiary who is a dependant, within the meaning of subsection 8500(1) of the *Income Tax Regulations*, of the survivor, member or former member.

Effect of group
life insurance
plan

(6) Subject to subsection (7), a defined benefit plan may provide for the reduction of the benefit payable under any of subsections (1) to (3) by an amount equal to that part of the group life insurance payment that can be considered to have been paid by employer premiums, calculated in a manner satisfactory to the Superintendent, if

(a) in the circumstances described in any of subsections (1) to (3), a survivor is entitled to a payment under a group life insurance plan on the death of the member or former member of the pension plan;

(b) the group life insurance plan is one that is approved by the Superintendent for the purposes of this subsection; and

(c) the group life insurance premiums are paid in whole or in part by the employer.

Limitation

(7) In respect of a reduction referred to in subsection (6),

(a) the actuarial present value of the reduction may not exceed the amount of the payment to which the survivor is entitled under the group life insurance plan; and

(b) in the case of a contributory pension plan, the reduction may not reduce the benefit payable to the survivor to an amount less than the aggregate of the member's required contributions together with interest in accordance with section

R.S., 1985, c. 32 (2nd Supp.), s. 23; 1998, c. 12, s. 15; 2000, c. 12, ss. 257, 264; 2001, c. 34, s. 72(F).

Marriage or Common-law Partnership

New relationship
not to terminate
pension benefit

24. A pension benefit payable to the spouse, former spouse or former common-law partner of a member or former member or to the survivor of a deceased member or former member shall not terminate by reason only that the spouse, former spouse, former common-law partner or survivor marries or enters into a common-law partnership.

R.S., 1985, c. 32 (2nd Supp.), s. 24; 2000, c. 12, s. 258.

Distribution of Pension Benefits and Pension Benefit Credits on Divorce, Annulment or Separation

Definition of
"provincial
property law"

25. (1) In this section, "provincial property law" means the law of a province relating to the distribution, pursuant to court order or agreement between them,

(a) of the property of spouses on divorce, annulment or separation; or

(b) of the property of former common-law partners on the breakdown of their common-law partnership.

Application of
provincial
property law

(2) Subject to this section, pension benefits, pension benefit credits and any other benefits under a pension plan shall, on divorce, annulment, separation or breakdown of common-law partnership, be subject to the applicable provincial property law.

Non-application
of this Act

(3) A pension benefit, pension benefit credit or other benefit under a pension plan that is subject to provincial property law pursuant to this section is not subject to the provisions of this Act relating to the valuation or distribution of pension benefits, pension benefit credits or other benefits under a pension plan, as the case may be.

Power to assign
to spouse, etc.

(4) Notwithstanding anything in this section or in provincial property law, a member or former member of a pension plan may assign all or part of that person's pension benefit, pension benefit credit or other benefit under the plan to that person's spouse, former spouse, common-law partner or former common-law partner, effective as of divorce, annulment, separation, or breakdown of the common-law partnership, as the case may be, and in the event of such an assignment the assignee shall, in respect of the assigned portion of the pension benefit, pension benefit credit or other benefit, be deemed for the purpose of this Act, except subsections 21(2) to (6),

(a) to have been a member of that pension plan, and

(b) to have ceased to be a member of that pension plan as of the effective date of the assignment,

but a subsequent spouse or common-law partner of the assignee is not entitled to any pension benefit, pension benefit credit or other benefit under the pension plan in

respect of that assigned portion.

Duty of administrator

(5) Where, pursuant to this section, all or part of a pension benefit, pension benefit credit or other benefit under a pension plan of a member or former member is required to be distributed to their spouse, former spouse or former common-law partner under a court order or an agreement between them, the administrator, on receipt of

(a) a written request from either the member or former member or their spouse, former spouse or former common-law partner that all or part of the pension benefit, pension benefit credit or other benefit, as the case may be, be distributed in accordance with the court order or the agreement, and

(b) a copy of the court order or agreement,

shall determine and henceforth administer the pension benefit, pension benefit credit or other benefit, as the case may be, in prescribed manner, in accordance with the court order or agreement. However, in the case of a court order, the administrator shall not administer the pension benefit, pension benefit credit or other benefit in accordance with the court order until all appeals therefrom have been finally determined or the time for appealing has expired.

Notice

(6) On receipt of a request referred to in subsection (5), the administrator shall notify the non-requesting spouse, former spouse or former common-law partner of the request and shall provide that person with a copy of the court order or agreement submitted in support of the request, but this requirement does not apply in respect of a request or an agreement received by the administrator in a form or manner that indicates that it was jointly submitted.

Splitting of joint and survivor pension benefit

(7) A pension plan may provide that, where, pursuant to this section, all or part of a pension benefit of a member or former member is required to be distributed to that person's spouse, former spouse or former common-law partner under a court order or agreement, a joint and survivor pension benefit may be adjusted so that it becomes payable as two separate pensions, one to the member or former member and the other to that person's spouse, former spouse or former common-law partner, if the aggregate of the actuarial present values of the two pensions is not less than the actuarial present value of the joint and survivor pension benefit.

Limitation

(8) Notwithstanding subsection (2), the aggregate of

(a) the actuarial present value of the pension benefit or other benefit paid to the member or former member, and

(b) the actuarial present value of the pension benefit or other benefit paid to the spouse, former spouse or former common-law partner of the member or former member

pursuant to this section shall be not greater than the actuarial present value of the pension benefit or other benefit, as the case may be, that would have been payable to the member or former member had the divorce, annulment, separation or breakdown not occurred.

R.S., 1985, c. 32 (2nd Supp.), s. 25; 2000, c. 12, s. 259; 2001, c. 34, s. 73(F).

Portability of Pension Benefit Credits

If member not yet eligible to retire

26. (1) If a member, before becoming eligible to receive an immediate pension benefit pursuant to subsection 16(2), ceases to be a member of a pension plan or dies, the member or the survivor, as the case may be, is entitled

(a) to transfer the member's pension benefit credit or the survivor's pension benefit credit, whichever is applicable, to another pension plan, if that other plan permits,

(b) to transfer the member's pension benefit credit or the survivor's pension benefit credit, whichever is applicable, to a retirement savings plan of the prescribed kind for the member or survivor, as the case may be, or

(c) to use the member's pension benefit credit or the survivor's pension benefit credit, whichever is applicable, to purchase an immediate or deferred life annuity of the prescribed kind for the member or survivor, as the case may be,

if the member or the survivor notifies the administrator of that desire, in prescribed form and within ninety days after the cessation of membership or the member's death, as the case may be (or, where the Superintendent allows a longer period under paragraph 28(1)(d), within sixty days after the administrator has given the written statement pursuant to that paragraph), and the administrator shall forthwith take the necessary action to give effect to any such notification.

Where member eligible to retire

(2) Where a member, after becoming eligible to retire pursuant to subsection 16(2) but before the commencement of payment of a pension benefit, ceases to be a member of the pension plan or dies, the plan may permit the member or the survivor, as the case may be,

(a) to transfer the member's pension benefit credit or the survivor's pension benefit credit, whichever is applicable, to another pension plan, if that other plan permits;

(b) to transfer the member's pension benefit credit or the survivor's pension benefit credit, whichever is applicable, to a retirement savings plan of the prescribed kind for the member or survivor, as the case may be; or

(c) to use the member's pension benefit credit or the survivor's pension benefit credit, whichever is applicable, to purchase an immediate or deferred life annuity of the prescribed kind for the member or survivor, as the case may be.

Other optional provisions of plan

(3) Where, at any time, a member ceases to be a member of the pension plan or dies, the plan may provide

(a) that, where the member's pension benefit credit or the survivor's pension benefit credit, whichever is applicable, is less than ten per cent of the Year's Maximum Pensionable Earnings for the calendar year in which that event occurs, the member or the survivor, as the case may be, must choose one of the following options:

(i) transfer the whole of that pension benefit credit to another pension plan, if

that other plan permits,

(ii) transfer the whole of that pension benefit credit to a registered retirement savings plan of the prescribed kind for the member or survivor, as the case may be, or

(iii) use the whole of that pension benefit credit to purchase an immediate or deferred life annuity for the member or survivor, as the case may be; and

(b) that, where part of the pension benefit payable results from the excess described in subsection 21(2), the member or the survivor, as the case may be, must choose one of the following options in respect of that excess:

(i) transfer it to another pension plan, if that other plan permits,

(ii) transfer it to a retirement savings plan of the prescribed kind for the member or survivor, as the case may be, or

(iii) use it to purchase an immediate or deferred life annuity for the member or survivor, as the case may be.

Where transfer
impairs solvency

(4) The administrator of a pension plan shall not transfer moneys out of the pension fund of the plan pursuant to this section without the consent of the Superintendent if such a transfer would, in the Superintendent's opinion, impair the solvency of the pension fund, and the Superintendent may consent to the transfer subject to such terms and conditions as the Superintendent deems appropriate in the circumstances, or may direct the transfer.

Pension plans
include

(5) For the purposes of this section, pension plans to which pension benefits may be transferred include

(a) pension plans that are under provincial jurisdiction; and

(b) pension plans that are organized and administered to provide pension benefits to employees employed in excepted employment.

R.S., 1985, c. 32 (2nd Supp.), s. 26; 1995, c. 17, s. 61; 1998, c. 12, s. 16; 1999, c. 31, s. 175(F); 2000, c. 12, s. 264; 2001, c. 34, s. 74(F).

Sex Discrimination Prohibited

Sex
discrimination
prohibited

27. (1) The sex of a member or former member or of their spouse, former spouse, common-law partner or former common-law partner may not be taken into account in determining

(a) the amount of any contribution required to be paid by the member under a pension plan after December 31, 1986; or

(b) the amount of any benefit to which any of those persons becomes entitled under the plan after December 31, 1986.

Compliance

(2) In order to comply with subsection (1), a pension plan may

(a) use annuity factors that do not differentiate as to sex;

(b) provide for employer contributions that vary according to the sex of the employee; or

(c) use any other method approved by the Superintendent.

Transfer under section 26

(3) Notwithstanding subsection (1), amounts transferred pursuant to section 26 may vary according to the sex of the member if the variation is such that the pension benefit payable at pensionable age, based on the amount so transferred, does not vary materially according to the sex of the member.

R.S., 1985, c. 32 (2nd Supp.), s. 27; 2000, c. 12, s. 260.

Rights to Information

Provisions respecting information to member and spouse or common-law partner

28. (1) A pension plan shall provide

(a) that each member of the plan and each employee who is eligible to join the plan, and that person's spouse or common-law partner, will be given, in the prescribed circumstances and in the prescribed manner,

(i) a written explanation of the provisions of the plan and of any applicable amendments thereto, within six months after the establishment of the plan or after the making of the amendment, as the case may be, and

(ii) such other information as is prescribed;

(b) subject to section 45, that each member of the plan and the member's spouse or common-law partner will be given, in the prescribed circumstances and in the prescribed manner and within six months, or such longer interval as is permitted by the Superintendent, after the end of each year of operation of the plan, a written statement showing

(i) in the case of a defined benefit plan, the pension benefits to which the member is entitled under the plan at the end of that year,

(ii) the value of accumulated contributions made under the plan by the member (or, in the case of a defined contribution provision, by or in respect of the member) since the member became a member, expressed in prescribed manner,

(iii) the prescribed ratio of the plan or, if there is no prescribed ratio, the funded ratio, if applicable, and

(iv) such other information as is prescribed;

(c) that each member and former member of the plan, every other person entitled

to pension benefits or refunds under the plan and their spouses or common-law partners may, once in each year of operation of the plan, either personally or by an agent authorized in writing for that purpose,

(i) examine the documents or information filed with the Superintendent under subsection 10(1) or 10.1(1) or section 12 or any regulations made under paragraph 39(*i*), and any other prescribed documents, at the Canadian head office of the administrator or at such other place as is agreed to by the administrator and the person requesting to examine the documents, and

(ii) order, in writing, a photocopy of any such documents; and

(*d*) that, where a member of the plan retires, ceases to be a member of the plan or dies, or where the whole or part of the plan is terminated, the administrator shall give to that member (or, in the case of termination, each member) and to the member's spouse or common-law partner (and, in the case of the member's death, the member's legal representative) a written statement, in prescribed form, of the member's pension benefits and other benefits payable under the plan, within thirty days, or such longer period as the Superintendent may allow, after the date of the retirement, cessation of membership, death or termination, as the case may be.

Meaning of
"funded ratio"

(2) In subparagraph (1)(*b*)(iii), "funded ratio" means the ratio of the assets of a pension plan to the liabilities of the pension plan on a going-concern basis, as reported in the latest actuarial report respecting the pension plan filed with the Superintendent.

Administrator's
duty

(3) The administrator shall forthwith

(*a*) permit any examination of documents that is requested under subparagraph (1)(*c*)(i); and

(*b*) comply, on condition of payment of such reasonable fee as the administrator may fix, with any written order for a photocopy placed under subparagraph (1)(*c*)(ii).

R.S., 1985, c. 32 (2nd Supp.), s. 28; 1998, c. 12, s. 17; 2000, c. 12, s. 263; 2001, c. 34, s. 75.

TERMINATION AND WINDING-UP OF PENSION PLANS

Deemed
termination

29. (1) The revocation of registration of a pension plan shall be deemed to constitute termination of the plan.

Where
Superintendent
may declare a
plan terminated

(2) The Superintendent may declare the whole or part of a pension plan terminated where

(*a*) there is any suspension or cessation of employer contributions in respect of all or part of the plan members;

(*b*) the employer has discontinued or is in the process of discontinuing all of its business operations or a part thereof in which a substantial portion of its employees who are members of the pension plan are employed; or

(c) the Superintendent is of the opinion that the pension plan has failed to meet the prescribed tests and standards for solvency in respect of funding referred to in subsection 9(1).

Idem

(3) A declaration made under subsection (2) shall declare a pension plan or part thereof, as the case may be, to be terminated as of the date that the Superintendent considers appropriate in the circumstances.

Adoption of new plan

(4) If employer contributions to a pension plan are suspended or cease as a result of the adoption of a new plan, the original plan is deemed not to have been terminated, and the pension benefits and other benefits provided under the original plan are deemed to be benefits provided under the new plan in respect of any period of membership before the adoption of the new plan, whether or not the assets and liabilities of the original plan have been consolidated with those of the new plan.

Notice of voluntary termination or winding-up

(5) An administrator who intends to terminate the whole or part of a pension plan or wind up a pension plan shall notify the Superintendent in writing of that intention at least sixty days before the date of the intended termination or winding-up.

Payments by employer to meet solvency requirements

(6) On the termination of the whole of a pension plan, the employer shall pay into the plan all amounts that would otherwise have been required to be paid to meet the prescribed tests and standards for solvency referred to in subsection 9(1) and, without limiting the generality of the foregoing, the employer shall pay into the plan

(a) an amount equal to the aggregate of

(i) the normal actuarial cost, and

(ii) any prescribed special payments,

that have accrued to the date of the termination; and

(b) all

(i) amounts deducted by the employer from members' remuneration, and

(ii) other amounts due to the pension fund from the employer

that have not been remitted to the pension fund at the date of the termination.

Assets of the plan

(7) On the termination or winding-up of the whole of a pension plan, no part of the assets of the plan shall revert to the benefit of the employer until the Superintendent's consent has been obtained and provision has been made for the payment to members and former members and their spouses, common-law partners, beneficiaries, estates or successions of all accrued or payable benefits in respect of membership up to the date of the termination or winding-up and, for that purpose, those benefits shall be treated as vested without regard to conditions as to age, period of membership in the plan or period of employment.

Effect of termination on assets

(8) On the termination of the whole of a pension plan, all assets of the plan that are to be used for the purpose of providing pension benefits or other benefits continue to be subject to this Act.

Report to Superintendent	(9) On the termination of a pension plan or part of a plan, the administrator of the plan shall file with the Superintendent a report, prepared by a person having the prescribed qualifications, setting out the nature of the pension benefits and other benefits to be provided under the plan and a description of the methods of allocating and distributing those benefits and deciding the priorities in respect of the payment of full or partial benefits to the members.
Assets not to be applied until report approved	(10) Assets of the plan may not be applied toward the provision of any benefits until the Superintendent has approved the report required by subsection (9), but the administrator of the plan may nevertheless pay to the person entitled, as they fall due, pension benefits, or refunds of employee contributions and interest thereon, as the case may be.
Superintendent may direct winding-up	(11) Where the whole of a pension plan has been terminated and the Superintendent is of the opinion that no action or insufficient action has been taken to wind up the plan, the Superintendent may direct the administrator to distribute the assets of the plan in accordance with the regulations made under paragraph 39(j), and may direct that any expenses incurred in connection with that distribution be paid out of the pension fund of the plan, and the administrator shall forthwith comply with any such direction.
Partial termination of plan	(12) Where a plan is terminated in part, the rights of members affected shall not be less than what they would have been if the whole of the plan had been terminated on the same date as the partial termination.
R.S., 1985, c. 32 (2nd Supp.), s. 29; 1998, c. 12, s. 18; 2000, c. 12, s. 261.	
Appointment of a new administrator	29.1 (1) If the administrator of a pension plan that has been terminated in whole or in part is insolvent or unable to act or the Superintendent is of the opinion that it is in the best interests of the members or former members, or any other persons entitled to pension benefits or refunds under the plan, that the administrator of the plan be removed, the Superintendent may remove the administrator and appoint a replacement administrator. A replacement administrator may recover their reasonable costs from the pension fund.
Notification	(2) The Superintendent shall, as soon as possible in the circumstances, notify a replaced administrator of their removal.
Effect of replacement	(3) The replacement administrator is seized of the pension fund as of the date of the notification under subsection (2).
Notice	(4) After receiving approval of the report under subsection 29(10), the replacement administrator shall give notice to the members, former members and any other persons who are entitled to pension benefits or refunds under the pension plan of the replacement administrator's intention to distribute the assets of the plan in accordance with the report.
Publication	(5) The replacement administrator shall publish the notice in the <i>Canada Gazette</i> and, except as otherwise directed by the Superintendent, once a week for two consecutive weeks in one or more newspapers in general circulation in each province.
Subrogation	(6) The members, former members and any other persons who were entitled to pension benefits or refunds under the pension plan immediately before the appointment of the replacement administrator are subrogated to those rights and

claims of the replacement administrator that the replacement administrator has elected in writing not to pursue.

Discharge

(7) On distribution of the assets in accordance with this Act and the regulations, the Superintendent may discharge the replacement administrator.

1998, c. 12, s. 19.

EFFECT OF SALE, ETC., OF BUSINESS

Effect of sale,
etc., of business

30. (1) Where

(a) an employer who is a party to a pension plan sells, assigns or otherwise disposes of all or part of its business or undertaking or all or part of the assets of its business or undertaking,

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

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

the employee continues to be entitled to the benefits provided under the employer's plan in respect of the period of membership in that employer's plan, without further accrual.

Idem

(2) Where the events described in paragraphs (1)(a) and (b) occur, whether or not the successor employer assumes responsibility for the accrued benefits of the employer's plan, then,

(a) for the purposes of the employer's plan, membership in the employer's plan of an employee referred to in paragraph (1)(b) shall be deemed not to have ceased by reason of those events; and

(b) for the purposes of

(i) determining the period of employment with respect to any eligibility condition of the successor employer's pension plan, and

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

the period of employment shall be deemed to include employment with both the employer and the successor employer without any interruption.

PAYMENT OF BENEFITS AND DESIGNATION OF BENEFICIARIES

Certain provisions
of provincial law
to apply

31. Except to the extent that they are inconsistent with this Act, any provisions of any provincial law respecting the payment of benefits or the designation of

beneficiaries under pension plans that would be applicable to a pension plan organized and administered to provide pension benefits to employees employed in included employment if that provincial law were applicable to such a pension plan shall be deemed to apply to such a pension plan as though that employment were not included employment.

OBJECTIONS AND APPEALS

Notice of
objection

32. (1) An administrator who is notified under subsection 10(4) or section 11.1 may, within sixty days after the day the notification is given, serve on the Superintendent a notice of objection in the prescribed form and manner, setting out the reasons for the objection and all facts relevant to it.

Reconsideration
by
Superintendent

(2) On receipt of a notice of objection, the Superintendent shall immediately reconsider the refusal or the revocation and cancellation, as the case may be, and vary or confirm the action taken, and shall immediately notify the administrator of the decision.

R.S., 1985, c. 32 (2nd Supp.), s. 32; 1998, c. 12, s. 20.

Appeal to Federal
Court

33. (1) Where an administrator has served a notice of objection under section 32, the administrator may,

(a) within ninety days after the Superintendent has confirmed the action taken as described in subsection 32(1), or

(b) after ninety days and before one hundred and eighty days have elapsed after service of the notice of objection and the Superintendent has not notified the administrator that the Superintendent has varied or confirmed the action taken,

appeal to the Federal Court for an order as described in paragraph (5)(b).

Institution of
appeal

(2) An appeal to the Federal Court shall be instituted by filing in the Registry of the Court, or by sending by registered mail addressed to it at Ottawa, three copies of a notice of appeal in prescribed form.

Registry to
transmit copies

(3) On receipt of the copies of the notice of appeal referred to in subsection (2), the Registry of the Court shall transmit two copies to the Superintendent.

Documents
relevant to appeal

(4) Forthwith after receiving a copy of the notice of appeal, the Superintendent shall forward to the Registry of the Court copies of all documents relevant to the appeal.

Disposal of
appeal

(5) The Court may dispose of an appeal

(a) by dismissing it and ordering the appellant to ensure the compliance of the pension plan to which the appeal relates with this Act and the regulations; or

(b) by allowing it and ordering the Superintendent to register the pension plan to which the appeal relates or reinstate the registration of the plan, as the circumstances require, and issue a certificate of registration in respect thereof.

Conditions

(6) An order made as described in paragraph (5)(b) may include conditions

imposed on the appellant that are conditions precedent to the registration or reinstatement of registration of the pension plan to which the appeal relates.

R.S., 1985, c. 32 (2nd Supp.), s. 33; 1998, c. 12, s. 21.

GENERAL

Application to
Federal Court

33.1 (1) If an administrator, employer or other person has omitted to do any thing under this Act that is required to be done by them or on their part, or contravenes a direction of the Superintendent or a provision of this Act or the regulations, the Superintendent may, in addition to any other action that the Superintendent may take, apply to the Federal Court for an order requiring the administrator, employer or other person to cease the contravention or do any thing that is required to be done, and on such application the Federal Court may so order and make any other order it thinks fit.

Appeal

(2) An appeal from an order made under subsection (1) lies in the same manner as an appeal from any other order of the Federal Court.

1998, c. 12, s. 22.

Superintendent
may bring actions

33.2 (1) In addition to any other action that the Superintendent may take in respect of a pension plan, the Superintendent may bring against the administrator, employer or any other person any cause of action that a member, former member or any other person entitled to a benefit or refund from the plan could bring.

Retroactivity

(2) Subsection (1) applies in respect of any cause of action regardless of whether it arose before or after the coming into force of this section.

1998, c. 12, s. 22.

Inspection

34. (1) The Superintendent or any person authorized in writing by the Superintendent for any purpose relating to the administration of this Act may, at any reasonable time,

(a) inspect any books, records or other documents, regardless of their physical form or characteristics, relating to a pension plan or to any securities, obligations or other investments in which pension fund moneys are invested; and

(b) require the administrator of a pension plan to furnish such information and in such form as the Superintendent deems necessary for the purpose of ascertaining whether or not the provisions of this Act or the regulations have been or are being complied with.

Powers of
Superintendent

(2) The Superintendent has the same powers as those conferred on commissioners under Part II of the *Inquiries Act* with respect to the taking of evidence, and may delegate those powers.

Payment of
expenses

(3) The fees and expenses of persons appointed on a temporary basis from outside the Public Service for the purposes of an inspection under paragraph (1)(a), including their fees and expenses related to preparing a report to the Superintendent relating to that inspection, are payable by the pension fund on being approved by the Superintendent.

R.S., 1985, c. 32 (2nd Supp.), s. 34; 1998, c. 12, s. 23.

No action against
person for
withholding, etc.

35. No action lies against any person for withholding, deducting, paying or crediting any sum of money in compliance or intended compliance with this Act or the regulations.

Void agreements

36. (1) Where any provision of this Act or the regulations requires an amount to be withheld, deducted, paid or credited, any agreement or arrangement by the person on whom the requirement is imposed not to withhold, deduct, pay or credit that amount is void.

Idem

(2) Any agreement or arrangement to assign, charge, anticipate or give as security

(a) any benefit provided under a pension plan, or

(b) any money withdrawn from a pension fund pursuant to section 26

is void.

Exception

(3) Subsection (2) does not apply to prevent the assignment of an interest in a pension benefit, or in a life-annuity of the prescribed kind resulting from a transfer or purchase pursuant to section 26, where the assignment

(a) is ordered by a court pursuant to provincial property law (within the meaning of subsection 25(1)); or

(b) is made under subsection 25(4) pursuant to a written agreement.

Void agreements

(4) Any agreement or arrangement

(a) to surrender or commute a benefit, or any right or interest therein, or

(b) to surrender or commute benefits payable as a result of a transfer or purchase pursuant to section 26

that is inconsistent with the rules set out in subsection 18(1) is void.

Exception

(5) Subsection (4) does not apply in respect of payments pursuant to paragraph 18(2)(b) or (c).

R.S., 1985, c. 32 (2nd Supp.), s. 36; 2000, c. 12, s. 262.

Amendments to
pension plans

37. (1) Where an amendment to a pension plan may reasonably be regarded as having been made in contemplation of the termination or winding-up of the plan, either immediately or in the future, with a view to avoiding payment of any pension benefit or other benefit for which the plan provided, the amendment is subject to being declared void, in the manner provided in this section.

Application and
declaration

(2) A judge of the Federal Court may, on application to that Court by the Superintendent and after such notice to the administrator of the pension plan as the judge may direct, declare void any amendment to that pension plan that under subsection (1) is subject to being declared void, and thereon, except as otherwise determined on appeal, if any, the amendment shall be deemed to be and always to

have been void for all purposes.

Proceedings on
declaration

(3) Where any declaration has been made under subsection (2), except with consent of the Superintendent, no process or proceedings shall be taken or instituted in consequence of that declaration within the time limit for the bringing of any appeal therefrom or while any such appeal remains to be disposed of.

Not statutory
instruments

37.1 A direction issued under this Act by the Superintendent with respect to a particular pension plan is not a statutory instrument for the purposes of the *Statutory Instruments Act*.

1998, c. 12, s. 24.

OFFENCES AND PUNISHMENT

Offences

38. (1) Every person who

(a) contravenes any provision of this Act or the regulations or a direction of the Superintendent given under the authority of this Act or the regulations,

(b) to avoid compliance with this Act or the regulations,

(i) destroys, alters, mutilates, secretes or otherwise disposes of any record, writing or other document,

(ii) makes a false or deceptive statement or a false or deceptive entry in any record, writing or other document, or

(iii) omits to furnish any material particular in any statement or in any record, writing or other document,

(c) prevents or obstructs, or attempts to prevent or obstruct, another person doing anything that that other person is authorized by or pursuant to section 34 to do or, unless unable to do so, fails to do anything that is required to be done by or pursuant to that section, or

(d) being an employer, fails to remit to the pension fund all amounts that the employer is liable so to remit,

is guilty of an offence.

Punishment

(1.1) A person who commits an offence under subsection (1) is

(a) in the case of an individual, liable on summary conviction to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding twelve months, or to both; and

(b) in the case of a corporation or other body, liable on summary conviction to a fine not exceeding five hundred thousand dollars.

Remittance of
amount owing

(2) If an employer is found guilty of not remitting all amounts to a pension fund, the

court may, in addition to imposing a penalty under subsection (1.1), order the employer to remit to the pension fund all amounts owing with interest.

Evidence

(3) In any prosecution for an offence under this section, a certificate purporting to be signed by the Superintendent or by any person on the Superintendent's behalf certifying that a copy of a pension plan or of an amendment to any such plan was not filed with the Superintendent as required by this Act, or certifying as to the registration of a pension plan, is admissible in evidence and, in the absence of any evidence to the contrary, is proof of the matters so certified.

Limitation period

(4) Proceedings in respect of an offence under this Act may be commenced at any time within, but not later than, two years after the day on which the subject-matter of the proceedings became known to the Superintendent.

Certificate of Superintendent

(4.1) A document appearing to have been issued by the Superintendent, certifying the day on which the subject-matter of any proceedings became known to the Superintendent, is admissible in evidence without proof of the signature or official character of the person appearing to have signed it and is, in the absence of evidence to the contrary, proof of the matter asserted in it.

Corporations and other bodies

(5) Where a corporation or other body is guilty of an offence under this section, every officer, director, agent or member of the corporation or body who directed, authorized, assented to, acquiesced in or participated in the offence is a party to and guilty of the offence and is liable on summary conviction to the punishment provided for the offence, whether or not the corporation or body has been prosecuted or convicted.

Informations and complaints

(6) An information or complaint under this section may be laid or made by any officer of the Office of the Superintendent of Financial Institutions, any member of the Royal Canadian Mounted Police or any person authorized in writing by the Minister.

R.S., 1985, c. 32 (2nd Supp.), s. 38; 1998, c. 12, s. 25; 2001, c. 9, s. 583.

REGULATIONS

Regulations

39. The Governor in Council may make regulations

(a) respecting applications for registration of pension plans;

(a.1) respecting simplified pension plans;

(b) respecting the fees that may be charged for the registration of pension plans and for the supervision, including inspection, of registered pension plans;

(c) prescribing the conditions under which, on the cessation of a member's membership in a pension plan or on the termination or winding-up of a pension plan, pension benefit credits may be held in trust by the administrator of the plan, or transferred to the administrator of another pension plan or to a registered retirement savings plan of the prescribed kind or to the agency referred to in paragraph 6(1)(d);

(d) prescribing, for the purposes of this Act or any provision thereof, the manner of

determining the portion of a pension benefit or other benefit that is attributable to membership in a plan after December 31, 1986;

(e) respecting the time by which contributions to a pension plan are required to be remitted to the pension fund by the administrator, and respecting the consequences of failure to remit contributions to the pension fund on time, including the liability of the administrator;

(f) providing for the determination of the day on which a member or former member of a pension plan becomes entitled to a particular pension benefit or other benefit under the plan;

(g) prescribing the manner in which pension benefit credits are to be determined and fixing the time as of which the determination is to be made;

(h) for enabling the Superintendent to require administrators to provide up-to-date consolidations of their pension plans and respecting the form and certification of those consolidations;

(h.1) respecting refunds of surplus assets and arbitrations referred to in section 9.2;

(i) requiring or enabling the Superintendent to require administrators to provide information to the Superintendent in respect of pension plans, in addition to the information mentioned in section 12;

(j) respecting the distribution of the assets of a pension plan that is being wound up;

(j.1) respecting the manner in which the administrator of a pension plan shall deal with complaints or inquiries from members of the pension plan, former members and any other persons entitled to pension benefits or refunds under the plan;

(k) exempting any employee or pension plan, any class of employee or pension plan or any benefit or kind of benefit under a pension plan from the application of this Act or any provision thereof;

(l) defining the term "disability";

(m) respecting the meaning of "impair the solvency" for the purposes of subsection 26(4);

(n) respecting the integration of

(i) the payment of any pension benefit or contribution under a pension plan

with

(ii) the payment of any pension or contribution payable under the *Old Age Security Act*, the *Canada Pension Plan*, or any provincial pension plan as defined in section 3 of the *Canada Pension Plan*;

(o) prescribing anything that by this Act is to be prescribed; and

(p) generally for carrying out the purposes and provisions of this Act.

R.S., 1985, c. 32 (2nd Supp.), s. 39; 1998, c. 12, s. 26; 2001, c. 34, s. 76.

REPORT TO PARLIAMENT

Annual report

40. The Superintendent shall, as soon as possible after the end of each fiscal year, submit to the Minister a report on

(a) the operation of this Act during that year,

(b) the extent to which inflation adjustments or other adjustments to pension benefits have been provided during that year, either voluntarily by employers or pursuant to collective agreements, as shown in information filed pursuant to section 12,

(c) the source of the funds used to make any adjustments referred to in paragraph (b), and

(d) the application of gains, if any, from pension funds,

and the Minister shall cause the report to be laid before each House of Parliament on any of the first fifteen days on which that House is sitting after the day the Minister receives it.

CONSEQUENTIAL AMENDMENTS TO OTHER ACTS

41. [Amendments]

REPEAL

Repeal of R.S., c.
P-7

42. (1) The *Pension Benefits Standards Act* is repealed.

Limitation

(2) Notwithstanding subsection (1), the *Pension Benefits Standards Act* and the regulations thereunder continue to apply to persons who have, before January 1, 1987, ceased membership in a pension plan or retired.

R.S., 1985, c. 32 (2nd Supp.), s. 42; 2001, c. 34, s. 77.

TRANSITIONAL PROVISIONS

Deemed
registration under
new Act

43. (1) Subject to this section, a pension plan that was, immediately before January 1, 1987, registered under the *Pension Benefits Standards Act* shall be deemed to be registered under this Act for the period commencing on January 1, 1987 and ending

(a) on December 31, 1988, where subsection (2) is not complied with, or

(b) where subsection (2) is complied with, on the day on which the plan is registered under paragraph (3)(a) or is refused registration under paragraph (3)(b)

if, before January 1, 1987 or such later date as the Superintendent may allow, the administrator has filed an undertaking that the plan will, as of January 1, 1987, be administered in accordance with this Act and the regulations.

Filing of amendments to plans

(2) Amendments that are required in order to bring a pension plan referred to in subsection (1) into compliance with this Act and the regulations must be filed with the Superintendent on or before December 31, 1988.

Examination and registration of amended pension plans

(3) The Superintendent shall forthwith examine amendments that are filed pursuant to subsection (2) and shall,

(a) if the plan, as amended by those amendments, complies with the standards for registration, register the plan and issue a certificate of registration in respect of the plan, and notify the administrator by registered mail of the Superintendent's action;
or

(b) if the plan, as amended by those amendments, does not comply with the standards for registration,

(i) notify the administrator by registered mail of the particulars of such non-compliance and direct the administrator to take such action to ensure compliance as the Superintendent specifies, and

(ii) if after sixty days from the day of mailing of such notification, or such longer period as the Superintendent may allow, the administrator has failed to comply with the Superintendent's direction referred to in subparagraph (i), refuse registration of the plan and notify the administrator by registered mail of the Superintendent's action.

Where undertaking not complied with

(4) Where the Superintendent is of the opinion that an undertaking mentioned in subsection (1) is not being complied with, the Superintendent shall

(a) notify the administrator by registered mail of the particulars of the non-compliance and direct the administrator to take such action to ensure compliance as the Superintendent specifies; and

(b) if after sixty days from the day of mailing of the notification, or such longer period as the Superintendent may allow, the administrator has failed to comply with the Superintendent's direction referred to in paragraph (a), cancel the deemed registration provided by subsection (1) and notify the administrator by registered mail of the Superintendent's action.

Application of provisions re objections and appeals

(5) Sections 32 and 33 apply, with such modifications as the circumstances require, in respect of actions of the Superintendent under subsections (3) and (4).

Where collective agreement conflicts with Act

44. (1) In the case of a pension plan that was registered under the *Pension Benefits Standards Act* immediately before January 1, 1987 and is governed by one or

more collective agreements entered into during the period beginning on December 17, 1985 and ending on December 31, 1986, where the terms of the pension plan conflict with the provisions of this Act, the terms of the pension plan prevail until the date of expiration of the collective agreement or the end of December 1988, whichever is earlier, after which time the provisions of this Act prevail.

Idem

(2) In the case of a pension plan that was registered under the *Pension Benefits Standards Act* immediately before January 1, 1987 and is governed by one or more collective agreements entered into before December 17, 1985, where the terms of the pension plan conflict with the provisions of this Act, the terms of the pension plan prevail until the date of expiration of the collective agreement or the end of December 1990, whichever is earlier, after which time the provisions of this Act prevail.

Information to members

45. Notwithstanding paragraph 28(1)(b), a pension plan may provide that the statement described in that paragraph may be provided on a triennial basis up to 1992, and annually thereafter, with the first such statement due in respect of the plan year ending in 1989 at the latest.

COMING INTO FORCE

Coming into force

46. This Act shall come into force on January 1, 1987.

SCHEDULE

[Amendments]

AMENDMENT NOT IN FORCE

-- 2003, c. 22, para. 225(z.16):

Replacement of "Public Service"

225. The expression "Public Service" is replaced by the expression "public service" wherever it occurs in the English version of the following provisions, other than in the expressions "Public Service corporation", "*Public Service Employment Act*", "Public Service Pension Fund" and "*Public Service Superannuation Act*":

...

(z.16) subsection 34(3) of the *Pension Benefits Standards Act, 1985*;

...