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## **Pension Benefits Standards Act, 1985**

**R.S.C. 1985, c. 32 (2nd Supp.)**  
**[Unofficial Chapter No. P-7.01]**

[Unofficial Chapter No. P-7.01]

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

### **SHORT TITLE**

*Short title*

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

*R.S.C. 1985, c. 32 (2nd Supp.), s. 1.*

### **INTERPRETATION**

*Definitions*

2 (1) In this Act,

actuary means a Fellow of the Canadian Institute of Actuaries; (actuaire)

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; (cotisation facultative)

administrator, in relation to a pension plan, means the administrator referred to in section 7, and includes the replacement administrator appointed under subsection 7.6(1); (administrateur)

cessation of membership in a pension plan has the meaning assigned by subsections (2) and (2.1); (fin de participation)

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; (convention collective)

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; (conjoint de fait)

common-law partnership means the relationship between two persons who are common-law partners of each other; (union de fait)

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; (continu)

deferred pension benefit means a pension benefit other than an immediate pension benefit; (prestation de pension différée)

defined benefit plan means a pension plan that is not a defined contribution plan; (régime à prestations déterminées)

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; (disposition à prestations déterminées)

defined contribution plan means a pension plan that consists of defined contribution provisions and does not contain defined benefit provisions, other than

(a) a defined benefit provision relating to pension benefits accrued in respect of employment before the effective date of the pension plan, or

(b) a defined benefit provision that provides for a minimum pension benefit whose additional value is not significant in the Superintendent's opinion; (régime à cotisations déterminées)

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

(a) contributions made by and on behalf of that member, and

(b) interest earnings and other gains and losses allocated to that member; (disposition à cotisations déterminées)

designated province means a province prescribed as a province in which there is in force pension legislation applicable to private superannuation plans; (province désignée)

electronic document means any form of representation of information or of concepts fixed in any medium by electronic, optical or other similar means that can be read or perceived by a person or by any means; (document électronique)

employee includes an officer; (salariés)

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; (employeur)

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; (emploi)

federal-provincial agreement means an agreement entered into under subsection 6.1(1); (accord fédéral-provincial)

former member, in relation to a pension plan, means

(a) except in sections 9.2 and 24 and paragraph 28(1)(b.1), a person who, on or after January 1, 1987, has either ceased membership in the plan or retired;

(b) in section 9.2 and paragraph 28(1)(b.1), a person who has either ceased membership in the plan or retired and has not, before the termination of the whole of the plan,

(i) transferred their pension benefit credit under section 26,

(ii) used their pension benefit credit to purchase a life annuity under section 26, or

(iii) had their pension benefits transferred to another pension plan; or

(c) in section 24, a person who, before, on or after January 1, 1987, has either ceased membership in the plan or retired; (ancien)

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; (à temps plein)

immediate pension benefit means a pension benefit that is to commence within one year after the member becomes entitled to it; (prestation de pension immédiate)

included employment has the meaning assigned by section 4; (emploi inclus)

information system means a system used to generate, send, receive, store or otherwise process an electronic document; (système d'information)

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; (prestation réversible)

marriage and remarriage [Repealed, 2000, c. 12, s. 254]

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; (participant)

Minister means the Minister of Finance; (ministre)

multi-employer pension plan means a pension plan organized and administered for employees of two or more employers whose contributions to the pension plan are determined under an agreement between the participating employers or a collective agreement, statute or regulation, if 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 95% of the plan members are employed by participating employers who are incorporated and are affiliates within the meaning of the Canada Business Corporations Act; (régime interentreprises)

multilateral agreement REPEALED: S.C. 2016, c. 7, s. 201(1), effective June 22, 2016 (R.A.).

negotiated contribution plan means a multi-employer pension plan that includes at least one defined benefit provision and under which a participating employer's contributions are limited to an amount determined in accordance with an agreement entered into by the participating employers or a collective agreement, statute or regulation, and which amount does not vary as a function of the prescribed tests and standards for solvency referred to in subsection 9(1); (régime à cotisations négociées)

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 or mandatary acting for a principal or mandator, and officer means a person holding such a position; (fonctions et cadre)

participating employer, in relation to a multi-employer pension plan, means an employer who is required to contribute to that plan; (employeur participant)

part-time basis, in relation to an employee, means engaged to work on other than a full-time basis; (à temps partiel)

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 designated beneficiary or estate or succession of a member or former member, is or may become entitled; (prestation de 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; (droit à pension)

pension fund, in relation to a pension plan, means a fund maintained to provide benefits under or related to the pension plan; (fonds de pension)

pension plan has the meaning assigned by subsection 4(2); (régime de pension)

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; (âge admissible)

plan year, in respect of a pension plan, means a calendar year, unless otherwise specified in the plan; (exercice du régime)

prescribed means prescribed by regulation;

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; (régime agréé)

retire has the meaning assigned by subsection (3); (retraite)

spouse, in relation to an individual, includes a person who is party to a void or, in Quebec, null marriage with the individual; (époux)

standards for registration [Repealed, 1998, c. 12, s. 1]

Superintendent means the Superintendent of Financial Institutions appointed pursuant to subsection 5(1) of the Office of the Superintendent of Financial Institutions Act; (surintendant)

surplus means the amount, determined in the prescribed manner, by which the assets of a pension plan exceed its liabilities; (excédent)

survivor, in relation to a member or former member, means

(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

(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; (survivant)

termination, in relation to a pension plan, means the situations described in subsections 29(1), (2), (2.1) and (4.2); (cessation)

variable benefit means a pension benefit payable in the form of a variable payment out of the pension fund; (prestation variable)

winding-up, in relation to a pension plan, means the distribution of the assets of a pension plan that has been terminated; (liquidation)

workout agreement means an agreement that establishes a funding schedule that has been approved by the Minister under section 29.3; (accord de sauvetage)

Year's Maximum Pensionable Earnings has the same meaning as in the Canada Pension Plan. (maximum des gains annuels ouvrant droit à pension)

#### *Cessation of membership in a pension plan*

(2) For the purposes of this Act, a member of a pension plan shall be deemed to cease membership in the plan

(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;

(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

(c) in any other prescribed circumstance.

#### *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.

#### *Negotiated contribution plan*

(5) Even though a pension plan - established as a negotiated contribution plan - is no longer a negotiated contribution plan because it has only one participating employer or more than 95% of its

members are employed by participating employers who are incorporated and are affiliates within the meaning of the Canada Business Corporations Act, that pension plan is deemed to be a negotiated contribution plan for a period of one year after the day it is no longer a negotiated contribution plan, or for any longer period that may be specified by the Superintendent.

*R.S.C. 1985, c. 32 (2nd Supp.), s. 2, c. 18 (3rd Supp.), s. 38; S.C. 1998, c. 12, s. 1; S.C. 2000, c. 12, s. 254; S.C. 2001, c. 34, s. 66; S.C. 2010, c. 12, s. 1824 (F) and 1825 (E); S.C. 2010, c. 25, s. 179; S.C. 2010, c. 12, s. 1786(1) (F), (2), (3) (E), (4) and (5) (F); S.C. 2016, c. 7, s. 201; S.C. 2019, c. 29, s. 145(1).*

*Pension plans may exceed minimum requirements*

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, designated beneficiaries, estates or successions.

*R.S.C. 1985, c. 32 (2nd Supp.), s. 3; S.C. 2000, c. 12, s. 255; S.C. 2010, c. 12, s. 1787.*

## **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;

(b.1) a pooled registered pension plan, as defined in subsection 2(1) of the Pooled Registered Pension Plans 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 aerodome, 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.C. 1985, c. 32 (2nd Supp.), s. 4; S.C. 1993, c. 28, s. 78 (Sch. III, s. 120); S.C. 1999, c. 31, s. 244 (F); S.C. 1999, c. 28, s. 172; S.C. 2002, c. 7, s. 226; S.C. 2012, c. 16, s. 84.*

## **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;

(c) disclose information gathered under paragraph (a) or (b) or subsection 9.01(6) or filed under subsection 9.01(5) or section 10, 10.1 or 12 to any government agency or regulatory body; and

(d) collect information from a pension supervisory authority of a designated province and disclose information to that authority for the purposes of implementing a federal-provincial agreement.

### *Terms and conditions*

(3) Any approval, authorization, consent or permission of the Superintendent given under this Act may be subject to terms and conditions.

*R.S.C. 1985, c. 32 (2nd Supp.), s. 5; S.C. 1998, c. 12, ss. 2, 3; S.C. 2010, c. 12, s. 1788; S.C. 2010, c. 25, s. 180; S.C. 2016, c. 7, s. 202.*



## AGREEMENTS

### *REPEALED*

6 REPEALED: S.C. 2016, c. 7, s. 203, effective June 22, 2016 (R.A.).

*R.S.C. 1985, c. 32 (2nd Supp.), s. 6; S.C. 1998, c. 12, s. 4; S.C. 2010, c. 25, s. 181; S.C. 2016, c. 7, s. 203.*

### *One or more designated provinces*

6.1 (1) The Minister may, with the approval of the Governor in Council, enter into an agreement with one or more designated provinces respecting any matter relating to pension plans that are subject to the pension legislation of at least one designated province that is a party to the agreement.

### *Content of agreement*

(2) A federal-provincial agreement may, among other things,

- (a) limit the application of the pension legislation of a designated province that is a party to the agreement to a pension plan and adapt that legislation to that pension plan;
- (b) limit the application of this Act and the regulations to a pension plan and adapt them to that pension plan;
- (c) exempt a pension plan from the application of this Act and the regulations or the pension legislation of a designated province that is a party to the agreement;
- (c.1) make applicable, with respect to a pension plan, the pension legislation of a designated province that is a party to the agreement;
- (d) provide for the administration and enforcement of this Act, the regulations and the pension legislation of a designated province that is a party to the agreement;
- (e) authorize a pension supervisory authority of a designated province that is a party to the agreement or the association referred to in section 6.4 to exercise any of the Superintendent's powers under this Act;
- (f) authorize the Superintendent to exercise any powers of a pension supervisory authority of a designated province that is a party to the agreement or the association referred to in section 6.4;
- (g) establish requirements - in addition to any other requirements under this Act, the regulations and the pension legislation of a designated province that is a party to the agreement - with respect to a pension plan, administrator or employer; and
- (h) confer powers on the Superintendent.

*Tabling in Parliament*

(3) The Minister must cause every federal-provincial agreement to be tabled in each House of Parliament.

*Publication - Canada Gazette*

(4) The Minister must cause to be published in the Canada Gazette

(a) every federal-provincial agreement and a notice of the date on which the agreement comes into effect with respect to pension plans;

(b) every amendment to a federal-provincial agreement and a notice of the date on which the amendment comes into effect with respect to pension plans; and

(c) a notice of the effective date of the Government of Canada's withdrawal from the federal-provincial agreement or of the effective date of termination of that agreement, whichever comes first.

*Publication - other*

(5) In addition to the publishing requirements under subsection (4), the Minister must ensure that every federal-provincial agreement and every amendment to a federal-provincial agreement is accessible to the public through the Internet or by any other means that the Minister considers appropriate.

*S.C. 2010, c. 25, s. 181; S.C. 2016, c. 7, s. 204.*

*Force of law*

6.2 (1) The provisions of a federal-provincial agreement, other than those exempted from the application of this subsection by regulation, have the force of law during the period that the agreement is in effect with respect to pension plans and are enforceable during that period as if those provisions formed part of this Act.

*Inconsistency with agreement*

(2) The provisions of a federal-provincial agreement that have the force of law prevail over any provision of this Act and the regulations to the extent of any inconsistency or conflict between them.

*S.C. 2010, c. 25, s. 181; S.C. 2016, c. 7, s. 205.*

*Review by Federal Court*

6.3 (1) A decision of a pension supervisory authority of a designated province that is made under the authority of a federal-provincial agreement and that relates to the application of this Act or the regulations is deemed to be a decision of a federal board, commission or other tribunal, as defined in subsection 2(1) of the Federal Courts Act, and is subject to judicial review under that Act.

*No review by Federal Court*

(2) A decision of the Superintendent that is made under the authority of a federal-provincial agreement and that relates to the application of the pension legislation of a designated province is deemed to be a decision of the pension supervisory authority of that province and is not subject to judicial review under the Federal Courts Act.

*S.C. 2010, c. 25, s. 181; S.C. 2016, c. 7, s. 205.*

*Association of pension supervisory authorities*

6.4 The Minister may, with the approval of the Governor in Council, enter into an agreement with one or more designated provinces respecting the establishment and operation in Canada of an association of pension supervisory authorities.

*S.C. 2010, c. 25, s. 181; S.C. 2016, c. 7, s. 205.*

## **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.

**REPEALED**

(2) REPEALED: S.C. 2012, c. 16, s. 85, effective December 14, 2012 (SI/2012-102).

R.S.C. 1985, c. 32 (2nd Supp.), s. 7; S.C. 1998, c. 12, s. 5; S.C. 2012, c. 16, s. 85.

*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.

S.C. 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.

S.C. 1998, c. 12, s. 5.

*Choosing representatives*

7.3 Pension plan members and retired members shall choose their representatives for the purposes of section 7.1 and subsection 7.2(2), directly or indirectly, in the prescribed manner.

S.C. 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).

*Coordinates*

(3) The administrator of a pension plan shall, within 30 days after being constituted or becoming the administrator, inform the Superintendent, in the form and manner, if any, that the Superintendent directs, 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, in the form and manner, if any, that the Superintendent directs, of any change to that information within 30 days after the change.

S.C. 1998, c. 12, s. 5; S.C. 2010, c. 25, s. 182.

*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 under the pension plan to attend the meeting; and
- (c) require any other interested persons to attend the meeting.

*S.C. 1998, c. 12, s. 5; S.C. 2010, c. 12, s. 1789.*

*Appointment of replacement administrator*

7.6 (1) If the administrator of a pension plan 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 under the plan, that the administrator be removed, the Superintendent may remove the administrator and appoint a replacement administrator. A replacement administrator may recover their reasonable fees and expenses from the pension fund.

*Notification*

(2) The Superintendent must notify a replaced administrator of their removal as soon as feasible.

*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) If the whole of a pension plan is terminated, the replacement administrator must, on receiving approval of the termination report under subsection 29(10), give notice to the members, former members and any other persons who are entitled to pension benefits 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 must publish the notice in the Canada Gazette 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 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. They may maintain an action in respect of those rights and claims in their own name.

*Discharge*

(7) The Superintendent may discharge the replacement administrator when the assets of the pension plan have been distributed in accordance with this Act and the regulations.

*S.C. 2010, c. 12, s. 1790.*

*Amounts to be held in trust*

8. (1) An employer shall ensure, with respect to its pension plan, that the following amounts are kept separate and apart from the employer's own moneys, and the employer is 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 under the plan:

- (a) the moneys in the pension fund,
- (b) an amount equal to the aggregate of the following payments that have accrued to date:
  - (i) the prescribed payments, and
  - (ii) the payments that are required to be made under a workout agreement; and
- (c) all of the following amounts that have not been remitted to the pension fund:
  - (i) amounts deducted by the employer from members' remuneration, and
  - (ii) other amounts due to the pension fund from the employer, including any amounts that are required to be paid under subsection 9.14(2) or 29(6).

*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 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.

*Investment choices*

(4.2) A pension plan may permit a member, former member, survivor or former spouse or former common law partner of a member or former member to make investment choices with respect to their account maintained in respect of a defined contribution provision or with respect to their account maintained for additional voluntary contributions.

*Administrator's duty*

(4.3) If a pension plan permits a member, former member, survivor or former spouse or former common law partner of a member or former member to make investment choices, the administrator must offer investment options of varying degrees of risk and expected return that would allow a reasonable and prudent person to create a portfolio of investments that is well adapted to their retirement needs.

*Deemed compliance with subsection (4.1)*

(4.4) With respect to the account for which an investment choice is made by a member, former member, survivor or former spouse or former common law partner of a member or former member, if an administrator offers investment options in accordance with subsection (4.3) and the regulations, that administrator is deemed to comply with subsection (4.1).

*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 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.C. 1985, c. 32 (2nd Supp.), s. 8; S.C. 1998, c. 12, s. 6; S.C. 2010, c. 12, s. 1791(1) (E), (2), (3) (E) and (4); S.C. 2010, c. 12, s.1791(5) (E); S.C. 2012, c. 16, s. 86(1) and (2) (E); S.C. 2010, c. 25, s. 183.*

## **FUNDING AND SURPLUS**

### **Required Funding**

#### *Funding of pension plan*

9. (1) A pension plan shall be funded in accordance with the prescribed tests and standards for solvency.

#### *Payments by employer*

(1.1) In respect of a pension plan that is not a multi-employer pension plan, the employer shall pay into the pension fund all amounts required to meet the prescribed tests and standards for solvency.

#### *Multi-employer pension plan*

(1.2) In respect of a multi-employer pension plan, each participating employer shall pay into the pension fund all contributions that they are required to pay under an agreement between participating employers or a collective agreement, statute or regulation.

#### *Actuarial reports*

(2) In the case of an actuarial report required under subsection 12(2), if 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) REPEALED: S.C. 1998, c. 12, s. 8(2), effective October 1, 1998 (SI/98-96).

(5) REPEALED: S.C. 1998, c. 12, s. 8(2), effective October 1, 1998 (SI/98-96).

(6) REPEALED: S.C. 1998, c. 12, s. 8(2), effective October 1, 1998 (SI/98-96).

*R.S.C. 1985, c. 32 (2nd Supp.), s. 9; S.C. 1998, c. 12, ss. 7, 8; S.C. 2010, c. 12, s. 1793.*

**FUNDING AND SURPLUS****Required Funding***Designation of actuary*

9.01 (1) If 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 under a pension plan, the Superintendent may designate an actuary to prepare, in accordance with subsection 12(3.1), an actuarial report or a termination report required under subsection 12(2) or 29(9), respectively, and to provide the administrator with the report within the period specified by the Superintendent.

*Notification*

(2) The Superintendent must notify the administrator in writing of the designation. If the administrator is not the employer, the administrator must notify the employer in writing.

*Obligation to provide information*

(3) The administrator and employer must, if requested to do so, provide the designated actuary with any information in their possession or control that the designated actuary considers necessary for the preparation of the report.

*Comments on draft report*

(4) Before finalizing the report, the designated actuary must provide the administrator with a copy of the draft report and give the administrator an opportunity to submit comments.

*Report to be filed*

(5) The administrator must file with the Superintendent the report prepared by the designated actuary within the period specified by the Superintendent.

*Power of Superintendent*

(6) If the administrator fails to file the report within the specified period, the Superintendent may require the designated actuary to provide a copy of the report.

*Replacement report*

(7) If the administrator has already filed the report in respect of which an actuary is designated, subsection 9(2) does not apply to that report and the designated actuary's report replaces it.

*Funding of pension plan*

(8) A pension plan must be funded in accordance with the report prepared by the designated actuary, once the report has been filed under subsection (5) or provided to the Superintendent under subsection (6).

*Fees and expenses*

(9) The administrator must pay out of the pension fund the reasonable fees and expenses of the designated actuary that are associated with the preparation of the report.

S.C. 2010, c. 12, s. 1794.

*Notification of remittance*

9.1 (1) The administrator of a pension plan must notify in writing the trustee 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 30 days after the date referred to in subsection (1),

- (a) the administrator of the pension plan must immediately notify the Superintendent; and
- (b) a trustee or custodian of the pension fund must, if the administrator is the employer, immediately notify the Superintendent.

*Content*

(3) The Superintendent may direct the form and content of any notice referred to in subsection (2) as well as the manner of providing that notice.

S.C. 1998, c. 12, s. 9; S.C. 2010, c. 25, s. 184.

## **Letters of Credit**

### *Letters of credit*

9.11 (1) Subject to the regulations, an employer may provide a trustee with, or transfer to a trust, a letter of credit made out to the trustee for the benefit of the pension plan, instead of paying into the pension fund an amount that is required to be paid under subsection 9(1.1).

### *Copy to administrator*

(2) As soon as feasible after the letter of credit is issued, the employer must provide the administrator with a copy of it.

### *Deductions from remuneration*

(3) The employer may not obtain a letter of credit in respect of an amount that it has deducted from members' remuneration.

### *Non-application*

(4) Subsection (1) does not apply in respect of a pension plan that has been terminated in whole.

S.C. 2010, c. 12, s. 1795.

### *Duty of employer*

9.12 The employer must ensure that the letter of credit and the trust agreement comply with this Act and the regulations and must, at any intervals or times and in the form that the Superintendent directs, provide the Superintendent and the administrator with a written statement confirming that compliance.

S.C. 2010, c. 12, s. 1795.

### *Obligation of trustee*

9.13 (1) The trustee must hold the letter of credit in trust for the pension plan.

### *Disclosure*

(2) The trustee must file with the Superintendent any information in respect of a letter of credit that the Superintendent requires at any intervals or times that the Superintendent directs.

*No liability*

(3) No civil action lies against the trustee for having, in good faith and in accordance with the regulations, on the direction of the employer, allowed the letter of credit to be cancelled or its face value to be reduced.

S.C. 2010, c. 12, s. 1795.

*Demand for payment*

9.14 (1) In the prescribed circumstances, the trustee must make a demand to the issuer for payment into the pension fund of an amount equal to the face value of the letter of credit.

*Payment by employer*

(2) If the issuer fails to honour the letter of credit, the employer must pay an amount equal to its face value into the pension fund without delay.

*Non-application of subsection 8(1)*

(3) Subsection 8(1) does not apply to an amount in respect of which the employer has obtained a letter of credit unless the issuer fails to honour the letter of credit.

*Bankruptcy, etc., of employer*

(4) In the event of any liquidation, assignment or bankruptcy of the employer, an amount equal to the amount of a letter of credit that has not been honoured by the issuer is deemed to be separate from and form no part of the estate in liquidation, assignment or bankruptcy.

S.C. 2010, c. 12, s. 1795.

*Costs*

9.15 The costs that are associated with obtaining, holding, amending or cancelling a letter of credit may not be paid out of the pension fund.

S.C. 2010, c. 12, s. 1795.

**Crown Corporations**

*Reduction of payments*

9.16 If the employer is a Crown corporation, a payment that it is required to make under subsection 9(1.1) may be reduced, provided the payment does not relate to any amount that the employer has deducted from members' remuneration and the prescribed conditions have been met.

S.C. 2010, c. 12, s. 1795.

*Refund of surplus to the employer*

9.2 (1) If an actuarial report prepared by a designated actuary or filed under subsection 12(2) 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(1)(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 whole of the pension plan is terminated shall, submit the proposal to arbitration. The employer shall notify the Superintendent, in the form and manner, if any, that the Superintendent directs, and the persons in those categories if the proposal is to be submitted to arbitration.

*Liquidation of employer*

(5) The employer's claim to the surplus, or part of it, shall be submitted to arbitration within 18 months after the termination of the whole of the pension plan, or any longer period specified by the Superintendent, if

- (a) the employer has not established a claim to the surplus; and
- (b) the employer is in the process of being liquidated.

The employer shall notify the Superintendent, in the form and manner, if any, that the Superintendent directs, and the persons in the categories referred to in subsection (3) that the claim is to be submitted to arbitration.

*Deemed agreement*

(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.

*Choice of arbitrator*

(7) The arbitrator shall be chosen by the employer and the persons in the categories set out in subsection (2). If they cannot agree on an arbitrator within the prescribed period, the Superintendent shall choose the arbitrator.

*Arbitration*

(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.

*Retention of experts*

(9) An arbitrator may retain any experts that the arbitrator considers necessary.

*Costs of arbitration*

(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.

*Issuance of decision*

(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.



*Scheme of division*

(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.

*Decision binding*

(13) An arbitrator's decision is final and binding on the parties and on any other person affected by it.

*Notification to unions*

(14) All notifications to unionized members under this section must also be made to the executive of their union.

*Union represents members*

(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.

S.C. 1998, c. 12, s. 9; S.C. 2001, c. 34, s. 67 (F); S.C. 2010, c. 12, s. 1796; S.C. 2010, c. 25, s. 185.

**REGISTRATION OF PENSION PLANS***Duty of administrator to file documents*

10. (1) The administrator of a pension plan shall file with the Superintendent, within 60 days after the plan is established and in the form and manner, if any, that the Superintendent directs,

- (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 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.C. 1985, c. 32 (2nd Supp.), s. 10; S.C. 1998, c. 12, s. 10; S.C. 2010, c. 25, s. 186.*

*Filing of amendments*

10.1 (1) The administrator of a pension plan must file with the Superintendent, within 60 days after an amendment is made to any document referred to in subsection 10(1), in the form and manner, if any, that the Superintendent directs, a copy of the amendment and a declaration, 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 or, in Quebec, null 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;
- (b) the solvency ratio of the pension plan would fall below the prescribed solvency ratio level;
- (c) the amendment would reduce the solvency ratio of the pension plan and the solvency ratio would be below the prescribed solvency ratio level once the amendment is made; or
- (d) the solvency ratio of the pension plan is below the prescribed solvency ratio level and the amendment would increase pension benefits or pension benefit credits.

*S.C. 1998, c. 12, s. 10; S.C. 2010, c. 12, s. 1797; S.C. 2010, c. 25, s. 187.*

*Negotiated contribution plans*

10.11 The administrator of a negotiated contribution plan may, subject to section 10.1 and despite the terms of the pension plan, make an amendment to any document referred to in paragraph 10(1)(a) or (b) that has the effect of reducing pension benefits or pension benefit credits.

*S.C. 2010, c. 12, s. 1798; S.C. 2010, c. 25, s. 188.*

**Transfer of Funds***No transfer without permission*

10.2 (1) Subject to section 26, the administrator may transfer or permit the transfer of any part of the assets of the pension plan that relate to defined benefit provisions to another pension plan, including a pension plan to which this Act does not apply, only with the Superintendent's permission.

*Transfer to pooled registered pension plan*

(2) Subject to section 26, the administrator may transfer or permit the transfer of any part of the assets of the pension plan to a pooled registered pension plan, within the meaning of subsection 2(1) of the Pooled Registered Pension Plans Act, only with the Superintendent's permission.

*S.C. 1998, c. 12, s. 10; S.C. 2010, c. 12, s. 1799; S.C. 2012, c. 16, s. 87.*

*Designated entity*

10.3 (1) The Minister may, with the approval of the Governor in Council, designate an entity, as defined in section 2 of the Bank Act, for the purposes, among others, of receiving and holding the pension benefit credit of any person who cannot be located, as well as the assets of a pension plan relating to that credit, and of disbursing that credit in a lump sum.

*Transfer*

(2) The administrator of a pension plan may transfer to the designated entity the pension benefit credit of any person who cannot be located, as well as the assets of a pension plan relating to that credit.

*If transfer impairs solvency*

(3) However, the administrator of a pension plan must obtain the consent of the Superintendent to transfer pension benefit credits and assets to the designated entity if, in the Superintendent's opinion, the transfer would impair the solvency of the pension fund.

*Transfer to Her Majesty*

(4) A designated entity that holds, for the prescribed period of time, the assets relating to the pension benefit credit of a person who cannot be located, must transfer those assets to Her Majesty in right of Canada.

*Limitation period or prescription*

(5) Upon transfer of assets to Her Majesty in right of Canada, a claim to the pension benefit credit associated with those assets can no longer be made.

*S.C. 2010, c. 25, s. 189.*

**Separate Pension Plan***Establishment of separate pension plan*

10.4 (1) The Superintendent may direct the administrator of a pension plan that is subject to the pension legislation of more than one jurisdiction to

(a) establish a separate pension plan for members employed in included employment, former members who were employed in included employment and any survivors of those members or former members; and

(b) transfer assets and liabilities relating to the members and former members of the separate pension plan, as well as to any survivors of those members or former members, from the original pension plan to the separate pension plan.

*Comparable plan*

(2) A separate pension plan must be comparable, in the opinion of the Superintendent, to the original pension plan.

*S.C. 2010, c. 25, s. 189.*

**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 under the pension plan, the Superintendent may make a direction with respect to the matters referred to in subsection (1) or (2) that has effect for a period of not more than 15 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.C. 1985, c. 32 (2nd Supp.), s. 11; S.C. 1998, c. 12, s. 10; S.C. 2010, c. 12, s. 1800.*

*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.

S.C. 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 any other intervals or times that the Superintendent directs - an information return relating to that pension plan, containing the prescribed information.

#### *Actuarial reports, financial statements and other information*

(2) The administrator of a pension plan shall file with the Superintendent actuarial reports, financial statements, and any other information required by or under the regulations at any intervals or times that the Superintendent directs.

#### *Employer*

(3) The employer shall file with the Superintendent any information required by or under the regulations at any intervals or times that 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 Chartered Professional Accountants of Canada.

#### *Form and manner of filings and time limit*

(4) Every document required to be filed under this section shall be filed in the form and manner, if any, that the Superintendent directs, and unless otherwise directed by the Superintendent, within six months after the end of the plan year to which the document relates.

R.S.C. 1985, c. 32 (2nd Supp.), s. 12; S.C. 1998, c. 12, ss. 11, 12; S.C. 2010, c. 12, s. 1801 (1) and (2) (F); S.C. 2010, c. 25, s. 190; S.C. 2017, c. 26, s. 62(a).

#### *Information to members*

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

*R.S.C. 1985, c. 32 (2nd Supp.), s. 13; S.C. 1998, c. 12, s. 13; S.C. 2010, c. 12, s. 1802.*

## **STANDARDS FOR REGISTRATION**

### **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.

*R.S.C. 1985, c. 32 (2nd Supp.), s. 14.*

#### *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.

*R.S.C. 1985, c. 32 (2nd Supp.), s. 15.*

## **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.

*R.S.C. 1985, c. 32 (2nd Supp.), s. 16.*

## **Phased retirement benefit**

### *Definitions*

16.1 (1) The following definitions apply in this section.

#### *"phased retirement benefit"*

"phased retirement benefit" means a pension benefit that is equal to a portion of the immediate pension benefit to which a person is entitled under subsection 16(1) or which they are eligible to receive under subsection 16(2).

#### *"phased retirement period"*

"phased retirement period" means the period in respect of which the phased retirement benefit is to be paid.

### *Phased retirement benefit*

(2) A pension plan may provide for the payment of a phased retirement benefit.

### *Conditions*

(3) A phased retirement benefit is only to be paid to a person if

- (a) the person enters into a written agreement with an employer who contributes to the pension plan from which the phased retirement benefit is to be paid, or with a prescribed administrator, that evidences their consent to its payment;
- (b) in the case of a person who was receiving a joint and survivor pension benefit prior to the phased retirement period, the person's spouse or common-law partner who would receive that joint and survivor pension benefit on the death of the person consents in the prescribed form to the cessation of the payment of the joint and survivor pension benefit;
- (c) the employer provides a copy of the agreement referred to in paragraph (a) to the administrator of the pension plan from which the phased retirement benefit is to be paid;

(d) the person accrues a pension benefit during the phased retirement period under circumstances to which subsection 8503(19) of the Income Tax Regulations applies; and

(e) the whole of the pension plan from which the phased retirement benefit is to be paid has not been terminated.

*Rules - during phased retirement period*

(4) During a phased retirement period

(a) the person is deemed to be a member;

(b) subsection 2(3) does not apply and the person is deemed not to be receiving an immediate pension benefit;

(c) the administrator of the pension plan from which the phased retirement benefit is to be paid shall not pay the immediate pension benefit to which the person would otherwise be entitled under subsection 16(1) or which they would otherwise be eligible to receive under subsection 16(2);

(d) paragraph 18(1)(b) and subsections 36(1) and (4) do not apply to an agreement or arrangement that may be entered into for the payment of the phased retirement benefit;

(e) section 21 does not apply to the calculation of the phased retirement benefit;

(f) section 22 does not apply to the phased retirement benefit; and

(g) in the case of a person who, prior to the phased retirement period, was receiving an immediate pension benefit from the pension plan from which the phased retirement benefit is to be paid, the administrator of that pension plan shall not pay the immediate pension benefit and an election that was made under subsection 22(5) is void or, in Quebec, null unless it was made under provincial property law within the meaning of subsection 25(1).

*Rules - after phased retirement period*

(5) At the end of a phased retirement period

(a) the pension benefit accrued during the phased retirement period is to be treated as vested without regard to conditions as to age, period of membership in the pension plan or period of employment;

(b) the immediate pension benefit to which the person is entitled under subsection 16(1) or which they are eligible to receive under subsection 16(2) is, unless otherwise prescribed, to be calculated without regard to the amount of the phased retirement benefit received;

(c) an election under subsection 22(5) that is void under paragraph (4)(g) remains void or, in Quebec, null;

(d) subsection 26(2) applies as if it contained no reference to "but before the commencement of payment of a pension benefit"; and

(e) in the case of a phased retirement period that ends as a result of the death of a person,

- (i) the person is deemed to have retired for purposes of the survivor benefit,
- (ii) the person is deemed to have been entitled to the joint and survivor pension benefit payable pursuant to section 22, without regard to subsection 22(5), in respect of the immediate pension benefit to which the person would otherwise be entitled under subsection 16(1) or which they would otherwise be eligible to receive under subsection 16(2), and
- (iii) subsections 23(5) to (7) apply.

*S.C. 2007, c. 35, s. 141; S.C. 2010, c. 12, s. 1803, 1824 (F) and 1825 (E).*

## **Variable Benefit**

### *Variable benefit*

16.2 (1) Subject to the regulations, a pension plan may provide that a member or former member who is entitled to an immediate pension benefit under subsection 16(1) or eligible to receive an immediate pension benefit under subsection 16(2) may elect to receive a variable benefit payable under a defined contribution provision.

### *Conditions*

- (2) A member or former member may make the election only if
  - (a) their spouse or common-law partner notifies the administrator of their consent, in the prescribed form; and
  - (b) the whole of the pension plan has not been terminated at the time the election is made.

### *Non-application*

- (3) Section 22 does not apply to a variable benefit.

*S.C. 2010, c. 12, s. 1804.*

### *Entitlement of survivor*

16.3 (1) In the case of the death of a former member who had a spouse or common-law partner at the time payment of a variable benefit referred to in subsection 16.2(1) commenced, the survivor is entitled to receive, subject to the regulations and the regulations made under the Income Tax Act, a variable benefit payable under a defined contribution provision based on the amount remaining in the former member's account maintained in respect of the defined contribution provision.

### *Designated beneficiary or estate or succession*

(2) If a former member dies without leaving a survivor, the amount remaining in the former member's account maintained in respect of a defined contribution provision is to be paid, subject to the regulations made under the Income Tax Act, to the former member's designated beneficiary or, if there is none, to the former member's estate or succession.

*S.C. 2010, c. 12, s. 1804.*

#### *Transfer*

16.4 (1) At least once every year, or more frequently if the pension plan permits, a former member or their survivor may elect

- (a) to transfer the amount remaining to another pension plan, including a plan referred to in paragraph 26(5)(a) or (b), if that other plan permits;
- (b) to transfer the amount remaining to a retirement savings plan of the prescribed kind for the former member or survivor, as the case may be; or
- (c) to use the amount remaining to purchase an immediate or deferred life annuity of the prescribed kind for the former member or survivor, as the case may be.

The former member or survivor must notify the administrator of their intention to make such an election in the prescribed form and the administrator must, without delay, take the necessary action to give effect to the notification.

#### *Transfer in case of death*

(2) If the survivor notifies the administrator of their intention to do so, in the prescribed form, within 90 days after the former member's death or, if the Superintendent allows a longer period under paragraph 28(1)(d), within 60 days after the administrator has given the written statement under that paragraph, the survivor may also

- (a) transfer the amount remaining to another pension plan, including a plan referred to in paragraph 26(5)(a) or (b), if that other plan permits;
- (b) transfer the amount remaining to a retirement savings plan of the prescribed kind for the survivor; or
- (c) use the amount remaining to purchase an immediate or deferred life annuity of the prescribed kind for the survivor.

The administrator must, without delay, take the necessary action to give effect to the notification.

*S.C. 2010, c. 12, s. 1804.*

#### *Cessation*

16.5 Before a pension plan ceases to provide for the payment of a variable benefit referred to in subsection 16.2(1), an administrator must offer a former member or survivor who receives that variable benefit the options referred to in subsection 16.4(1).

*S.C. 2010, c. 25, s. 198(2).*

## **Vesting of Benefits**

*Provision respecting vesting*

17. A pension plan must provide that any member of the plan 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 the member would have been eligible to receive under the plan if they had attained pensionable age; 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 under the terms of the plan that are required or permitted by subsections 16(2), (4) and (6) and sections 22 to 25 and 27.

*R.S.C. 1985, c. 32 (2nd Supp.), s. 17; S.C. 2001, c. 34, s. 68 (F); S.C. 2010, c. 12, s. 1805.*

## **Entitlement Not Affected**

*For greater certainty*

17.1 For greater certainty, a pension plan is not to provide that a pension benefit, or any other benefit or option referred to in paragraph 17(b), or a member's entitlement to such a pension benefit or option, is affected when a plan is terminated.

*S.C. 2019, c. 29, s. 146*

## **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) with respect to a person who has been a member for a continuous period of at least two years, that, except as provided in section 26, that person - if they are entitled to a benefit described in section 16 or 17 or would be entitled to the benefit if they retired or ceased membership in the plan - is not permitted to withdraw any part of their 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 they are entitled to the benefit, 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.

#### *Optional provisions*

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

(a) REPEALED: S.C. 2010, c. 12, s. 1806(2), effective July 1, 2011 (SI/2011-21).

(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 pension benefit credit is less than 20% 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 any other percentage that may be prescribed, the pension benefit credit may be paid to the member or survivor, as the case may be.

*R.S.C. 1985, c. 32 (2nd Supp.), s. 18; S.C. 1998, c. 12, s. 14; S.C. 2000, c. 12, ss. 256, 263(a); S.C. 2001, c. 34, s. 69 (F); S.C. 2010, c. 25, s. 191; S.C. 2010, c. 12, s. 1806.*

## **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.

*R.S.C. 1985, c. 32 (2nd Supp.), s. 19.*

## **REPEALED**

*Repealed*

20. REPEALED: S.C. 2010, c. 12, s. 1807, effective July 1, 2011 (SI/2011-21).

*R.S.C. 1985, c. 32 (2nd Supp.), s. 20; S.C. 2001, c. 34, s. 70 (F); S.C. 2010, c. 12, s. 1807.*

## **Minimum Employer Contributions for Defined Benefit Plans**

*Minimum pension benefit*

21 (1) Subject to paragraph 26(3)(b), if a member of a defined benefit plan retires, ceases to be a member or dies, the pension benefit in respect of the member is to be increased by the amount that can be provided by the amount of the aggregate of the member's contributions, other than additional voluntary contributions, together with interest in accordance with section 19, that exceeds 50 per cent of the pension benefit credit in respect of the member's membership in the plan.

*Exception*

(2) Subsection (1) does not apply to a contribution, or the pension benefit arising from it, in respect of any defined contribution provision of a defined benefit plan.



*If plan provides for indexation*

(3) Subsection (1) does not apply if a defined benefit plan provides for annual indexation of a deferred pension benefit, up to the day when payment of that deferred pension benefit commences, on the basis of

(a) increases of at least 75 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*

(4) For the purposes of paragraph (3)(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 12-month periods.

*R.S.C. 1985, c. 32 (2nd Supp.), s. 21; S.C. 2001, c. 34, s. 71 (F); S.C. 2010, c. 12, s. 1808; S.C. 2019, c. 29, s. 148.*

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

**Pre-retirement Death Benefit***If member dies before eligible for early retirement*

23. (1) In the case of the death of a member or former member of a pension plan who is entitled to a deferred pension benefit under section 17, or, in the case of a member, would be entitled to that benefit if the member ceased membership in the plan, the member's or former member's survivor is entitled to 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 they had terminated employment on that day and had not died.

*No survivor*

(1.1) If a member or former member dies without leaving a survivor, the pension benefit credit referred to in subsection (1) is to be paid to the member's or former member's designated beneficiary or, if there is none, to their estate or succession.

*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 spouse*

(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 19.

*R.S.C. 1985, c. 32 (2nd Supp.), s. 23; S.C. 1998, c. 12, s. 15; S.C. 2000, c. 12, ss. 257, 264(a), (b), (c); S.C. 2001, c. 34, s. 72 (F); S.C. 2010, c. 12, s. 1809.*

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

## **Divorce, Annulment, Separation or Breakdown of Common-law Partnership**

### *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 subsections (4), (7) and (8), pension benefits, pension benefit credits and any other benefits under a pension plan are, on divorce, annulment, separation or breakdown of common-law partnership, 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) A member or former member of a pension plan may assign all or part of their pension benefit, pension benefit credit or other benefit under the plan to their 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. The assignee is, in respect of the assigned portion of the pension benefit, pension benefit credit or other benefit, deemed for the purposes of this Act, except section 21,

(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.

However, 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) On divorce, annulment, separation or breakdown of a common-law partnership, if a court order or an agreement between the parties provides for the distribution of property between a member or former member and their spouse, former spouse or former common-law partner, the administrator shall determine and administer any pension benefit, pension benefit credit or other benefit of a pension plan of the member or former member in the prescribed manner and in accordance with the court order or agreement 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 or administered in accordance with the court order or the agreement; and

(b) a copy of 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 from that order 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.

*Adjustment of joint and survivor pension benefit*

(7.1) A pension plan may provide that, if no part of the 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 referred to in subsection (5), a joint and survivor pension benefit may be adjusted so that it becomes payable in the normal form of the pension benefit as defined in subsection 22(1).

*Limitation*

(8) The aggregate of the following amounts shall not be 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:

(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.

*R.S.C. 1985, c. 32 (2nd Supp.), s. 25; S.C. 2000, c. 12, s. 259; S.C. 2001, c. 34, s. 73 (F); S.C. 2010, c. 12, s. 1811(1) to (3), (4) (E) and (5).*

**Portability of Pension Benefit Credits and Purchase of Life Annuities***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 registered 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.

*Consent*

(2.1) The transfer of pension benefit credit, referred to in paragraph (2)(b), may be made by a member only if the member's spouse or common-law partner notifies the administrator, in the prescribed form, of their consent to the transfer.

*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) REPEALED: S.C. 2010, c. 25, s. , effective December 15, 2010 (R.A).

(b) that, if part of the pension benefit payable results from the excess described in subsection 21(1), 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.

*Repealed*

(4) REPEALED: S.C. 2010, c. 12, s. 1813(2), effective July 12, 2010 (R.A.).

*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;

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

(c) a pooled registered pension plan, as defined in subsection 2(1) of the Pooled Registered Pension Plans Act.

*R.S.C. 1985, c. 32 (2nd Supp.), s. 26; S.C. 1995, c. 17, s. 61; S.C. 1998, c. 12, s. 16; S.C. 1999, c. 31, s. 175 (F); S.C. 2000, c. 12, s. 264(d); S.C. 2001, c. 34, s. 74 (F); S.C. 2010, c. 12, s. 1813(2); S.C. 2010, c. 25, s. 192; S.C. 2010, c. 12, s. 1813(1); S.C. 2012, c. 16, s. 88.*

*If transfer or purchase impairs solvency*

26.1 The administrator of a pension plan must obtain the consent of the Superintendent to transfer moneys out of the pension fund under section 26 or purchase an immediate or deferred life annuity if, in the Superintendent's opinion, the transfer or purchase would impair the solvency of the pension fund. The Superintendent may consent to the transfer or purchase or may direct the administrator to carry out the transfer or purchase.

*S.C. 2010, c. 12, s. 1814.*

## **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.C. 1985, c. 32 (2nd Supp.), s. 27; S.C. c. 12, s. 260.*

## **Rights to Information**

### *Provisions respecting information to member and spouse*

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 to the plan, within 60 days 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) that each member of the plan and the member's spouse or common-law partner will be given, in the prescribed circumstances and manner and within six months - or any longer period 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;

(b.1) that each former member of the plan and the former member's spouse or common-law partner will be given, in the prescribed circumstances and manner and within six months - or any longer period permitted by the Superintendent - after the end of each year of operation of the plan, a written statement showing

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

(ii) any other prescribed information;

(c) that each member and former member of the plan, every other person entitled to pension benefits 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 or mandatary authorized in writing for that purpose,

(i) examine copies of the documents or information filed with the Superintendent under subsection 9.01(5), 10(1) or 10.1(1), section 12 or subsection 29.03(4) or any regulations made under paragraph 39(1)(i), the reports provided under subsection 9.01(6), the letters of credit referred to in subsection 9.11(1), the documents submitted under subsection 29.3(3), and of any other prescribed documents, at the Canadian head office of the administrator or at any other place that is agreed to by the administrator and the person requesting to examine the documents, and

(ii) order, in writing, a copy of any of those documents;

(d) that, if a member of the plan retires or ceases to be a member of the plan for any reason other than the termination of the whole of the plan, the administrator shall give to that member and to the member's spouse or common-law partner a written statement, in the prescribed form, of the member's pension benefits and other benefits payable under the plan, within 30 days after the date of the retirement or cessation of membership, or any longer period permitted by the Superintendent; and

(e) that, if a member of the plan dies, the administrator shall give the written statement referred to in paragraph (d) in the prescribed form within 30 days after the date of the death - or any longer period permitted by the Superintendent - to the survivor, if there is one, to the member's designated beneficiary, if the administrator has been notified of the designation and there is no survivor, or, in every other case, to the executor, administrator or liquidator of the member's estate or succession.

#### *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. Information on plan termination

(2.1) A pension plan shall provide that if the whole of the plan is terminated, the administrator shall give to each member and former member and to the spouse or common-law partner of each member and former member, a written statement, in the prescribed form, informing them of

(a) the termination of the plan within 30 days or any longer period permitted by the Superintendent; and

(b) the member's pension benefits and other benefits payable under the plan within 120 days after the termination or any longer period that the Superintendent may allow.

#### *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.C. 1985, c. 32 (2nd Supp.), s. 28; S.C. 1998, c. 12, s. 17; S.C. 2000, c. 12, s. 263(d); S.C. 2001, c. 34, s. 75; S.C. 2010, c. 25, s. 193; S.C. 2010, c. 12, s. 1815(2) and (3); S.C. 2010, c. 12, s. 1815(1).*

## **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).

#### *Declaration by Superintendent*

(2.1) The Superintendent may also declare the whole of a pension plan terminated if there is a cessation of crediting of benefits to the plan members.

#### *Date of termination*

(3) In a declaration made under subsection (2) or (2.1), the Superintendent shall declare a pension plan or part of a pension plan, 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 negotiated contribution plan are suspended or cease as a result of the adoption of a new defined benefit 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.

*Partial termination*

(4.1) Only the Superintendent may declare part of a pension plan terminated.

*Termination by administrator or employer*

(4.2) Subject to subsections (1), (2) and (2.1), the whole of a pension plan is terminated only if the administrator or employer notifies the Superintendent in writing of their decision to terminate the pension plan and the date of the termination.

*Result of termination*

(4.3) As of the date of the termination of the whole of a pension plan, there is to be no crediting of benefits to the plan members under that pension plan.

*Notice of voluntary termination or winding-up*

(5) An administrator or employer who terminates or winds up a pension plan shall notify the Superintendent in writing not less than 60 and not more than 180 days before the date of the termination or winding-up.

*Payments by employer to meet solvency requirements*

(6) If the whole of a pension plan is terminated, the employer shall, without delay, pay into the pension fund 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 pension fund

(a) an amount equal to the normal cost that has accrued to the date of the termination;

(b) the amounts of any prescribed special payments that are due on termination or would otherwise have become due between the date of the termination and the end of the plan year in which the pension plan is terminated;

(c) the amounts of payments that are required to be made under a workout agreement that are due on termination or would otherwise have become due between the date of the termination and the end of the plan year in which the pension plan is terminated;

(d) all of the following amounts that have not been remitted to the pension fund at the date of the termination:

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

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

(e) the amounts of all of the payments that are required to be made under subsection 9.14(2).

*Payment by employer of pension benefits*

(6.1) If the whole of a pension plan that is not a negotiated contribution plan is terminated, the employer shall pay into the pension fund, in accordance with the regulations, the amount - calculated periodically in accordance with the regulations - that is required to ensure that any obligation of the plan with respect to pension benefits, as they are determined on the date of the termination, is satisfied.

*Application of subsection 8(1)*

(6.2) Subsection 8(1) does not apply in respect of the amount that the employer is required to pay into the pension fund under subsection (6.1). However, it applies in respect of any payments that are due and that have not been paid into the pension fund in accordance with the regulations made for the purposes of subsection (6.1).

*Overpayment*

(6.3) If, on the winding-up of the pension plan, there remains in the pension fund an amount that is more than the amount required to permit the plan to satisfy all obligations with respect to pension benefits as they are determined on the date of termination, the portion of the remaining amount that is, according to the regulations, attributable to the payments made under subsection (6.1) does not constitute a surplus and, subject to subsection (7), is to revert to the benefit of the employer.

*Winding-up or bankruptcy*

(6.4) On the winding-up of the pension plan or the liquidation, assignment or bankruptcy of the employer, the amount required to permit the plan to satisfy any obligations with respect to pension benefits as they are determined on the date of termination is payable immediately.

*Application of subsection 8(1)*

(6.5) Subsection 8(1) does not apply in respect of the amount that the employer is required to pay into the pension fund under subsection (6.4). However, it applies in respect of any payments that have accrued before the date of the winding-up, liquidation, assignment or bankruptcy and that have not

been remitted to the fund in accordance with the regulations made for the purposes of subsection (6.1).

*Assets of the pension 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, designated beneficiaries, estates or successions of all accrued or payable benefits in respect of membership up to the date of the termination or winding-up.

*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.

*Actuarial termination report*

(9) On the termination of the whole or part of a pension plan, the administrator of the plan shall file with the Superintendent, in the form and manner, if any, that the Superintendent directs, a termination 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. The report must also give the amount referred to in subsection (6.1) - calculated as at the date of termination - and contain any prescribed information.

*Assets not to be applied until termination report approved*

(10) Assets of the pension plan may not be applied toward the provision of any benefits until the Superintendent has approved the termination report. The administrator of the plan may nevertheless pay pension benefits, as they fall due, to the person entitled.

*Superintendent may direct winding-up*

(11) If 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(1)(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 comply with any such direction without delay.

**REPEALED**

(12) REPEALED: S.C. 2010, c. 12, s. 1816(7), effective April 1, 2011 (SI/2011-21).

*R.S.C. 1985, c. 32 (2nd Supp.), s. 29; S.C. 1998, c. 12, s. 18; S.C. 2000, c. 12, s. 261; S.C. 2010, c. 12, s. 18(1) and (3); S.C. 2010, c. 25, s. 194; S.C. 2010, c. 12, s. 1816(4) to (7); S.C. 2010, c. 25, s. 198(6) and (7).*

## **DISTRESSED PENSION PLAN WORKOUT SCHEME**

### *Application*

29.01 (1) Sections 29.02 to 29.3 apply only in respect of a defined benefit plan that is not a multi-employer pension plan.

### *Agent of Her Majesty*

(2) Sections 29.02 to 29.3 do not apply in respect of an employer who is an agent of Her Majesty in right of Canada.

*S.C. 2010, c. 12, s. 1817.*

### *Definitions*

29.02 The following definitions apply in sections 29.03 to 29.3:

#### *"beneficiary" "bénéficiaire"*

"beneficiary" means any person, other than a member, who is entitled to pension benefits under a pension plan.

#### *"representative" "représentant"*

"representative" means a bargaining agent for unionized members or a representative appointed under subsection 29.08(3).

*S.C. 2010, c. 12, s. 1817*

### *Election of employer*

29.03 (1) Subject to the regulations, an employer may elect to enter into a distressed pension plan workout scheme, as provided for in this section and sections 29.04 to 29.3, unless the employer is in the process of being liquidated, has made an assignment or has become bankrupt or the whole of the pension plan has been terminated.

### *Resolution*

(2) The election must be authorized by a resolution of the employer and, in the case of a Crown corporation, must also be authorized by the Minister and the appropriate Minister, as defined in subsection 83(1) of the Financial Administration Act.

#### *Declaration*

(3) The election must be made by means of a declaration, in the prescribed form, of an officer of the employer and the declaration must

(a) state that the employer does not anticipate being able to make the payments required under subsection 9(1.1) or that the employer is the subject of proceedings under the Companies' Creditors Arrangement Act or Part III of the Bankruptcy and Insolvency Act;

(b) state that the employer intends to negotiate with the representatives of the members and beneficiaries with the purpose of entering into a workout agreement;

(c) indicate, in the case of an employer who is not the subject of proceedings under the Companies' Creditors Arrangement Act or Part III of the Bankruptcy and Insolvency Act, what portion of the payments referred to in subsection 29.07(1) the employer intends to defer; and

(d) contain any prescribed information.

#### *Filing*

(4) The employer must, without delay, file the declaration, a certified copy of the employer's resolution and any prescribed documents with the Superintendent and provide the Minister and the administrator with a copy of the documents filed.

#### *Notice to members and beneficiaries*

(5) The employer must, in accordance with the regulations, provide notice of the declaration to the members and beneficiaries.

S.C. 2010, c. 12, s. 1817.

#### *Negotiation period*

29.04 (1) On the day on which the declaration is filed with the Superintendent, a negotiation period for the purposes of paragraph 29.03(3)(b) begins and, subject to subsections (2) and (3), ends on the date that is determined in accordance with the regulations.

#### *Extension by Minister*

(2) The Minister may extend the negotiation period by a period of up to three months and, in determining whether to do so, must take into account any written representations made by the employer or the representatives and any other matter that the Minister considers relevant. No more than one extension may be granted in respect of any negotiation period.



*Termination by Minister*

(3) The Minister may terminate the negotiation period by notifying the Superintendent, the administrator, the employer and the representatives of the date of the termination.

S.C. 2010, c. 12, s. 1817.

*Exception*

29.05 Despite section 29.04, the negotiation period ends, and may not be extended, on the liquidation, assignment or bankruptcy of the employer.

S.C. 2010, c. 12, s. 1817.

*No termination*

29.06 Despite section 11.1 and subsections 29(2) and (2.1), the Superintendent may not revoke the registration of a pension plan or declare the whole of a pension plan terminated during the negotiation period.

S.C. 2010, c. 12, s. 1817.

*Deferral of payments*

29.07 (1) If an employer makes an election under subsection 29.03(1), the payments to the pension fund that become due during the negotiation period are deferred, to the extent specified in the declaration, except payments that relate to normal cost and payments of the amounts that the employer has deducted from members' remuneration.

*Non-application of subsection 8(1)*

(2) Subsection 8(1) does not apply to the deferred payments during the negotiation period.

*When deferred payments become due*

(3) The deferred payments and interest on those payments become due immediately if

- (a) the whole of the pension plan is terminated during the negotiation period;
- (b) the employer becomes the subject of proceedings under the Companies' Creditors Arrangement Act or Part III of the Bankruptcy and Insolvency Act during the negotiation period;
- (c) the workout agreement does not provide for the payment of the deferred amounts; or

(d) there is no workout agreement at the end of the negotiation period.

#### *Non-application*

(4) Subsections (1) to (3) do not apply if, at the time the election is made to enter into a distressed pension plan workout scheme, the employer is the subject of proceedings under the Companies' Creditors Arrangement Act or Part III of the Bankruptcy and Insolvency Act.

*S.C. 2010, c. 12, s. 1817.*

#### *Appointment by Federal Court*

29.08 (1) Once the declaration has been filed with the Superintendent, the employer must, without delay, apply to the Federal Court for the appointment of

(a) a representative who has exclusive authority to negotiate a workout agreement on behalf of the beneficiaries; and

(b) a representative who has exclusive authority to negotiate a workout agreement on behalf of the non-unionized members, if any.

#### *Other court*

(2) If the employer is the subject of proceedings under the Companies' Creditors Arrangement Act or Part III of the Bankruptcy and Insolvency Act, the employer must make the application instead to the appropriate court as determined by the regulations.

#### *Eligibility*

(3) The Federal Court or the court referred to in subsection (2) must appoint representatives who meet the prescribed eligibility criteria. The appointment is subject to any terms that the Federal Court or other court considers appropriate.

#### *Information to be provided to representatives*

(4) Within five days after the day on which a representative is appointed, the administrator must provide the representative with the names and home addresses of the non-unionized members or beneficiaries that they represent and a copy of the declaration.

#### *Notice to members and beneficiaries*

(5) Each representative - or, if the representative agrees, the employer - must, in the prescribed manner and within the prescribed period, notify the non-unionized members or beneficiaries that they represent of their appointment and provide them with any prescribed information.

### *Costs*

(6) The costs associated with the application made under subsection (1) or (2) must be paid by the employer and not out of the pension fund.

*S.C. 2010, c. 12, s. 1817.*

### *Obligation of employer and administrator*

29.09 (1) The employer and administrator must provide the representatives with any prescribed information in the prescribed manner and within the prescribed period.

### *Fees and expenses*

(2) The reasonable fees and expenses of the representatives must be paid by the employer and not out of the pension fund.

*S.C. 2010, c. 12, s. 1817.*

### *Workout agreement*

29.1 (1) Subject to the regulations made for the purposes of sections 29.03 to 29.09, this section and sections 29.2 and 29.3, the employer and the representatives may negotiate a workout agreement that, among other things, proposes a funding schedule in respect of the pension plan for the period specified in the agreement.

### *Exception*

(2) The proposed funding schedule may not provide for payments that become due before the day on which the negotiation period begins or that relate to normal cost.

### *Termination*

(3) A workout agreement may not be entered into in respect of a pension plan that has been terminated in whole.

*S.C. 1998, c. 12, s. 19; S.C. 2010, c. 12, s. 1817.*

### *Information to be provided to members and beneficiaries*

29.2 (1) The members and beneficiaries must be provided with the prescribed information regarding the proposed workout agreement within the prescribed period by their respective representatives or, if the representative agrees, by the employer.

#### *Consent of representatives*

(2) A representative who is not a bargaining agent may consent to a proposed workout agreement only if less than one third of the members or beneficiaries that they represent object to the agreement within the prescribed period.

#### *How objections are counted*

(3) Any objection expressed by a representative on behalf of the members or beneficiaries that they represent is to be counted as a separate objection for each person that they represent.

S.C. 2010, c. 12, s. 1817.

#### *Approval by Minister*

29.3 (1) The proposed funding schedule may take effect only if it is approved by the Minister, on the request of the employer and the representatives who consent to the proposed workout agreement.

#### *Objections*

(2) The request for approval of the funding schedule may be submitted to the Minister only if less than one third of the members and less than one third of the beneficiaries object to the proposed workout agreement within the prescribed period.

#### *Request for approval*

(3) A request for approval must be submitted within the prescribed period and must be accompanied by

(a) a copy of the proposed workout agreement signed by the employer and the representatives that consent to it;

(b) the funding schedule in the form that the Superintendent directs;

(c) a written statement from each representative who consents to the proposed workout agreement or the employer, as the case may be, confirming that the requirements set out in subsection 29.2(1) have been met;

(d) a written statement in which the employer confirms that the requirement set out in subsection (2) has been met; and

(e) any prescribed documents or information.

*Conditions*

(4) The Minister may approve the funding schedule only if, in the Superintendent's opinion, it complies with the regulations made under subparagraph 39(1)(n.1)(v). In deciding whether or not to approve the funding schedule, the Minister must consider the prescribed criteria and any other matter that the Minister considers relevant.

*Notification of decision*

(5) The Minister must notify the Superintendent, employer, administrator and representatives of the decision and, if the funding schedule is approved, must provide the Superintendent with a copy of the schedule.

*Effect of approval*

(6) On approval by the Minister, the funding schedule is, for the purposes of this Act - except section 38 - and the regulations, considered to be part of the prescribed tests and standards for solvency in respect of the pension plan in question.

*Inconsistency*

(7) In the event of an inconsistency between the approved funding schedule and the provisions of the regulations, the funding schedule prevails to the extent of the inconsistency.

S.C. 2010, c. 12, s. 1817.

**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.

*R.S.C. 1985, c. 32 (2nd Supp.), s. 30; S.C. 2010, c. 12, s. 1824 (F).*

## **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.

*R.S.C. 1985, c. 32 (2nd Supp.), s. 31.*

## **ELECTRONIC COMMUNICATIONS**

*Consent and other conditions*

31.1 (1) Any requirement under this Act to provide a person with information, including information in a document, may be satisfied by the provision of an electronic document if

(a) the addressee has consented and has designated an information system for the receipt of the electronic document;

(b) the electronic document is provided to the designated information system; and

(c) the information in the electronic document is accessible by the addressee and capable of being retained by the addressee, so as to be usable for subsequent reference.

*Revocation of consent*

(2) An addressee may revoke the consent referred to in paragraph (1)(a).

*Non-application*

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

(a) to any requirement under this Act to provide the Minister or the Superintendent with information;

(b) to any requirement under this Act, imposed on the Minister or the Superintendent, to provide a person with information; or

(c) to any requirement under this Act exempted, by regulation, from the application of those subsections.

*Communications by Minister or Superintendent*

(4) For greater certainty, the Minister and the Superintendent may use electronic means to communicate information, including information in a document, under this Act.

*S.C. 2010, c. 25, s. 195.*

*Signatures*

31.2 A requirement under this Act for a signature is satisfied in relation to an electronic document if the prescribed requirements, if any, are met and if the signature results from the use by a person of a technology or a process that permits the following to be proven:

(a) the signature resulting from the use by the person of the technology or process is unique to them;

(b) the technology or process is used by the person to incorporate, attach or associate their signature to the electronic document; and

(c) the technology or process can be used to identify its user.

*S.C. 2010, c. 25, s. 195.*

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

### *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.

*S.C. 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 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.

*S.C. 1998, c. 12, s. 22; S.C. 2010, c. 12, s. 1818.*

## GENERAL

### *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.C. 1985, c. 32 (2nd Supp.), s. 34; S.C. 1998, c. 12, s. 23; S.C. 2003, c. 22, s. 225(z.16) (E).*

### *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.

*R.S.C. 1985, c. 32 (2nd Supp.), s. 35.*

### *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 or, in Quebec, null.

### *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 or, in Quebec, null.

*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 or, in Quebec, null.

*Exception*

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

*R.S.C. 1985, c. 32 (2nd Supp.), s. 36; S.C. 2000, c. 12, s. 262; S.C. 2010, c. 12, s. 1825 (E).*

*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 or, in Quebec, null, 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 or, in

Quebec, null any amendment to that pension plan that under subsection (1) is subject to being declared void or, in Quebec, null, and thereon, except as otherwise determined on appeal, if any, the amendment shall be deemed to be and always to have been void or, in Quebec, null 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.

*R.S.C. 1985, c. 32 (2nd Supp.), s. 37; S.C. 2010, c. 12, s. 1825 (E).*

*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.

*S.C. 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) in any record, writing or other document, makes a false or deceptive statement or a false or deceptive entry, 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) If a corporation or other body is guilty of an offence under this section, every officer, director, agent or mandatary 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.C. 1985, c. 32 (2nd Supp.), s. 38; S.C. 1998, c. 12, s. 25; S.C. 2001, c. 9, s. 583; S.C. 2010, c. 12, s. 1819 (E).*

**REGULATIONS***Regulations*

39 (1) The Governor in Council may make regulations

(a) respecting applications for registration of pension plans;

(a.1) REPEALED: S.C. 2012, c. 16, s. 89, effective December 14, 2012 (SI/2012-102).

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

(b.1) respecting the implementation of a federal-provincial agreement;

(b.2) exempting a federal-provincial agreement or any provision of that agreement from the application of subsection 6.2(1);

(b.3) respecting transitional matters in the event that the Government of Canada ceases to be a party to a federal-provincial agreement;

(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;

(c.1) respecting the transfer of pension benefit credit of any person who cannot be located, as well as the assets relating to that credit to the entity designated under section 10.3, including the circumstances and conditions under which that credit and those assets may be transferred to that entity;

(c.2) respecting the entity designated under section 10.3;

(c.3) respecting the holding of pension benefit credit of any person who cannot be located, as well as the assets relating to that credit by the entity designated under section 10.3, the making of claims for that credit and the disbursement of that credit;

(c.4) respecting the transfer to Her Majesty in right of Canada of assets held by the entity designated under section 10.3;

(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;

(e.1) respecting the interest to be paid on the amounts due to the pension fund from the employer or the administrator;

(e.2) respecting the letters of credit referred to in subsection 9.11(1), including regulations

(i) specifying the types of payments that may be replaced by a letter of credit,

(ii) specifying the circumstances in which a payment or part of a payment may be replaced by a letter of credit and the conditions and restrictions that apply,

(iii) specifying the eligibility criteria that the issuer of the letter of credit and the trustee referred to in section 9.13 must meet,

(iv) specifying the terms and conditions that a letter of credit and a trust agreement must contain,

(v) specifying the circumstances in which, on the direction of the employer, a letter of credit may be cancelled or its face value amended and the conditions that apply, and

(vi) specifying the circumstances in which a letter of credit must be cancelled or its face value reduced and the amount - or part of the amount - in respect of which it was obtained to be paid by the employer into the pension fund;

(e.3) respecting the reduction of payments referred to in section 9.16, including specifying the conditions under which they may be reduced and the types of payments that may be reduced;

(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;

(h.2) respecting solvency ratios and solvency ratio levels and the manner in which they are to be determined;

(i) authorizing the Superintendent to specify the information in respect of pension plans that is to be provided to the Superintendent by the administrator;

(i.1) authorizing the Superintendent to specify the information in respect of pension plans that is to be provided to the Superintendent by the employer;

(i.2) respecting the establishment of a separate pension plan under section 10.4, the determination of assets to be transferred to that plan and the transfer of assets and liabilities to that plan;

(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 must deal with complaints or inquiries from members of the pension plan, former members and any other persons entitled to pension benefits 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;

(k.1) respecting phased retirement benefits;

(k.2) respecting variable benefits;

(l) defining the term disability;

(l.1) defining the term normal cost for the purposes of paragraph 29(6)(a) and subsections 29.07(1) and 29.1(2);

(m) respecting the meaning of impair the solvency for the purposes of section 26.1;

(m.1) respecting payment of the amount described in subsection 29(6.1);

(m.2) respecting the manner in which the amount described in subsection 29(6.1) is to be calculated, including the periodic adjustment of that amount between the date of termination and the date of the winding-up of the pension plan;

(m.3) respecting the determination of the portion referred to in subsection 29(6.3) and the reversion of that portion to the benefit of the employer;

(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;

(n.1) respecting the distressed pension plan scheme provided for in sections 29.01 to 29.3, including regulations

(i) specifying the circumstances in which the election referred to in subsection 29.03(1) may not be made,

(ii) specifying the form and content of the notice to be provided under subsection 29.03(5) as well as the manner in which and the period within which it is to be provided,

(iii) respecting the negotiation process,

(iv) respecting the determination of the day on which the negotiation period is to end, and



- (v) respecting the funding schedule, including what it may provide for and the requirements that it must meet;
- (n.11) respecting the investment of the assets of a pension fund;
- (n.2) respecting the process by which investment options are offered by an administrator and choices among those options are made;
- (n.3) respecting investment options offered by an administrator;
- (n.4) prescribing any measure necessary for the purposes of sections 31.1 and 31.2, including the time when and circumstances under which an electronic document is to be considered to have been provided or received and the place where it is considered to have been provided or received;
- (n.5) setting out the requirements under this Act to which subsections 31.1(1) and (2) do not apply;
- (n.6) authorizing the Superintendent to specify the form of any information - including information in a document - required to be provided to him or her under the regulations, as well as the manner of providing that information;
- (n.7) respecting the composition of a board of trustees or other similar body referred to in paragraph 7(1)(a);
- (o) prescribing anything that by this Act is to be prescribed; and
- (p) generally for carrying out the purposes and provisions of this Act.

#### *Classes*

(2) A regulation made under this Act may be made applicable generally to all pension plans or specifically to one or more classes of pension plans.

#### *General or specific application*

(3) A regulation made for the purposes of subsection 8(4.1) or 9(1), sections 9.11 to 9.15 or subsection 10.1(2) may be made applicable generally to all pension plans or specifically to one or more pension plans.

*R.S.C. 1985, c. 32 (2nd Supp.), s. 39; S.C. 1998, c. 12, s. 26; S.C. 2001, c. 34, s. 76; S.C. 2007, c. 35, s. 142; S.C. 2010, c. 12, s. 1820(2) to (4) (F), (5), (7) (F), (8) and (10) (F); S.C. 2010, c. 12, s. 1820(12); S.C. 2010, c. 25, s. 196(1) and (2), as amended by S.C. 2010, c. 25, s. 198(8); S.C. 2010, c. 12, s. 1820(1), (6), (9) and (11); S.C. 2012, c. 16, s. 89; S.C. 2010, c. 25, s. 196(3); S.C. 2016, c. 7, s. 206; S.C. 2022, c. 10, s. 188(2).*

#### *Incorporation by reference*

39.1 (1) A regulation made under this Act may incorporate by reference a document produced by a person or body other than the Minister or the Superintendent.

*Reproduced or translated document*

(2) A regulation may incorporate by reference a document that the Minister or Superintendent reproduces or translates from a document produced by a person or body other than the Minister or Superintendent, with any adaptations of form or reference that will facilitate its incorporation.

*Jointly produced document*

(3) A regulation may incorporate by reference a document that the Minister or Superintendent produces jointly with a provincial or foreign government or government agency for the purpose of harmonizing the regulation with other laws.

*Scope of incorporation*

(4) A document may be incorporated by reference as it exists on a particular date or as it is amended from time to time.

*Defence*

(5) No person may be convicted of an offence or subjected to a penalty for the contravention of a regulation if a document that is relevant to the offence or contravention is incorporated by reference in the regulation unless it is proved that, at the time of the alleged contravention, the document was reasonably accessible to the person or reasonable steps had been taken to ensure that the document was accessible to the public.

*Registration and publication*

(6) For greater certainty, a document that is incorporated by reference in a regulation is not required to be transmitted for registration or published in the Canada Gazette by reason only that it is incorporated by reference.

*Exception*

(7) A regulation that is specifically applicable to one pension plan or one employer may not incorporate by reference a document produced by the employer or administrator or any person related to either of them, including any body corporate that - within the meaning of subsections 2(2), (4) and (5) of the Canada Business Corporations Act - is affiliated with either of them or is the holding body corporate or a subsidiary of either of them.

S.C. 2010, c. 12, s. 1821.

**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) REPEALED: S.C. 2010, c. 12, s. 1822, effective July 1, 2011 (SI/2011-21).
- (c) REPEALED: S.C. 2010, c. 12, s. 1822, effective July 1, 2011 (SI/2011-21).
- (d) REPEALED: S.C. 2010, c. 12, s. 1822, effective July 1, 2011 (SI/2011-21).

*R.S.C. 1985, c. 32 (2nd Supp.), s. 40; S.C. 2010, c. 12, s. 1822.*

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

**REPEALED**

*Repealed*

43. REPEALED: S.C. 2010, c. 12, s. 1823, effective July 1, 2011 (SI/2011-21).

*R.S.C. 1985, c. 32 (2nd Supp.), s. 43; S.C. 2010, c. 12, s. 1823.*

*Repealed*

44. REPEALED: S.C. 2010, c. 12, s. 1823, effective July 1, 2011 (SI/2011-21).

*R.S.C. 1985, c. 32 (2nd Supp.), s. 44; S.C. 2010, c. 12, s. 1823.*

*Repealed*

45. REPEALED: S.C. 2010, c. 12, s. 1823, effective July 1, 2011 (SI/2011-21).

*R.S.C. 1985, c. 32 (2nd Supp.), s. 45; S.C. 2010, c. 12, s. 1823.*

## **COMING INTO FORCE**

*Coming into force*

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

*R.S.C. 1985, c. 32 (2nd Supp.), s. 46.*

## **SCHEDULE**

### **TRANSITIONAL PROVISIONS**

*TRANSITIONAL PROVISIONNOTE: S.C. 2010, c. 25, s. 197, effective December 15, 2010 (R.A.), contained the following transitional provision:*

*Adoption of new plan*

197. If, as a result of the adoption of a new plan, employer contributions to a pension plan are suspended or cease before the day on which subsection 29(4) of the Pension Benefits Standards Act, 1985, as enacted by subsection 194(1), comes into force, 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, regardless of whether the assets and liabilities of the original plan have been consolidated with those of the new plan.