

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c.C-36, AS AMENDED

AND IN THE MATTER OF SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c.C-43, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF THE VICTORIAN ORDER OF NURSES FOR CANADA, VICTORIAN ORDER OF NURSES FOR CANADA – EASTERN REGION, AND VICTORIAN ORDER OF NURSES FOR CANADA – WESTERN REGION

FACTUM OF THE SUPERINTENDENT OF FINANCIAL SERVICES
(Pension Plan Restructuring)

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MINISTRY OF THE ATTORNEY GENERAL
CIVIL LAW DIVISION, FSCO BRANCH
Financial Services Commission of Ontario
5160 Yonge Street, 17th Floor
Toronto ON M2N 6L9

Deborah McPhail – LSUC #231540
Tel: 416-226-7764
Fax: 416-590-7556

**Counsel for the Superintendent of
Financial Services**

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FACTUM OF THE SUPERINTENDENT OF FINANCIAL SERVICES

(Pension Plan Restructuring)

I. OVERVIEW

1. The VON Canada Pension Plan (the “Plan”) is a multi-jurisdictional pension plan. It is registered in Ontario but has members in other provinces. Because the Applicants’ proposal for pension plan restructuring affects members outside Ontario, the Superintendent of Financial Services (the “Superintendent”) must adhere to two multi-jurisdictional agreements that are in place and apply pension legislation from British Columbia, Alberta, Saskatchewan, Manitoba, New Brunswick, and Newfoundland. All but one of the pension regulators for these provinces have advised the Superintendent on a preliminary basis that the proposal does not comply with their legislation.

2. Therefore, absent authorization from this Court, the Superintendent is unable to agree to the proposal except as regards the one affected member in Saskatchewan.

II. FACTS

3. The Superintendent does not take issue with the facts set out in VON's Factum, although the Superintendent does not have specific knowledge of some of these facts.

III. ISSUES AND THE LAW

4. The Superintendent suggests that the appropriate issues on this motion are as follows:

- a) Does the Superintendent have jurisdiction to order the VON Canada Pension Plan (the "Plan") partially wound up for some or all of the jurisdictions in which the employment of Plan members has been terminated? **There is no jurisdiction to order a partial wind up regarding members in British Columbia, Alberta, and Prince Edward Island. While there may be jurisdiction to order a partial wind up regarding members in Saskatchewan, Manitoba, New Brunswick, and Newfoundland, full funding is required on partial wind up in all of these jurisdictions except Saskatchewan.**
- b) If the answer to issue (a) is no, should this Court nevertheless authorize the Applicants to restructure the Plan as proposed by VON? **If this Court is inclined to grant the Applicants' request, it should be only with respect to the affected members in Saskatchewan, Manitoba, New Brunswick, and Newfoundland but full funding should be required except for Saskatchewan, as otherwise the order would be contrary to the pension legislation and would result in unequal treatment of Plan members.**

5. The Superintendent will address four issues in this factum:
- a) the role and mandate of the Superintendent;
 - b) the two multi-jurisdictional agreements that are in place;
 - c) whether the Superintendent has jurisdiction to order a partial wind up for the jurisdictions that have partial wind ups in their legislation; and
 - d) whether the Superintendent has jurisdiction to order a partial wind up for the jurisdictions that do not have partial wind ups in their legislation.

a) Role and Mandate of the Superintendent

6. The *Financial Services Commission of Ontario Act, 1997* (the “FSCO Act”) created the Financial Services Commission of Ontario (“FSCO”) in 1998 as an agency to provide regulatory services that protect the public interest and enhance public confidence in the “regulated sectors”.

Financial Services Commission of Ontario Act, 1997, S.O. 1997, c.28, ss. 2, 3

7. The “regulated sectors” include all persons who establish or administer a pension plan within the meaning of the *Pension Benefits Act (“PBA”)* and all employers or other persons on their behalf who are required to contribute to any such pension plan.

Financial Services Commission of Ontario Act, 1997, ibid, s. 1

8. The *FSCO Act* also establishes the Superintendent as the chief executive officer of FSCO.

Financial Services Commission of Ontario Act, 1997, supra, s. 5(1)

9. The Superintendent's mandate under the *FSCO Act* includes the administration and enforcement of the *FSCO Act* and every other Act that confers powers on or assigns duties to the Superintendent. "Every other Act" includes the *PBA*.

Financial Services Commission of Ontario Act, 1997, supra, s. 5(2)(c)

10. The *PBA* provides that with the approval of the Lieutenant Governor in Council, the Minister of Finance may enter into one or more agreements on behalf of the Crown with a representative of a designated jurisdiction concerning the pension benefits legislation that governs designated multi-jurisdictional pension plans in Ontario and in the designated jurisdiction.

Pension Benefits Act, R.S.O. 1990, c.P.8, as amended, s. 100(1)

11. The *PBA* also provides that an agreement respecting multi-jurisdictional plans may establish a mechanism for determining whether the Superintendent has the principal regulatory jurisdiction for the pension plan.

Pension Benefits Act, ibid, s. 100(3)

12. The Plan is a multi-jurisdictional pension plan because it has members in more than one province, or jurisdiction. The Plan has always been treated as a multi-jurisdictional plan but not a multi-employer pension plan.

***Victorian Order of Nurses for Canada v. Ontario (Superintendent Financial Services)*, 2009 ONFST 11, at pp. 27-28; Book of Authorities of the Applicants, Tab 3**

b) Multi-Jurisdictional Agreements

13. There are two multi-jurisdictional agreements that apply in this case:

- the 2016 Agreement Respecting Multi-Jurisdictional Pension Plans (the “2016 Agreement”) governs the regulation of multi-jurisdictional pension plans that have members in British Columbia, Nova Scotia, Ontario, Quebec, and Saskatchewan;
- the 1968 Memorandum of Reciprocal Agreement (the “1968 Memorandum”) governs the regulation of multi-jurisdictional pension plans that have members in Alberta, Manitoba, New Brunswick, and Newfoundland.

2016 Agreement Respecting Multi-Jurisdictional Pension Plans, dated May 2016; Book of Authorities of the Applicants, Tab 4

Memorandum of Reciprocal Agreement, dated June 27, 1968; Book of Authorities of the Applicants, Tab 5

14. Prince Edward Island is not governed by either agreement because to date, it does not have pension legislation.

15. The reasons why some jurisdictions are governed by the 2016 Agreement and others by the 1968 Memorandum are historical and complicated. However, the distinction is not relevant to this motion because under either agreement, the

Superintendent is the “major authority” who is authorized to enforce the pension legislation of the “minor authority” as it relates to partial wind ups.

2016 Agreement, supra, section 4(4), pp. 6-7; Schedule “B”, pp. 35-41; Book of Authorities of the Applicants, Tab 4

Memorandum of Reciprocal Agreement, supra, s. 2; Book of Authorities of the Applicants, Tab 5

16. Under both agreements, the Superintendent must determine whether the minor authority's pension legislation authorizes partial wind ups and if so, the grounds for ordering a partial wind up and the funding that is required.

17. A partial wind up is a statutory concept that does not otherwise exist. A partial wind up can only be ordered if certain statutory preconditions are present.

18. Partial wind ups have not existed under the *PBA* since July 2012. However, because both agreements provide that the major authority enforces the minor authority's legislation with regard to partial wind ups, the Superintendent has jurisdiction to order a partial wind up for a minor authority if that minor authority's pension legislation permits a partial wind up to be ordered and there are grounds to order it under that legislation.

19. This requires an examination of the legislation of the following jurisdictions that authorize partial wind ups: Saskatchewan; Newfoundland; New Brunswick; and Manitoba.

20. The pension legislation for British Columbia and Alberta does not recognize or authorize partial wind ups. Prince Edward Island does not have pension legislation.

c) Does the Superintendent have jurisdiction to order a partial wind up for the jurisdictions whose pension legislation authorizes partial wind ups – Saskatchewan, Newfoundland, New Brunswick, and Manitoba?

i) Saskatchewan

21. Saskatchewan's pension legislation is *The Pension Benefits Act, 1992* (the "Saskatchewan Act"). Subsection 51(2) of that Act provides for a partial termination:

51(2) Where an employer fails to make contributions to a plan with respect to a specific and identifiable class or group of members, the superintendent may terminate that part of the plan that is applicable to that class or group.

The Pension Benefits Act, 1992, c.P-6.001 of the Statutes of Saskatchewan, 1992, s. 51(2)

22. Subsection 52(1) of the Saskatchewan Act provides an additional ground for a partial termination:

52(1) Where, in the opinion of the superintendent, an employer who employs or employed members or former members of a plan has discontinued or is about to discontinue part or all of the employer's business operations, the superintendent may terminate all or part of the plan.

The Pension Benefits Act, 1992, ibid, s. 52(1)

23. It does not appear that the Plan has a specific and identifiable class or group of members relating to the members whose employment was terminated. However, the Applicants have discontinued part of VON's business operations in Saskatchewan.

Therefore, there are grounds for a partial termination of the Plan with regard to the one Saskatchewan terminated member under subsection 52(1) of the Saskatchewan Act.

24. The Saskatchewan Act provides for funding on termination:

54(1) Within 30 days after the termination of a plan, the employer:

- (a) shall pay into the plan all amounts whose payment is required by the terms of the plan or this Act; and
- (b) without limiting the generality of clause (a), shall make all payments that, by the terms of the plan or this Act:
 - (i) are due from the employer to the plan but have not been made at the date of the termination; or
 - (ii) have accrued to that date but are not yet due.

55. Where only part of a plan is terminated, the pensions and other benefits affected by the partial termination shall not be less than they would have been if the whole of the plan had been terminated on the date of the partial termination.

The Pension Benefits Act, 1992, supra, ss. 54, 55

25. These provisions indicate that a plan must be fully funded on partial termination under the Saskatchewan Act. However, section 39 in the regulations to the Saskatchewan Act allows an unfunded liability on partial wind up and states that each unfunded liability is to be dealt with separately and applied only to the benefits to which it was established. In other words, that Act permits unequal funding.

Regulation P6-001R1, s. 39

ii) **Newfoundland**

26. The Newfoundland pension legislation is the *Pension Benefits Act, 1997* (the “Newfoundland Act”). Section 59 of that Act authorizes a partial termination:

59(1) The superintendent may declare the whole or part of a pension plan terminated where

(a) there is a suspension or cessation of employer contributions in respect of all or part of the plan membership, except where surplus is used to meet funding requirements...

(2) A declaration made under subsection (1) shall declare the whole or part of a pension plan to be terminated as of a date determined by the superintendent.

Pension Benefits Act, 1997, c. P-4.01, s. 59

27. The Newfoundland Act requires full funding on a plan termination:

61(1) On termination of a pension plan, the employer shall pay into the pension fund all amounts that would otherwise have been required to be paid to meet the requirements prescribed by the regulations for solvency, including

(a) an amount equal to the aggregate of

- (i) the normal actuarial cost, and
- (ii) special payments prescribed by the regulations,

that have accrued to the date of termination; and

(b) all

- (i) amounts deducted by the employer from members' remuneration, and
- (ii) other amounts due to the pension fund from the employer

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

(2) Where, on the termination, after April 1, 2008, of a pension plan, other than a multi-employer pension plan, the assets in the pension fund are less than the value of the benefits provided under the plan, the employer shall, as prescribed by the regulations, make the payments into the pension fund, in addition to the

payments required under subsection (1), that are necessary to fund the benefits provided under the plan.

Pension Benefits Act, 1997, ibid, s. 61

28. The Superintendent therefore has the authority to partially terminate the Plan with respect to the thirteen terminated Newfoundland members and to require full funding on the partial termination.

iii) New Brunswick

29. The pension legislation for New Brunswick is the *Pension Benefits Act* (the "New Brunswick Act"). This Act authorizes the Superintendent to order a partial wind up:

61(1) The Superintendent may by order require the wind-up of a pension plan, in whole or in part, on such date and with such notice as in the opinion of the Superintendent are appropriate, if

- (a) there is a cessation or suspension of employer contributions to the pension fund.

Pension Benefits Act, Chapter P-5.1, s. 61

30. The New Brunswick Act states as follows regarding funding on a partial wind up:

65(1) Upon wind-up of a pension plan, in whole or in part, an employer required to make contributions to the pension fund shall pay into the fund

- (a) an amount equal to the total of all payments that, under this Act, the regulations and the plan have accrued to and including the date of the wind-up, whether or not payment of such money is due on that date; and
- (b) an amount equal to all payments that under this Act, the regulations and the plan are due from the employer to the pension fund but that have not been paid at the date of wind-up.

65(1.1) For the purpose of paragraph 1(a), if a pension plan is wound up, in whole or in part, and as of the date of the wind-up the market value of the investments held by the plan does not equal or exceed its solvency liabilities, the employer shall pay into the fund in accordance with subsection (4), an amount so that

(b) where the plan is wound up in part, the market value of the investments held by the plan attributable to that portion of the plan being wound up equals its solvency liabilities for that part,

and such amount required to be paid shall be deemed to have accrued as of the effective date of the wind-up.

65(4) Where a pension plan is wound up, in whole or in part, and an amount under subsection 1.1 is determined to be owing and the employer is not insolvent,

(a) the employer shall fund the amount over a period of not more than five years after the effective date of the wind-up,

(b) the administrator shall continue to file annual information returns and actuarial valuation reports as required under this Act until the amount has been retired, and

(c) subject to subsections 62(2) and (7), the assets of the plan shall be distributed in the manner and to the extent prescribed.

66(1) Upon the wind-up of a pension plan in whole or in part, if insufficient funds are available to pay the pensions and benefits under the plan, the amount of the pension or benefit to which a person is entitled may be reduced in accordance with the regulations.

66(2) Nothing in subsection (1) prevents the Superintendent from ordering a reduction in pensions and benefits under a pension plan before the wind-up of the plan is completed if the Superintendent is of the opinion, upon reasonable and probable grounds, that there are or are likely to be insufficient funds available to pay the pensions and benefits under the plan.

Pension Benefits Act, ibid, ss. 65 & 66

31. Therefore, there is authority to order a partial wind up under the New Brunswick Act with regard to the forty-seven terminated New Brunswick members. Full funding is required.

d) Manitoba

32. The Manitoba legislation is *The Pension Benefits Act* (the “Manitoba Act”). It provides for a partial termination in limited circumstances:

26.1(12) The suspension or cessation of contributions by a participating employer to a multi-unit pension plan does not constitute a partial termination of the plan unless

- (a) the plan expressly provides that it does; or
- (b) the superintendent, upon application by the administrator, declares that it does.

The Pension Benefits Act, C.C.S.M. c.P.32, s. 26.1(12)

33. However, this provision does not apply unless the Plan administrator applied and the Manitoba superintendent exercised her discretion to designate the Plan as a multi-unit pension plan. The Manitoba superintendent has advised the Superintendent that such a designation has not been made. Therefore, there is no jurisdiction to order the Plan partially wound up with respect to the nine terminated Manitoba members.

The Pension Benefits Act, ibid, s. 26.1(2)

General Considerations

34. The Superintendent’s practice is to consult with the other pension regulators before making an order pursuant to the 2016 Agreement or the 1968 Memorandum. This preserves harmony and ensures consistency. Therefore, although the Saskatchewan, Newfoundland, New Brunswick, and Manitoba Acts all authorize the

Superintendent to order a partial termination or partial wind up, the Superintendent would want to consult with those pension regulators to determine whether to issue the order(s) and if so, the funding obligations and to whom the funding obligations should be ordered. On a preliminary basis the Superintendent has been advised by all of the regulators except Saskatchewan that a proposal that results in unequal funding and treatment would not be approved.

35. It must be emphasized as well that the ordering of a partial termination or partial wind up under each of the above four Acts is discretionary. Nothing in any of the four Acts requires the Superintendent to make the order. If this Court is inclined to grant the Applicants' restructuring proposal, the Superintendent would request an adjournment in order to consult with these four pension regulators.

36. Finally, any order by the Superintendent must be issued under the procedural provisions of the major authority's legislation. In that case, the Ontario *Pension Benefits Act* requires that a Notice of Intended Decision be issued. That Notice would give the right to request a hearing before the Financial Services Tribunal. A final Order could not be issued until the time for requesting a hearing had passed or the Tribunal had held a hearing and directed the Superintendent to make a final Order.

Pension Benefits Act, R.S.O. 1990, c.P.8, as amended, s. 89

d) Does the Superintendent have jurisdiction to order a partial wind up for the jurisdictions that do not have partial wind ups in their legislation - British Columbia, Alberta, and Prince Edward Island?

37. The pension legislation for British Columbia and Alberta does not authorize or recognize partial wind ups or partial terminations. Prince Edward Island does not have pension legislation.

Pension Benefits Standards Act [SBC] Chapter 30, s. 98

Employment Pension Plans Act, Chapter I-8.1, s. 118

38. A partial wind up or partial termination is a creature of statute. It does not exist at common law.

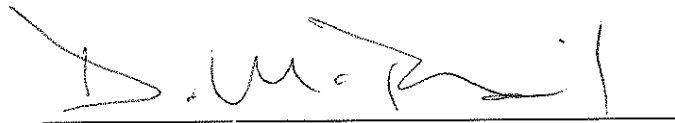
39. Therefore, the Superintendent simply has no jurisdiction to order a partial wind up with respect to the terminated members in any of these three jurisdictions.

40. A suggestion has been made that British Columbia and Alberta legislation allow the superintendent in those jurisdictions to designate a plan as a “multi-unit” pension plan that would permit individual employers to withdraw from the plan on the basis of less than 100% funding. The pension regulators for both of these jurisdictions have advised that no such designation has been made.

IV. ORDER REQUESTED

41. The Superintendent respectfully requests that the Applicants' proposal be rejected by this Honourable Court except as regards the one affected member in Saskatchewan. If the Court is inclined to allow the proposal as regards the terminated Plan members in Manitoba, New Brunswick, and Newfoundland, the Superintendent requests time to consult with these pension regulators to determine how best to proceed.

All of which is respectfully submitted, this 8th day of July, 2016.



Deborah McPhail
Counsel for the Superintendent of
Financial Services

SCHEDULE "A" – LIST OF AUTHORITIES

1. *Victorian Order of Nurses for Canada v. Ontario (Superintendent Financial Services)*, 2009 ONFST 11

SCHEDULE "B" – STATUTORY PROVISIONS

1. *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c.28, ss. 1, 2, 3, 5
2. *Pension Benefits Act*, R.S.O. 1990, c.P.8, ss. 89, 100
3. *The Pension Benefits Act, 1992*, c.P-6.001 of the *Statutes of Saskatchewan, 1992*, ss. 52, 54, 55
4. *Pension Benefits Act, 1997*, (Newfoundland), c.p-4.01, ss. 59, 61
5. *Pension Benefits Act*, Chapter P-5.1 (New Brunswick), ss. 61, 65, 66
6. *The Pension Benefits Act*, C.C.S.M., c.P.32 (Manitoba), s. 26.1
7. *Pension Benefits Standards Act [SBC]* Chapter 30, s. 98
8. *Employment Pension Plans Act*, Chapter I-8.1 (Alberta), s.118

Financial Services Commission of Ontario Act, 1997

S.O. 1997, CHAPTER 28

Consolidation Period: From June 4, 2015 to the e-Laws currency date.

Last amendment: 2015, c. 20, Sched. 12.

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DEFINITIONS

Definitions

1. In this Act,

“Commission” means the Financial Services Commission of Ontario established under section 2; (“Commission”)

“Director” means the director of arbitrations appointed under the *Insurance Act*; (“directeur”)

Note: On a day to be named by proclamation of the Lieutenant Governor, the definition of “Director” is repealed. (See: 2014, c. 9, Sched. 5, ss. 1, 8)

“Minister” means the Minister of Finance, and “Ministry” has a corresponding meaning; (“ministre”, “ministère”)

“regulated sector” means a sector that consists of,

- (a) all co-operative corporations to which the *Co-operative Corporations Act* applies,
- (b) all credit unions, caisses populaires and leagues to which the *Credit Unions and Caisses Populaires Act, 1994* applies,
- (c) all persons engaged in the business of insurance and governed by the *Insurance Act*,
- (c.1) all holders of a service provider’s licence issued under Part VI (Automobile Insurance) of the *Insurance Act*,
- (d) all corporations registered or incorporated under the *Loan and Trust Corporations Act*,
- (e) all mortgage brokerages, mortgage brokers, mortgage agents and mortgage administrators licensed under the *Mortgage Brokerages, Lenders and Administrators Act, 2006*, or
- (f) all persons who establish or administer a pension plan within the meaning of the *Pension Benefits Act* and all employers or other persons on their behalf who are required to contribute to any such pension plan; (“secteur réglementé”)

Note: On a day to be named by proclamation of the Lieutenant Governor, the definition of “regulated sector” in section 1 of the Act is amended by striking out “or” at the end of clause (e), by adding “or” to the end of clause (f) and by adding the following clause: (See: 2015, c. 9, s. 29 (1))

- (g) all persons licensed to establish and administer pooled registered pension plans under the *Pooled Registered Pension Plans Act, 2015* and all employers who enter into contracts with those persons;

"Superintendent" means the Superintendent of Financial Services appointed under section 5; ("surintendant")

"Tribunal" means the Financial Services Tribunal established under section 6. ("Tribunal") 1997, c. 28, s. 1; 2006, c. 29, s. 62 (1); 2013, c. 2, Sched. 6, s. 1.

COMMISSION

Commission established

2. (1) There is hereby established a commission to be known in English as the Financial Services Commission of Ontario and in French as Commission des services financiers de l'Ontario. 1997, c. 28, s. 2 (1).

Members

(2) The Commission shall consist of the chair and the two vice-chairs of the Commission, the Superintendent and the Director. 1997, c. 28, s. 2 (2).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (2) is amended by striking out "the Superintendent and the Director" at the end and substituting "and the Superintendent". (See: 2014, c. 9, Sched. 5, ss. 2, 8)

Quorum

(3) A majority of the members of the Commission constitutes a quorum. 1997, c. 28, s. 2 (3).

Purposes

3. The purposes of the Commission are,

- (a) to provide regulatory services that protect the public interest and enhance public confidence in the regulated sectors;
- (b) to make recommendations to the Minister on matters affecting the regulated sectors; and
- (c) to provide the resources necessary for the proper functioning of the Tribunal. 1997, c. 28, s. 3.

Chair and vice-chairs

4. (1) The Lieutenant Governor in Council shall appoint the chair and the two vice-chairs of the Commission. 2006, c. 34, s. 33 (1).

Acting chair

(2) If the chair of the Commission is absent or unable to act, or if the office of chair is vacant, the vice-chairs shall designate one of them to act in the place of the chair who shall have the powers of the chair. 1997, c. 28, s. 4 (2).

Acting vice-chair

(3) If a vice-chair of the Commission is absent or unable to act, or if the office of a vice-chair is vacant, the chair of the Commission may designate a member of the Tribunal to act in the place of the vice-chair who shall have the powers of a vice-chair. 1997, c. 28, s. 4 (3).

Transition

(4) The chair and the vice-chair of the Pension Commission of Ontario holding office immediately before this section comes into force shall be the chair and one of the vice-chairs respectively of the Financial Services Commission of Ontario until the Lieutenant Governor in Council appoints their successors under subsection (1). 1997, c. 28, s. 4 (4).

SUPERINTENDENT

Superintendent

5. (1) There shall be a Superintendent of Financial Services appointed under Part III of the *Public Service of Ontario Act, 2006* who shall be the chief executive officer of the Commission. 1997, c. 28, s. 5 (1); 2006, c. 35, Sched. C, s. 43 (1).

Powers and duties

(2) The Superintendent shall,

- (a) be responsible for the financial and administrative affairs of the Commission;
- (b) exercise the powers and duties conferred on or assigned to the Superintendent;

- (c) administer and enforce this Act and every other Act that confers powers on or assigns duties to the Superintendent; and
- (d) supervise generally the regulated sectors. 1997, c. 28, s. 5 (2).

Same

(2.1) If an agreement under section 100 of the *Pension Benefits Act* provides for the delegation to the Superintendent of any powers or duties of a person who has supervisory or regulatory powers under the pension benefits legislation of another jurisdiction, the Superintendent is authorized to exercise those powers and perform those duties. 2010, c. 1, Sched. 8, s. 1.

Note: On a day to be named by proclamation of the Lieutenant Governor, section 5 of the Act is amended by adding the following subsection: (See: 2015, c. 9, s. 29 (2))

Same

(2.2) If an agreement under section 5 (Bilateral agreement) or 6 (Multilateral agreement) of the *Pooled Registered Pension Plans Act* (Canada), as those sections apply for the purposes of the *Pooled Registered Pension Plans Act, 2015*, provides for the delegation to the Superintendent of any powers or duties of a person who has supervisory or regulatory powers under the pooled registered pension plan legislation of another jurisdiction, the Superintendent is authorized to exercise those powers and perform those duties. 2015, c. 9, s. 29 (2).

Delegation of powers and duties

(3) The Superintendent may, subject to the conditions that the Superintendent considers appropriate, delegate in writing to any person employed in the Commission the exercise of any power or the performance of any duty that this Act, any other Act or an agreement under section 100 of the *Pension Benefits Act* confers on or assigns to the Superintendent and all acts done and decisions made under the delegation are as valid and effective as if done or made by the Superintendent. 1997, c. 28, s. 5 (3); 2010, c. 26, Sched. 8, s. 1.

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 5 (3) of the Act is repealed and the following substituted: (See: 2015, c. 9, s. 29 (3))

Delegation of powers and duties

(3) The Superintendent may, subject to the conditions that the Superintendent considers appropriate, delegate in writing to any person employed in the Commission the exercise of any power or the performance of any duty conferred on or assigned to the Superintendent under,

- (a) this Act;
- (b) any other Act;
- (c) an agreement under section 100 of the *Pension Benefits Act*; or
- (d) an agreement under section 5 (Bilateral agreement) or 6 (Multilateral agreement) of the *Pooled Registered Pension Plans Act* (Canada), as those sections apply for the purposes of the *Pooled Registered Pension Plans Act, 2015*. 2015, c. 9, s. 29 (3).

Effect of delegation

(3.1) An act done or decision made under a delegation given under subsection (3) is as valid and effective as if it had been done or made by the Superintendent. 2015, c. 9, s. 29 (3).

Same, hearings

(4) The Superintendent may appoint in writing any employee of the Commission, or any other person, to hold a hearing on behalf of the Superintendent and to exercise the powers and perform the duties of the Superintendent relating to the hearing. 1997, c. 28, s. 5 (4).

Oaths

(5) The Superintendent may administer an oath required under this Act and any other Act that confers powers on or assigns duties to the Superintendent. 1997, c. 28, s. 5 (5).

TRIBUNAL

Tribunal established

6. (1) There is hereby established a tribunal to be known in English as the Financial Services Tribunal and in French as Tribunal des services financiers. 1997, c. 28, s. 6 (1).

PENSION BENEFITS ACT
R.S.O. 1990, CHAPTER P.8

AND

REGULATIONS

FINANCIAL SERVICES COMMISSION

OF ONTARIO ACT, 1997

S.O. 1997, CHAPTER 28

AND

REGULATION

Contents of order

(3) An order under this section may include, but is not limited to, requiring the preparation of a new report and specifying the assumptions or methods or both that shall be used in the preparation of the new report. R.S.O. 1990, c. P.8, s. 88 (3).

Note: On a day to be named by proclamation of the Lieutenant Governor, section 88 is repealed and the following substituted:

Appeal or judicial review of special orders

88. (1) A person who is required to comply with an order made under subsection 87 (6) may appeal the order to the Tribunal by filing a notice of appeal with the Tribunal, and serving it on the Superintendent, within 15 days after the person receives the order. 2010, c. 9, s. 75.

Effect of appeal

(2) The appeal does not stay the order but the Tribunal may grant a stay until it disposes of the appeal. 2010, c. 9, s. 75.

Parties

(3) The parties to the appeal are the appellant, the Superintendent and such other persons as the Tribunal may specify. 2010, c. 9, s. 75.

Power of the Tribunal

(4) The Tribunal may, by order, confirm, vary or revoke the order or substitute another order. 2010, c. 9, s. 75.

Effect of judicial review

(5) An application for judicial review of an order made under subsection 87 (6) or under subsection (4), and any appeal from an order of the court on the application for judicial review, does not stay the order made under subsection 87 (6) or under subsection (4), as the case may be. 2010, c. 9, s. 75.

Same

(6) Despite subsection (5), a judge of the court to which the application is made or a subsequent appeal is taken may grant a stay until the matter is finally determined. 2010, c. 9, s. 75.

Note: On a day to be named by proclamation of the Lieutenant Governor, section 88 is repealed and the following substituted:

Tribunal hearing re special orders

88. (1) A person who is required to comply with an order made under subsection 87 (6) is entitled to a hearing by the Tribunal about the order if the person delivers a written request to the Tribunal within 30 days after a copy of the order is served on the person. 2010, c. 24, s. 40.

Effect of request

(2) The request for a hearing by the Tribunal does not stay the order, but the Tribunal may grant a stay until it disposes of the request. 2010, c. 24, s. 40.

Hearing

(3) Upon receiving the request made in accordance with subsection (1), the Tribunal shall appoint a time for and hold the hearing. 2010, c. 24, s. 40.

Parties

(4) The parties to the hearing are the person who requests the hearing, the Superintendent and such other persons as the Tribunal specifies. 2010, c. 24, s. 40.

Power of Tribunal

(5) At or after the hearing, the Tribunal by order may confirm, vary or revoke the order or substitute another order. 2010, c. 24, s. 40.

See: 2010, c. 24, ss. 40, 49 (4).

See: 2010, c. 9, ss. 75, 80 (2).

NOTICES OF, AND APPEALS FROM, INTENDED DECISIONS AND ORDERS

Notices and hearings

Notice of intention re registration

89. (1) If the Superintendent intends to refuse to register a pension plan, an amendment to a pension plan or part of an amendment to a pension plan or to revoke such a registration, the Superintendent shall serve notice of the intended decision, together with written reasons for it, on the applicant or administrator of the plan. 2010, c. 24, s. 42 (1).

Notice of intention re various orders

(2) If the Superintendent intends to make or refuse to make any of the following orders, the Superintendent shall serve notice of the intended decision, together with written reasons for it, on the administrator of the pension plan and on any other person to whom the intended order is to be directed:

1. An order under subsection 42 (9) or 43 (5) (repayment of money).

Note: On a day to be named by proclamation of the Lieutenant Governor, paragraph 1 of subsection 89 (2) of the Act is repealed and the following substituted: (See: 2015, c. 20, Sched. 34, s. 8)

1. An order under subsection 39.1 (12), 42 (9) or 43 (5) (repayment of money).

- 1.1 An order under subsection 68 (6) (effective date of a wind up).
2. An order under subsection 79.2 (15) (return of transferred assets).
3. An order under section 83 (application of the Guarantee Fund).
4. An order under section 87 (administration of pension plan).

Note: On a day to be named by proclamation of the Lieutenant Governor, paragraph 4 is repealed and the following substituted:

4. An order under subsection 87 (1) (administration of pension plan).

See: 2010, c. 9, ss. 77 (3), 80 (2).

5. An order under section 88 (preparation of a report). 2010, c. 9, s. 77 (1, 2); 2010, c. 24, s. 42 (2, 3).

Note: On a day to be named by proclamation of the Lieutenant Governor, paragraph 5 is repealed and the following substituted:

5. An order under subsection 87 (4) (preparation of a report).

See: 2010, c. 9, ss. 77 (3), 80 (2).

Notice of intention re membership

(3) If the Superintendent intends to make or refuse to make an order requiring an administrator to accept an employee as a member of a class of employees for whom a pension plan is established or maintained, the Superintendent shall serve notice of the intended decision, together with written reasons for it, on the administrator of the pension plan and the Superintendent shall serve, or require the administrator to serve, a copy of the notice and written reasons on the employee. 2010, c. 24, s. 42 (4).

Notice re reimbursement of overpayment, etc.

(3.0.1) If the Superintendent intends to consent or refuse to consent under subsection 62.1 (5) to a payment from the pension fund to the employer, the Superintendent shall serve notice of the intended decision, together with written reasons for it, on the applicant and the Superintendent may require the applicant to transmit a copy of the notice and written reasons to such other persons or classes of persons or both as the Superintendent specifies in the notice to the applicant. 2010, c. 24, s. 42 (5).

Notice re payment of surplus

(3.1) If an application is filed in accordance with subsection 78 (2) for the payment of surplus to the employer and the Superintendent intends to consent or refuse to consent under subsection 78 (1), the Superintendent shall serve notice of the intended decision, together with written reasons for it, on the applicant and on any person who made written representations to the Superintendent in accordance with subsection 78 (3). 2010, c. 24, s. 42 (6).

- (3.2) REPEALED: 2010, c. 24, s. 42 (7).

Notice re terms and conditions of approval or consent

(4) If the Superintendent intends to refuse to give an approval or consent or intends to attach terms and conditions to an approval or consent under this Act or the regulations, other than a consent referred to in subsection (3.0.1) or (3.1), the Superintendent shall serve notice of the intended decision, together with written reasons for it, on the applicant for the approval or consent. 2010, c. 24, s. 42 (8).

Notice re wind up order

(5) If the Superintendent intends to make an order requiring the wind up of a pension plan or declaring a pension plan wound up, the Superintendent shall serve notice of the intended decision, together with written reasons for it, on the administrator and the employer, and the Superintendent may require the administrator to transmit a copy of the notice and written reasons to such other persons or classes of persons or both as the Superintendent specifies in the notice to the administrator. 2010, c. 24, s. 42 (9).

Notice requiring hearing

(6) A notice under subsection (1), (2), (3), (3.0.1), (3.1), (4) or (5) shall state that the person on whom the notice is served is entitled to a hearing by the Tribunal if the person delivers to the Tribunal, within thirty days after service of the notice under that subsection, notice in writing requiring a hearing, and the person may so require such a hearing. R.S.O. 1990, c. P.8, s. 89 (6); 1997, c. 28, s. 208 (6); 2010, c. 24, s. 42 (10).

Power of Superintendent

(7) Where the person on whom the notice is served does not require a hearing in accordance with subsection (6), the Superintendent may make the intended decision indicated in the notice. R.S.O. 1990, c. P.8, s. 89 (7); 2010, c. 24, s. 42 (11).

Hearing

(8) Where the person requires a hearing by the Tribunal in accordance with subsection (6), the Tribunal shall appoint a time for and hold the hearing. R.S.O. 1990, c. P.8, s. 89 (8); 1997, c. 28, s. 208 (7).

Power of Tribunal

(9) At or after the hearing, the Tribunal by order may direct the Superintendent to make or refrain from making the intended decision indicated in the notice and to take such action as the Tribunal considers the Superintendent ought to take in accordance with this Act and the regulations, and for such purposes, the Tribunal may substitute its opinion for that of the Superintendent. R.S.O. 1990, c. P.8, s. 89 (9); 1997, c. 28, s. 208 (7); 2010, c. 24, s. 42 (12).

(10) REPEALED: 1997, c. 28, s. 208 (8).

Parties

(11) The Superintendent, the person who requires a hearing and such other persons as the Tribunal specifies are parties to the proceeding before the Tribunal under this section. R.S.O. 1990, c. P.8, s. 89 (11); 1997, c. 28, s. 208 (9).

(12), (13) REPEALED: 1997, c. 28, s. 208 (10).

Release of documentary evidence

(14) Documents and things put in evidence at a hearing shall, upon the request of the person who produced them, be released to the person within a reasonable time after the matter in issue has been finally determined. R.S.O. 1990, c. P.8, s. 89 (14).

90. REPEALED: 1997, c. 28, s. 209.

Appeal to court

91. (1) A party to a proceeding before the Tribunal under section 89 may appeal to the Divisional Court from the decision or order of the Tribunal. 1997, c. 28, s. 210 (1).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (1) is amended by striking out "section 89" and substituting "section 88 or 89". See: 2010, c. 9, ss. 78, 80 (2).

Certified copy of record

(2) Upon the request of a party desiring to appeal to the Divisional Court and upon payment of the fee established by the Minister, the Tribunal shall furnish the party with a certified copy of the record of the proceeding, including the documents received in evidence and the decision or order appealed from. R.S.O. 1990, c. P.8, s. 91 (2); 1997, c. 28, s. 210 (2).

92. REPEALED: 1997, c. 28, s. 211.

FINANCIAL SERVICES COMMISSION OF ONTARIO

93. REPEALED: 2010, c. 1, Sched. 23, s. 11.

94. REPEALED: 1997, c. 28, s. 213 (1).

Reciprocal agreements

95. (1) The Commission may, subject to the approval of the Lieutenant Governor in Council,

- (a) enter into agreements with the authorized representatives of another province or the Government of Canada to provide for the reciprocal application and enforcement of pension benefits legislation, the reciprocal registration, audit and inspection of pension plans and for the establishment of a Canadian association of pension supervisory authorities;
- (b) authorize a Canadian association of pension supervisory authorities to carry out such duties on behalf of the Commission as the Commission may require; and

- (c) delegate to a pension supervisory authority or the government of a designated jurisdiction such functions and powers under this Act as the Commission may determine and the Commission may accept similar delegations of functions and powers from a pension supervisory authority or the government of a designated jurisdiction. R.S.O. 1990, c. P.8, s. 95 (1); 2010, c. 1, Sched. 23, s. 12 (1, 2).

Same

- (2) Without limiting the generality of subsection (1), an agreement may provide for,
- (a) the delegation of any powers and duties of the Superintendent under this Act and the regulations to a pension supervisory authority or the government of a designated jurisdiction;
- (b) the delegation to the Superintendent of any powers and duties of a pension supervisory authority or of the government of a designated jurisdiction under pension benefits legislation. 1999, c. 15, s. 17; 2010, c. 1, Sched. 23, s. 12 (3-5).

Delegation to the Superintendent

- (3) The Superintendent may accept a delegation described in clause (2) (b). 1999, c. 15, s. 17.

96. REPEALED: 1997, c. 28, s. 213 (1).

Research

97. (1) It is a function of the Superintendent to conduct surveys and research programs and to compile statistical information related to pensions and pension plans. R.S.O. 1990, c. P.8, s. 97 (1); 1997, c. 28, s. 214.

Provision of information

(2) The Superintendent may request an employer or an administrator or a member of a pension plan to provide information necessary to compile the statistical information and such persons shall comply with the request within a reasonable period of time. R.S.O. 1990, c. P.8, s. 97 (2); 1997, c. 28, s. 214.

Confidentiality

(3) The Superintendent shall use the information only for the purpose of compiling the statistical information. R.S.O. 1990, c. P.8, s. 97 (3); 1997, c. 28, s. 214.

Order to provide information to the Superintendent

98. (1) The Superintendent may, by order, require an employer, an administrator or any other person to give such information as the order specifies to the Superintendent or a person designated by the Superintendent for the purpose of enabling the Superintendent or designate to ascertain whether this Act and the regulations are being complied with. 2010, c. 24, s. 43.

Contents

(2) Without limiting the generality of subsection (1), the order may require the administrator to secure an appraisal of any or all of the assets of the pension fund by one or more independent valuers and provide the appraisal to the Superintendent or designate or it may authorize the Superintendent to obtain an appraisal at the administrator's expense. 2010, c. 24, s. 43.

Same

(3) The order may specify the form in which information is to be provided and the time within which it is to be provided to the Superintendent or designate. 2010, c. 24, s. 43.

Same

(4) The order has no effect unless the reasons for the order are set out in it. 2010, c. 24, s. 43.

Enforcement

(5) An order under this section, excluding the reasons for the order, may be filed in the Superior Court of Justice and upon being filed it is enforceable as an order of that court. 2010, c. 24, s. 43.

Security

99. Every person entrusted by the Superintendent with the custody or control of money in the course of employment shall give security in the manner and form provided by the *Public Officers Act*. R.S.O. 1990, c. P.8, s. 99; 1997, c. 28, s. 216.

AGREEMENTS WITH DESIGNATED JURISDICTIONS

Agreements with designated jurisdictions

100. (1) With the approval of the Lieutenant Governor in Council, the Minister may enter into one or more agreements on behalf of the Crown with a representative of a designated jurisdiction concerning the pension benefits legislation that governs designated multi-jurisdictional pension plans in Ontario and in the designated jurisdiction. 2010, c. 1, Sched. 23, s. 13.

Contents

(2) An agreement may provide for the application of this Act and the regulations to designated multi-jurisdictional pension plans, the application of the pension benefits legislation of a designated jurisdiction to those plans, the application of the agreement itself to those plans and the supervision and regulation of those plans. 2010, c. 1, Sched. 23, s. 13.

Same, changes in legal requirements

(3) Without limiting the generality of subsection (2), an agreement may provide for any of the following matters in relation to a designated multi-jurisdictional pension plan:

1. It may establish a mechanism for determining whether the Superintendent, or a person who has supervisory or regulatory powers under the pension benefits legislation of another designated jurisdiction, has the principal regulatory jurisdiction for the pension plan.
2. It may provide that this Act and the regulations, or any portion thereof, does not apply with respect to the pension plan in specified circumstances.
3. It may establish additional requirements that apply with respect to the pension plan in specified circumstances.
4. It may provide that a requirement of this Act or a regulation is deemed to be satisfied in respect of the pension plan if a corresponding requirement of the principal regulatory jurisdiction is satisfied or in such other circumstances as may be specified. 2010, c. 1, Sched. 23, s. 13.

Same

(4) For greater certainty, an agreement may provide for the following matters:

Final location

1. If, under a designated multi-jurisdictional pension plan, a member or former member has service in Ontario and in a designated jurisdiction, the agreement may establish requirements for determining the amount of the pension benefits, deferred pension, pension or ancillary benefits or any other amount payable under the pension plan in relation to the member or former member that differ from the requirements that would otherwise apply in the absence of the agreement. The requirements established by the agreement may result in an increase or a decrease in the amount to which the person would otherwise be entitled.

Additional contributions

2. It may require an employer, or a person or entity required to make contributions to the pension plan on the employer's behalf, to make contributions in addition to those required under this Act and the regulations and may specify the times and manner in which the contributions are to be made.

Allocation of assets

3. It may provide for the allocation of the assets of the pension plan between jurisdictions at the times and in the manner specified. 2010, c. 1, Sched. 23, s. 13.

Same, administrative matters

(5) Without limiting the generality of subsection (2), an agreement may provide for the following matters:

1. Matters respecting the administration and enforcement of this Act and the regulations and of the pension benefits legislation of the designated jurisdiction.
2. The reciprocal application and enforcement of pension benefits legislation and the reciprocal registration, audit and inspection of the designated multi-jurisdictional pension plans.
3. The delegation of any powers or duties of the Superintendent under this Act and the regulations to a person who has supervisory or regulatory powers under the pension benefits legislation of the designated jurisdiction.
4. The delegation to the Superintendent of any powers or duties of a person who has supervisory or regulatory powers under the pension benefits legislation of the designated jurisdiction.
5. The reciprocal exchange of information between the Superintendent and a person who has supervisory or regulatory powers under the pension benefits legislation of the designated jurisdiction if the information is necessary for the purposes of,
 - i. complying with, implementing or enforcing the agreement, or
 - ii. the administration and enforcement of this Act and the regulations and the pension benefits legislation of the designated jurisdiction. 2010, c. 1, Sched. 23, s. 13.

Effective date

(6) An agreement or an amendment to an agreement with a designated jurisdiction does not come into effect in Ontario until a date that is specified by regulation. 2010, c. 1, Sched. 23, s. 13.

Same

(7) An agreement with a designated jurisdiction ceases to have effect in Ontario on a date that is specified by regulation. 2010, c. 1, Sched. 23, s. 13.

Publication of agreements

(8) The Minister shall publish each agreement and any amendments to the agreement in *The Ontario Gazette*. 2010, c. 1, Sched. 23, s. 13.

Status of agreement

101. (1) An agreement under section 100 is enforceable with respect to a designated multi-jurisdictional pension plan as if the agreement formed part of this Act and, in case of a conflict between the agreement and this Act or the regulations, the agreement prevails. 2010, c. 1, Sched. 23, s. 13.

Exception

(2) Sections 84 and 85 prevail over an agreement under section 100. 2010, c. 1, Sched. 23, s. 13.

Restriction

(3) An agreement under section 100 is not enforceable until it is published in *The Ontario Gazette*. 2010, c. 1, Sched. 23, s. 13.

Status of agreement

(4) An agreement under section 100 is not a regulation within the meaning of Part III (Regulations) of the *Legislation Act, 2006*. 2010, c. 1, Sched. 23; s. 13.

EXEMPTIONS AND SPECIAL ARRANGEMENTS

Arrangements re windup of Nortel pension plans

102. (1) This section applies with respect to the following pension plans:

1. The pension plan known as the Nortel Networks Limited Managerial and Non-Negotiated Pension Plan, registered under this Act as number 0342048.
2. The pension plan known as the Nortel Networks Negotiated Pension Plan, registered under this Act as number 0587766. 2011, c. 9, Sched. 35, s. 10.

Transfer re pension

(2) A person who is receiving a pension from a Nortel pension plan as of the date of the wind up of the plan is entitled, despite subsection 73 (2), to require the administrator to transfer an amount equal to the commuted value of the person's pension into a life income fund that satisfies the prescribed requirements. 2012, c. 8, Sched. 44, s. 8.

Restriction

(2.1) However, the person's entitlement to the transfer is subject to such conditions and restrictions as may be prescribed. 2012, c. 8, Sched. 44, s. 8.

Direction

(3) The person may exercise his or her entitlement by delivering a direction to the administrator within the prescribed period, and the direction must be in a form approved by the Superintendent and must contain the prescribed information. 2011, c. 9, Sched. 35, s. 10.

Compliance

(4) The administrator shall comply with the direction within the prescribed period of time after it is delivered. 2011, c. 9, Sched. 35, s. 10.

Discharge of administrator

(5) The administrator is discharged on making the payment in accordance with the direction of the person if the payment complies with this Act and the regulations. 2011, c. 9, Sched. 35, s. 10.

Life income fund

(6) In this section, "life income fund" has the meaning assigned in the regulations. 2011, c. 9, Sched. 35, s. 10.

The Pension Benefits Act, 1992

being

Chapter P-6.001 of the *Statutes of Saskatchewan, 1992* (effective January 1, 1993) as amended by the *Statutes of Saskatchewan, 1996, c.15; 1997, c.T-22.2; 2001, c.50 and 51; 2002, c.S-17.2; 2004, c.42; 2012, c.F-13.5, c.14 and c.27; and 2013, c.P-16.101 and c.S-15.1.*

NOTE:

This consolidation is not official. Amendments have been incorporated for convenience of reference and the original statutes and regulations should be consulted for all purposes of interpretation and application of the law. In order to preserve the integrity of the original statutes and regulations, errors that may have appeared are reproduced in this consolidation.

Enforcement of maintenance orders

50(1) Notwithstanding any other provision of this Act or any other Act, for the purpose of enforcing a maintenance order as defined in *The Enforcement of Maintenance Orders Act, 1997*, pension benefits that are:

- (a) payable to a former member are subject to seizure pursuant to that Act; and
 - (b) payable to a former member at a future date are subject to attachment pursuant to that Act.
- (2) Where an amount has been attached pursuant to subsection (1), the administrator shall deduct from the commuted value of the pension benefits to which the former member is entitled:
- (a) the cost of complying with the attachment calculated in the prescribed manner;
 - (b) the total amount of taxes, if any, that are required to be deducted or withheld as a result of the attachment; and
 - (c) the lesser of:
 - (i) the amount attached; and
 - (ii) the remainder of the commuted value of the former member's pension benefits.
- (3) Where an amount has been attached pursuant to subsection (1):
- (a) the former member has no further claim or entitlement to any pension or benefit pursuant to the plan respecting the amount attached;
 - (b) the entitlement of the former member is to be calculated on the basis of the commuted value of his or her pension benefits after the attachment; and
 - (c) neither the administrator nor the plan is liable to any person by reason of having made payment pursuant to an attachment mentioned in subsection (1).

1996, c.15, s.9; 2012, c.14, s.6.

PART VII Termination of Plan

Termination by superintendent

- 51(1) Where the superintendent refuses to register a plan or cancels the registration of a plan, the plan is terminated.
- (2) Where an employer fails to make contributions to a plan with respect to a specific and identifiable class or group of members, the superintendent may terminate that part of the plan that is applicable to that class or group.
- (3) In any case other than that described in subsection (2), where an employer fails to make contributions to a plan, the superintendent may terminate the whole plan.

- (4) Subsections (2) and (3) do not apply to the extent that surplus assets are used to provide employer contributions, if:
- (a) the plan permits that use;
 - (b) the intention of the employer to do so is disclosed to the members and former members in the prescribed manner; and
 - (c) the superintendent has approved that use.
- (5) Subject to subsection (6), the failure of an employer to make contributions pursuant to a specified multi-employer plan does not terminate the plan unless the plan provides that it does so.
- (6) On the registration of a plan that includes an identifiable class or group of the members of another plan:
- (a) years of continuous employment pursuant to the other plan count as years of continuous employment pursuant to the plan; and
 - (b) the other plan or the part of the other plan that affects the class or group is not to be terminated unless the superintendent determines that the plan should be terminated.
- (7) A termination pursuant to subsection (1), (2), (3) or (6) takes effect when the remedies pursuant to sections 22 and 23 have been exhausted.

1992, c.P-6.001, s.51.

Discontinuation of business

- 52(1) Where, in the opinion of the superintendent, an employer who employs or employed members or former members of a plan has discontinued or is about to discontinue part or all of the employer's business operations, the superintendent may terminate all or part of the plan.
- (2) Where the superintendent terminates all or part of a plan pursuant to subsection (1), the termination is deemed to be a cancellation of the registration for the purposes of sections 22 and 23.

1992, c.P-6.001, s.52.

Termination by administrator

- 53 An administrator who decides to terminate all or part of a plan shall notify the superintendent in writing of the decision immediately after making the decision.

1992, c.P-6.001, s.53.

Payments to and from employer on termination

- 54(1) Within 30 days after the termination of a plan, the employer:
- (a) shall pay into the plan all amounts whose payment is required by the terms of the plan or this Act; and

(b) without limiting the generality of clause (a), shall make all payments that, by the terms of the plan or this Act:

(i) are due from the employer to the plan but have not been made at the date of the termination; or

(ii) have accrued to that date but are not yet due.

(2) Notwithstanding any provision of the plan, where a plan is terminated, no part of the assets of the plan shall revert to the benefit of the employer until provision has been made for the funding or purchase of all pensions and other benefits pursuant to the plan.

1992, c.P-6.001, s.54.

Partial termination

55 Where only part of a plan is terminated, the pensions and other benefits affected by the partial termination shall not be less than they would have been if the whole of the plan had been terminated on the date of the partial termination.

1992, c.P-6.001, s.55.

Requirement to file termination report

56(1) Within 60 days after the termination of a plan or any further period that the superintendent may allow, the administrator shall file with the superintendent a report prepared by a Fellow of the Canadian Institute of Actuaries or a member of any other prescribed group or category of persons, setting out:

(a) the nature of the benefits to be provided;

(b) the assets and liabilities of the plan;

(c) the allocation and distribution of the assets of the plan and the priorities for determining the benefits of persons entitled to them;

(d) the prescribed information; and

(e) any other information that the superintendent may require.

(2) Subject to subsection (3), no assets of a plan that has been terminated may be used to provide any pensions or other benefits until the superintendent has approved in writing the report required by subsection (1).

(3) Where the allocation and distribution does not commence within 60 days after the approval of the report by the superintendent, the administrator shall file an updated report.

(4) Subsections (1) and (2) apply, with any necessary modification, to the updated report required by subsection (3).

(5) The administrator may pay any benefits to persons entitled to them as those benefits become due.

1992, c.P-6.001, s.56.

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Important Information

(Includes details about the availability of printed and electronic versions of the Statutes.)

Table of Public Statutes

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How current is this statute?

Responsible Department

SNL1996 CHAPTER P-4.01

PENSION BENEFITS ACT, 1997

Amended:

2001 c22 ss19-29; 2001 c42 s31; 2004 c36 s29; 2004 c40;
2004 c47 s29; 2007 c6; 2007 cT-9.1 s5; 2008 c16; 2012 c41

CHAPTER P-4.01

AN ACT RESPECTING PENSION BENEFITS

(Assented to December 19, 1996)

Analysis

PART I
SHORT TITLE AND DEFINITIONS

1. Short title
2. Definitions

PART II
ADMINISTRATION OF THE ACT

3. Minimum standards
4. Act prevails
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6. Powers and duties of superintendent
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8. Agreements
 - 8.1 Existing agreement
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- (a) the contract or trust agreement of the receiving fundholder is filed with the superintendent and the receiving plan is registered under this Act; and
- (b) the superintendent has approved the transfer in writing.

1996 cP-4.01 s58

PART VIII TERMINATION, WIND-UP AND DISPOSAL OF BUSINESS

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Plan termination

59. (1) The superintendent may declare the whole or part of a pension plan terminated where

- (a) there is a suspension or cessation of employer contributions in respect of all or part of the plan membership, except where surplus is used to meet funding requirements;
- (b) the employer has discontinued or is in the process of discontinuing all of its business operation or a part in which a substantial portion of its employees who are members of the plan are employed;
- (c) the employer is bankrupt within the meaning of the *Bankruptcy Act* (Canada);
- (d) the superintendent is of the opinion that the plan has failed to meet the requirements prescribed by the regulations for solvency in respect of funding; or
- (e) all or part of the business or assets of a predecessor employer's business are sold, assigned or otherwise disposed of and the successor employer who acquired the business or assets does not provide a pension plan for the members of the predecessor employer's plan who become employees of the successor employer.

(2) A declaration made under subsection (1) shall declare the whole or part of a pension plan to be terminated as of a date determined by the superintendent.

1996 cP-4.01 s59

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Plan termination requirements

60. (1) An employer, or, in the case of a multi-employer pension plan, the administrator, who intends to terminate the whole or part of a pension plan shall notify in writing the superintendent and any other person or body who is affected of that intention at least 60 days before the date of the intended termination.

(2) On the termination of the whole or part of a pension plan, the administrator of the plan shall file with the superintendent

- (a) a report required by the superintendent, within 6 months after the effective date of termination; and
- (b) all outstanding annual information returns up to the effective date of the termination, within 3 months after that date.

(3) The wind-up of a pension plan shall commence immediately after the termination of the plan unless the superintendent gives written approval to postpone the wind-up.

1996 cP-4.01 s60

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Termination payments

61. (1) On termination of a pension plan, the employer shall pay into the pension fund all amounts that would otherwise have been required to be paid to meet the requirements prescribed by the regulations for solvency, including

- (a) an amount equal to the aggregate of
 - (i) the normal actuarial cost, and
 - (ii) special payments prescribed by the regulations,

that have accrued to the date of termination; and

- (b) all
 - (i) amounts deducted by the employer from members' remuneration, and
 - (ii) other amounts due to the pension fund from the employer

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

(2) Where, on the termination, after April 1, 2008, of a pension plan, other than a multi-employer pension plan, the assets in the pension fund are less than the value of the benefits provided under the plan, the employer shall, as prescribed by the regulations, make the payments into the pension fund, in addition to the payments required under subsection (1), that are necessary to fund the benefits provided under the plan.

1996 cP-4.01 s61; 2008 c16 s1

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Distribution of plan assets

62. (1) On termination or wind-up 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 or former members, the principal beneficiary, beneficiary or estate of a member or former member of a pension benefit, accrued or payable, in respect of membership to the date of termination or wind-up and, for that purpose, those pension benefits shall be treated as if the members or former members were entitled to a deferred pension benefit.

(2) Where a notice of intention to terminate a pension plan has been given, the assets of the plan may not be applied toward the provision of a pension benefit until the superintendent has approved the report required by subsection 60(2), but the administrator of the plan may continue to pay a pension benefit which began before the notice of intention to terminate and any other payment approved by the superintendent.

(3) On termination of a pension plan all assets of the plan that are to be used for the purpose of providing a pension benefit or another benefit continue to be subject to this Act.

(4) Where a pension plan is terminated in part, the rights of members affected shall not be less than what they would have been if the whole of the plan had been terminated on the same date as the partial termination.

1996 cP-4.01 s62; 2001 c22 s29



CHAPTER P-5.1

CHAPITRE P-5.1

Pension Benefits Act

Loi sur les prestations de pension

Assented to June 27, 1987

Sanctionnée le 27 juin 1987

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wind-up if the Superintendent is of the opinion that there are reasonable grounds for the change.

60(7) The withdrawal of a participating employer under a multi-employer pension plan does not constitute wind-up in part of the plan unless, in the opinion of the Superintendent, a partial wind-up of the plan is appropriate in the circumstances.

61(1) The Superintendent may by order require the wind-up of a pension plan, in whole or in part, on such date and with such notice as in the opinion of the Superintendent are appropriate, if

(a) there is a cessation or suspension of employer contributions to the pension fund,

(b) there is a cessation or suspension of crediting service for pension benefits to members under the plan,

(c) the employer is bankrupt within the meaning of the *Bankruptcy Act*, chapter B-3 of the Revised Statutes of Canada, 1970,

(d) a significant number of members of the pension plan have terminated employment as a result of the discontinuance of all or part of the business of the employer, or as a result of the reorganization of the business of the employer,

(e) the provisions of this Act or regulations are not being complied with,

(f) all or part of the employer's business or all or part of the assets of the employer's business are sold, assigned or otherwise disposed of and the person who acquires the business or assets does not provide a pension plan for the members of the employer's pension plan who become employees of that person,

(g) in the case of a multi-employer pension plan,

(i) there is a significant reduction in the number of members, or

(ii) there is a cessation of contributions under the pension plan or a significant reduction in such contributions, or

dation s'il est d'avis qu'il y a des motifs raisonnables pour le faire.

60(7) Le fait qu'un employeur participant se retire d'un régime de pension interemployeur ne constitue pas une liquidation partielle du régime à moins que, de l'avis du surintendant, une liquidation partielle du régime est appropriée dans les circonstances.

61(1) Le surintendant peut, par ordonnance, exiger la liquidation totale ou partielle d'un régime de pension à telle date et avec tel avis qu'il estime appropriés,

a) s'il y a cessation ou suspension des cotisations de l'employeur au fonds de pension,

b) s'il y a cessation ou suspension des crédits de service aux participants en vertu du régime,

c) si l'employeur est en faillite au sens de la *Loi sur la faillite*, chapitre B-3 des Statuts révisés du Canada de 1970,

d) si un nombre important de participants au régime de pension ont mis fin à leur emploi à la suite de la discontinuité de la totalité ou d'une partie des affaires de l'employeur, ou à la suite de la réorganisation des affaires de l'employeur,

e) si les dispositions de la présente loi ou des règlements ne sont pas observées,

f) si la totalité ou une partie des affaires de l'employeur, ou si la totalité ou une partie des éléments d'actif des affaires de l'employeur est vendue, cédée ou autrement aliénée et que la personne qui acquiert ses affaires ou éléments d'actif ne prévoit pas un régime de pension pour les participants au régime de pension de l'employeur qui deviennent des salariés de cette personne,

g) dans le cas d'un régime de pension interemployeur,

(i) s'il y a une réduction importante du nombre des participants, ou

(ii) s'il y a cessation des cotisations en vertu du régime de pension ou une réduction importante de ces cotisations, ou

(h) any other prescribed event or circumstance occurs.

61(2) In an order under subsection (1), the Superintendent shall specify the effective date of the wind-up, the persons or class or classes of persons to whom the administrator shall give notice of the order and the information that shall be given in the notice.

62(1) The administrator of a pension plan that is to be wound up in whole or in part shall file a wind-up report that sets out

(a) the assets and liabilities of the pension plan,

(b) the benefits to be provided under the pension plan to members, former members and other persons,

(c) the methods of allocating and distributing the assets of the pension plan and determining the priorities for payment of benefits, and

(d) such other information as is prescribed.

62(2) No payment shall be made out of the pension fund in respect of which notice of proposal to wind up has been given until the Superintendent has approved the wind-up report.

62(3) Subsection (2) does not apply to prevent continuation of payment of a pension or any other benefit the payment of which commenced before the giving of the notice of proposal to wind up the pension plan, or to prevent any other payment that is prescribed or that is approved by the Superintendent.

62(4) An administrator shall not make payment out of the pension fund except in accordance with the wind-up report approved by the Superintendent.

62(5) The Superintendent may refuse to approve a wind-up report that does not meet the requirements of this Act and the regulations or that, in the Superintendent's opinion, does not protect the interests of the members and former members of the pension plan.

62(6) On the partial wind-up of a pension plan, members, former members and other persons entitled to benefits or payments under the pension plan shall have rights

h) si d'autres événements ou circonstances prescrits se produisent.

61(2) Le surintendant doit, dans une ordonnance en vertu du paragraphe (1), préciser la date réelle de la liquidation, les personnes, la ou les catégories de personnes auxquelles l'administrateur doit donner avis de l'ordonnance et les renseignements qui doivent être inclus dans l'avis.

62(1) L'administrateur d'un régime de pension qui est sur le point d'être liquidé totalement ou partiellement doit déposer un rapport de liquidation indiquant

a) les éléments d'actif et de passif du régime de pension,

b) les prestations à servir aux participants, anciens participants ou autres personnes en vertu du régime de pension,

c) les méthodes de répartition et de distribution des éléments d'actif du régime de pension et la détermination des priorités pour le paiement des prestations, et

d) tous autres renseignements prescrits.

62(2) Aucun paiement ne doit être effectué sur un fonds de pension qui a fait l'objet d'une notification de l'avis de proposition de liquidation tant que le surintendant n'a pas approuvé le rapport de liquidation.

62(3) Le paragraphe (2) ne s'applique pas pour empêcher la continuation du paiement d'une pension ou de toute autre prestation dont le paiement a commencé avant la notification de l'avis de proposition de liquidation du régime de pension, ou pour empêcher tout autre paiement qui est prescrit ou qui est approuvé par le surintendant.

62(4) Un administrateur ne doit faire des paiements sur le fonds de pension qu'en conformité avec le rapport de liquidation approuvé par le surintendant.

62(5) Le surintendant peut refuser d'approuver un rapport de liquidation qui ne répond pas aux exigences de la présente loi et des règlements, ou qui, de l'avis du surintendant, ne protège pas les intérêts des participants et des anciens participants du régime de pension.

62(6) À la liquidation partielle d'un régime de pension, les participants, les anciens participants et d'autres personnes qui ont droit à des prestations ou paiements en

and benefits that are not less than the rights and benefits they would have on a full wind up of the pension plan on the effective date of the partial wind-up.

62(7) The Superintendent may require the distribution of any or all assets of a pension plan as a condition of the approval of the wind-up report.

62(8) The Superintendent shall not approve the wind-up report before the expiry of thirty days after the receipt of the report filed under subsection (1).

63 If there is no administrator to undertake the requirements respecting the wind-up of a pension plan in whole or in part, the Superintendent may act as or may appoint an administrator for the purposes of the wind-up and such costs as are appropriate in the circumstances may be paid out of the pension fund.

64(1) On the wind-up of a pension plan in whole or in part, the administrator shall give to each person entitled to a pension, deferred pension or other benefit or to a refund in respect of the pension plan a statement setting out the person's entitlement under the pension plan, the options available to the person and any other prescribed information.

64(2) For the purposes of determining the amount of pension benefits to which a person may be entitled on the wind-up of a pension plan, in whole or in part,

(a) the employment of each member of the pension plan affected by the wind-up shall be deemed to have been terminated on the effective date of the wind-up of the pension plan, and

(b) each member's pension benefits as of the effective date of the wind-up shall be determined as if the member had satisfied all eligibility conditions for a deferred pension under section 35, and the member shall be deemed to be entitled to a deferred pension under section 35.

64(3) Section 36, other than subsection 36(3) applies to members and former members of a pension plan upon wind-up other than persons who are receiving a pension.

vertu d'un régime de pension doivent avoir des droits et prestations qui ne sont pas inférieurs aux droits et prestations qu'ils auraient eu à la liquidation totale du régime de pension à la date réelle de la liquidation partielle.

62(7) Le surintendant peut exiger la répartition d'un ou de tous les éléments d'actif d'un régime de pension comme une condition de l'approbation du rapport de liquidation.

62(8) Le surintendant ne doit approuver le rapport de liquidation qu'à l'expiration des trente jours après la réception du rapport déposé en vertu du paragraphe (1).

63 À défaut d'un administrateur pour s'occuper des exigences concernant la liquidation totale ou partielle d'un régime de pension, le surintendant peut nommer un administrateur ou agir lui-même à ce titre pour fins de liquidation, auquel cas les frais appropriés dans les circonstances peuvent être payés sur le fonds de pension.

64(1) À la liquidation totale ou partielle d'un régime de pension, l'administrateur doit donner à chaque personne qui a droit à une pension, une pension différée ou une autre prestation, ou à un remboursement se rapportant à un régime de pension, une déclaration indiquant le droit de cette personne en vertu du régime de pension, les choix disponibles qui lui sont offerts et tout autre renseignement prescrit.

64(2) Afin de déterminer le montant des prestations de pension auxquelles une personne peut avoir droit à la liquidation totale ou partielle d'un régime de pension,

a) l'emploi de chaque participant au régime de pension touché par la liquidation est réputé avoir cessé à la date réelle de la liquidation du régime de pension, et

b) les prestations de pension de chaque participant à la date réelle de la liquidation doivent être déterminées comme si le participant avait rempli toutes les conditions d'admissibilité à une pension différée en vertu de l'article 35, et le participant est réputé avoir droit à une pension différée en vertu de l'article 35.

64(3) L'article 36, sauf son paragraphe (3), s'applique aux participants et anciens participants à un régime de pension à la liquidation du régime autres que les personnes qui reçoivent une pension.

65(1) Upon wind-up of a pension plan, in whole or in part, an employer required to make contributions to the pension fund shall pay into the fund

(a) an amount equal to the total of all payments that, under this Act, the regulations and the plan have accrued to and including the date of the wind-up, whether or not payment of such money is due on that date, and

(b) an amount equal to all payments that under this Act, the regulations and the plan are due from the employer to the pension fund but that have not been paid at the date of wind-up.

65(1.1) For the purpose of paragraph (1)(a), if a pension plan is wound up, in whole or in part, and as of the date of the wind-up the market value of the investments held by the plan does not equal or exceed its solvency liabilities, the employer shall pay into the fund in accordance with subsection (4), an amount so that

(a) where the plan is wholly wound up, the market value of investments held by the plan equals its solvency liabilities, or

(b) where the plan is wound up in part, the market value of the investments held by the plan attributable to that portion of the plan being wound up equals its solvency liabilities for that part,

and such amount required to be paid shall be deemed to have accrued as of the effective date of the wind-up.

65(1.2) Subsection (1.1) does not apply to a defined benefit plan established under one or more collective agreements or a trust agreement in which the requirement that an employer's contributions, or a person required to make contributions on behalf of an employer, to a pension fund are limited to a fixed amount established in a collective agreement or a trust agreement.

65(2) For the purposes of subsection (1), the amount required to be paid shall be deemed to accrue on a daily basis.

65(3) The employer shall pay the amounts required under subsection (1), other than an amount determined pursuant to subsection (1.1), to the pension fund in the manner and on the terms prescribed.

65(1) À la liquidation totale ou partielle d'un régime de pension, un employeur qui est tenu de cotiser au fonds de pension doit verser au fonds

a) un montant égal au total de tous les paiements qui, en vertu de la présente loi, des règlements et du régime, sont accumulés jusqu'à la date de la liquidation inclusivement, que le paiement de ces sommes soit dû ou non à cette date, et

b) un montant égal à tous les paiements qui, en vertu de la présente loi, des règlements et du régime sont dus par l'employeur au fonds de pension mais qui n'ont pas été payés à la date de la liquidation.

65(1.1) Aux fins de l'alinéa (1)a), si un régime de pension est liquidé, totalement ou partiellement, et qu'à la date de la liquidation, la valeur marchande des placements du régime est inférieure à ses passifs de solvabilité, l'employeur doit verser au fonds conformément au paragraphe (4), un montant dont le paiement est requis et qui est réputé s'accumuler à la date réelle de la liquidation et, ce montant doit être suffisant de façon à produire ce qui suit :

a) dans le cas d'une liquidation totale, pour que la valeur marchande des placements du régime soit égale à ses passifs de solvabilité;

b) dans le cas d'une liquidation partielle, pour que la valeur marchande des placements attribuables à la partie du régime qui est liquidée soit égale à ses passifs de solvabilité imputables à cette partie du régime.

65(1.2) Le paragraphe (1.1) ne s'applique pas à un régime de prestation déterminée établi en vertu d'une ou de plusieurs conventions collectives ou d'une convention fiduciaire qui limitent les cotisations au fonds de pension faites par l'employeur ou les cotisations faites pour le compte de l'employeur à un montant fixe.

65(2) Aux fins du paragraphe (1), le montant dont le paiement est requis est réputé s'accumuler sur une base journalière.

65(3) L'employeur doit payer au fonds de pension les montants requis en vertu du paragraphe (1), autre que le montant dont il est question au paragraphe (1.1), de la manière et dans les conditions prescrites.

65(4) Where a pension plan is wound up, in whole or in part, and an amount under subsection (1.1) is determined to be owing and the employer is not insolvent,

(a) the employer shall fund the amount over a period of not more than five years after the effective date of the wind-up,

(b) the administrator shall continue to file annual information returns and actuarial valuation reports as required under this Act until the amount has been retired, and

(c) subject to subsections 62(2) and (7), the assets of the plan shall be distributed in the manner and to the extent prescribed.

65(5) If a plan is wound up, in whole or in part, and an amount is owing pursuant to subsection (1.1), a schedule of special payments shall be established, subject to the approval of the Superintendent, for the amount to be retired over a period of not more than five years, commencing as of the effective date of the wind-up.

65(6) For the purposes of subsection (1.1), the amount shall be considered to have been retired if a subsequent actuarial valuation reveals that the market value of investments of the plan or of the part of the plan that was wound up, as the case may be, equals or exceeds its solvency liabilities.

2007, c.51, s.1

66(1) Upon the wind-up of a pension plan in whole or in part, if insufficient funds are available to pay the pensions and benefits under the plan, the amount of the pension or benefit to which a person is entitled may be reduced in accordance with the regulations.

66(2) Nothing in subsection (1) prevents the Superintendent from ordering a reduction in pensions and benefits under a pension plan before the wind-up of the plan is completed if the Superintendent is of the opinion, upon reasonable and probable grounds, that there are or are likely to be insufficient funds available to pay the pensions and benefits under the plan.

2007, c.51, s.2

65(4) Lorsqu'à la liquidation totale ou partielle du régime de pension, il est déterminé qu'un montant est dû au titre du paragraphe (1.1) et que l'employeur est solvable,

a) l'employeur doit combler le déficit de solvabilité dans un délai maximal de cinq ans en ayant pour point de départ la date réelle de la liquidation du régime;

b) l'administrateur doit continuer à déposer les rapports annuels de renseignements et les rapports d'évaluation actuarielle qui sont exigés par la présente loi jusqu'à ce que le déficit de solvabilité soit comblé;

c) sous réserve des paragraphes 62(2) et (7), les actifs du régime doivent être distribués de la manière et dans la mesure prescrites.

65(5) Si le régime de pension est liquidé totalement ou partiellement, et qu'un montant est dû au titre du paragraphe (1.1), un calendrier des paiements spéciaux doit être établi, sujet à l'approbation du surintendant. Les paiements spéciaux doivent être faits dans un délai maximal de cinq ans en ayant pour point de départ la date réelle de la liquidation du régime.

65(6) Aux fins du paragraphe (1.1), le déficit de solvabilité est considéré comme comblé si une évaluation actuarielle subséquente révèle que la valeur des placements du régime de pension qui est liquidé ou de la partie du régime de pension qui est liquidée n'est plus inférieure à ses passifs de solvabilité.

2007, ch. 51, art. 1

66(1) À la liquidation totale ou partielle d'un régime de pension, lorsque des fonds disponibles pour le paiement des pensions et des prestations en vertu du régime sont insuffisants, le montant de la pension ou de la prestation à laquelle une personne a droit peut être réduit conformément aux règlements.

66(2) Rien au paragraphe (1) n'empêche le surintendant d'ordonner la réduction des pensions et des prestations d'un régime de pension avant que la liquidation ne soit complétée si, en se fondant sur des motifs raisonnables et probables, il est d'avis qu'il y a une insuffisance de fonds disponibles pour verser les pensions ou les prestations prévues au régime de pension ou qu'une telle insuffisance de fonds est vraisemblable.

2007, ch. 51, art. 2

Manitoba Laws

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This version is current as of June 29, 2016.

It has been in effect since June 14, 2012.

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C.C.S.M. c. P32

The Pension Benefits Act

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

Definitions

1(1) In this Act

"**active member**" of a pension plan means a member of the plan who is accruing a pension under the plan, or would be accruing a pension if it were not for a temporary interruption in employment; (« participant actif »)

"**administrator**" means

(a) in relation to a pension plan, the person or body of persons referred to in subsection 28.1(1) or (1.1) that is responsible for administering the plan, and

(b) in relation to a prescribed plan or to a registered retirement income fund as defined in subsection 21.4(1), the financial institution responsible for administering the plan or fund; (« administrateur »)

"**commission**" means The Pension Commission of Manitoba; (« Commission »)

"**common-law partner**" of a member or former member means

(a) a person who, with the member or former member, registered a common-law relationship under section 13.1 of *The Vital Statistics Act*, or

(b) a person who, not being married to the member or former member, cohabited with him or her in a conjugal relationship

(i) for a period of at least three years, if either of them is married, or

(ii) for a period of at least one year, if neither of them is married; (« conjoint de fait »)

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

"**defined benefit pension plan**" means a pension plan under which a member's pension

(a) is determined with reference to the member's remuneration for each year of employment, or for a selected number of years of employment, or

(b) is expressed as a fixed amount for each year of employment, or as a fixed periodic amount; (« régime de retraite à prestations déterminées »)

"**designated province**" means another province or territory of Canada in which there is in force legislation substantially similar to this Act and that has been designated in the regulations as a designated province; (« province désignée »)

"**early retirement age**" means the earliest age at which, under the terms of a pension plan, a member is eligible to require his or her pension to be commenced; (« âge de la retraite anticipée »)

- (b) 125% of the total amount of the liabilities of the pension plan determined on the basis of factors that would apply if the pension plan were being terminated or wound up on the date of payment, less the total amount of those liabilities determined on the basis of factors applying on the assumption that the pension plan is not being so terminated or wound up;

whichever is the greater, but this subsection does not apply where the payment of surplus occurs upon the termination or winding up of the pension plan.

Trustee Act does not apply

26(2.4) If the requirements of this Act and the regulations have been met for making a payment of surplus in accordance with a proposal made under subclause (2.1)(a)(iii), the payment may be made despite the provisions of *The Trustee Act*.

Liability on termination or winding up of plan

26(3) Upon the termination or winding up of a pension plan filed or required to be filed for registration under section 18, the employer is liable to pay all amounts that would otherwise have been required to be paid, up to the date of the termination or winding up, to meet the prescribed tests for solvency.

Notification of termination or winding up of plan

26(4) Before a pension plan that has been or is required to be filed for registration under section 18 is terminated or wound up, the person responsible for filing the annual information return for the pension plan under that section must notify the commission in writing of the date as of which the pension plan will be terminated or wound up. That date may not be earlier than the date the commission is notified.

No reduction of accrued benefits

26(5) A pension plan amendment that adversely affects the pension or the pension benefit credit of any person in respect of a period of employment or membership in the plan before the effective date of the amendment is void, unless it meets prescribed requirements and

- (a) the amendment is necessary for the plan to comply with the *Income Tax Act* (Canada) and does not affect any pension or pension benefit credit any more than is necessary for the plan to comply; or
- (b) the amendment
 - (i) is permitted by the terms of a multi-unit pension plan,
 - (ii) is necessary for the plan to meet prescribed solvency requirements, and does not affect any pension or pension benefit credit any more than is necessary for the plan to meet those requirements, and
 - (iii) is approved in writing by the superintendent.

S.M. 1992, c. 36, s. 11; S.M. 2005, c. 2, s. 17; S.M. 2011, c. 23, s. 6.

Definitions

26.1(1) In this section,

"collective agreement" means a collective agreement as defined in *The Labour Relations Act*; (« convention collective »)

"multi-unit pension plan" means a pension plan designated as a multi-unit pension plan under subsection (2); (« régime multipartite »)

"participating employer" means an employer who is contractually required to make contributions to a multi-unit pension plan. (« employeur participant »)

Designation of multi-unit pension plan

26.1(2) Upon the written request of the administrator of a pension plan, the superintendent may designate the plan as a multi-unit pension plan if the plan complies with this Act and the regulations and

- (a) the plan is organized and administered for employees of one employer, who is required under two or more collective agreements to make contributions to the plan;
- (b) the plan
 - (i) is organized and administered for employees of two or more employers who are required under one collective agreement to make contributions to the plan, and none of whom employs more than 95% of the active members of the plan, and
 - (ii) provides a pension determined with reference to periods of employment with those employers; or
- (c) the plan
 - (i) is organized and administered for employees of two or more employers each of whom is required by two or more collective agreements to make contributions to the plan, and none of whom employs more than 95% of the active members of the plan, and
 - (ii) provides a pension determined with reference to periods of employment with those employers.

For the purpose of this subsection, two or more employers who are affiliated with each other for the purposes of *The Corporations Act* are to be treated as one employer.

26.1(3) Repealed, S.M. 2005, c. 2, s. 18.

Board of trustees

26.1(4) The administrator of a multi-unit pension plan must be a board of trustees with

- (a) at least as many trustees representing members of the plan as there are trustees representing the participating employer or employers; and
- (b) at least one trustee representing non-active members of the plan.

Transfer to another plan

26.1(5) Where an employee who is a member of a multi-unit pension plan is transferred to other employment governed by another pension plan of a participating employer, the employee may immediately join the other pension plan.

Employment with two or more employers

26.1(6) In determining when an employee who has been employed at different times by two or more participating employers is eligible or required to become a member of a multi-unit pension plan, all those periods of employment must be treated as one period of continuous employment with one employer.

26.1(7) and (8) Repealed, S.M. 2005, c. 2, s. 18.

Forfeiture of minimal benefit

26.1(9) If

- (a) a member's pension benefit credit under a multi-unit pension plan is less than a prescribed amount;
- (b) no contributions have been made by or behalf of the member for a period of two years; and
- (c) the administrator is unable to locate the member, having made a reasonable effort to do so;

the member's pension benefit credit may be forfeited to the plan in accordance with the regulations.

Liability of employer limited

26.1(10) A participating employer's liability for funding the benefits of a multi-unit pension plan is limited to the amount the participating employer is contractually required to contribute to the plan.

Required provisions in multi-unit plans

26.1(11) A multi-unit pension plan shall contain provisions, consented to in writing by the superintendent,

- (a) specifying the methods of allocation and distribution of the assets of the plan and the priorities for determining the benefits of members entitled to them, where the assets of the plan are not sufficient to pay all benefits on the winding up of the plan;
- (b) providing for the allocation of surplus assets on the winding up of the plan;
- (c) outlining the consequences of a participating employer's withdrawal from the plan, in respect of the funding and vesting of the benefits of members affected by the withdrawal;
- (d) specifying, in accordance with the regulations, the circumstances when a member ceases to be an active member of the plan;
- (e) specifying how the plan will meet the tests for solvency prescribed in the regulations;
- (f) outlining the consequences of a participating union's withdrawal from the plan, in respect of the funding and vesting of the benefits of members affected by the withdrawal; and
- (g) setting out a process for selecting those trustees of the plan representing the employer or employers, and those trustees of the plan representing the members of the plan.

No partial termination

26.1(12) The suspension or cessation of contributions by a participating employer to a multi-unit pension plan does not constitute a partial termination of the plan unless

- (a) the plan expressly provides that it does; or
- (b) the superintendent, upon application by the administrator, declares that it does.

S.M. 1992, c. 36, s. 12; S.M. 2005, c. 2, s. 18; S.M. 2011, c. 23, s. 7.

Contents of plan

27 In any pension plan filed for registration in accordance with section 18,

- (a) repealed, S.M. 2011, c. 23, s. 8;
- (b) provisions for computation of the employer's contributions and of the pension and, in the case of a deferred profit-sharing pension plan, the formula governing allocation of contributions and surplus amongst the members of the plan shall not be variable at the discretion of the employer;

unless in the opinion of the commission the circumstances of the plan warrant otherwise.

S.M. 2005, c. 2, s. 19; S.M. 2011, c. 23, s. 8.

Trust for contributions

28(1) Any sum received by an employer from an employee pursuant to an arrangement for the payment of such sum by the employer into a pension plan as the employee's contribution thereto shall be deemed to be held by the employer in trust for payment of the sum after his receipt thereof into the pension plan as the employee's contribution thereto, whether or not the amount thereof has been kept separate and apart by the employer and the employer shall not appropriate or convert any part thereof to his own use or to any use not authorized by the trust.

Payroll deductions

28(2) For the purposes of subsection (1), any sum withheld by an employer for pension purposes, whether by payroll deduction or otherwise, from moneys payable to an employee shall be deemed to be a sum received by the employer from the employee.

Employer's contributions in trust

28(3) Any sum required to be paid into a pension plan by an employer as the employer's contribution to the pension plan shall, when due under the pension plan, be deemed to be held by the employer in trust for payment of the same into the pension plan in accordance with the pension plan and this Act and the regulations as the

This Act is Current to June 22, 2016

This Act has "Not in Force" sections. See the Table of Legislative Changes.

PENSION BENEFITS STANDARDS ACT

[SBC 2012] CHAPTER 30

Assented to May 31, 2012

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98 (1) The superintendent may direct the administrator of a pension plan to terminate the plan if

(a) one or more of the plan documents do not comply with this Act or the regulations, or

(b) the administrator has not complied with this Act, the regulations, the plan documents or a direction issued under section 113.

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

Division 3 — After Effective Date of Termination

Benefits cease to accrue

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

Required amounts must be remitted

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

(a) are due from the participating employer to the plan but remain unpaid at the effective date of the termination, and

(b) have accrued to the effective date of the termination but are not yet due,

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

Solvency deficiency must be eliminated

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

(a) the participating employers must eliminate the solvency deficiency as prescribed, and



Province of Alberta

EMPLOYMENT PENSION PLANS ACT

Statutes of Alberta, 2012
Chapter E-8.1

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Alberta Queen's Printer
7th Floor, Park Plaza
10611 - 98 Avenue
Edmonton, AB T5K 2P7
Phone: 780-427-4952
Fax: 780-452-0668

E-mail: qp@gov.ab.ca
Shop on-line at www.qp.alberta.ca

Termination by direction of Superintendent

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

- (a) one or more of the plan documents of the plan do not comply with this Act or the regulations, or
 - (b) the administrator has not complied with this Act, the regulations, the plan documents or a direction issued under section 133.
- (2) If the Superintendent makes a direction under subsection (1), the Superintendent must specify a date as the effective date of the termination.

Division 3**After Effective Date of Termination****Benefits cease to accrue**

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

Required amounts must be remitted

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

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

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

Solvency deficiency must be eliminated

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

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c.C-36, AS AMENDED
AND IN THE MATTER OF SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990, c.C-43, AS AMENDED
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF THE VICTORIAN ORDER OF NURSES
FOR CANADA, VICTORIAN ORDER OF NURSES FOR CANADA – EASTERN REGION, AND VICTORIAN ORDER OF
NURSES FOR CANADA – WESTERN REGION

ONTARIO

**SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

**FACTUM OF THE SUPERINTENDENT OF
FINANCIAL SERVICES
(Pension Plan Restructuring)**

**MINISTRY OF THE ATTORNEY GENERAL
CIVIL LAW DIVISION, FSCO BRANCH**
Financial Services Commission of Ontario
5160 Yonge Street, 17th Floor
Toronto ON M2N 6L9

Deborah McPhail LSUC# 231540
Tel: (416) 226-7764
Fax:(416) 590-7556

Counsel for the Superintendent of
Financial Services