

HOUSE USE ONLY

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Province of Prince Edward Island
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BILL NO. 41

Pension Benefits Act

Honourable Janice A. Sherry
Minister of Environment, Labour and Justice and Attorney General

GOVERNMENT BILL

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Queen's Printer
Charlottetown, Prince Edward Island

Pension Benefits Act

WHEREAS the Government of Prince Edward Island wishes to promote the development of an environment in which pension promises will be fulfilled;

AND WHEREAS greater transparency of information about pension plans will assist members, former members and retired members in making informed decisions about their pension plans;

AND WHEREAS the Government of Prince Edward Island intends to promote and facilitate the implementation and continuation of pension plans;

BE IT ENACTED by the Lieutenant Governor and the Legislative Assembly of the Province of Prince Edward Island as follows:

1. In this Act,

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|---|-----------------------------------|
| | Definitions |
| (a) “additional voluntary contribution” means a contribution to a pension fund by a member beyond any amount that the member is required to contribute, but does not include an optional contribution or a contribution in relation to which the employer is required to make a concurrent additional contribution to the pension fund; | additional voluntary contribution |
| (b) “administrator” means the person that administers a pension plan; | administrator |
| (c) “assets” means, in relation to an employer, assets that in the ordinary course of business would be entered in books of account, whether or not a particular asset is entered in the books of account of the employer; | assets |
| (d) “bridging benefit” means a periodic payment provided under a pension plan to a retired member of the pension plan for a temporary period of time for the purpose of supplementing the retired member’s pension benefit until the retired member is eligible to receive benefits under the <i>Old Age Security Act</i> (Canada) or is either eligible for or commences to receive retirement benefits under the <i>Canada Pension Plan</i> or the <i>Quebec Pension Plan</i> ; | bridging benefit |
| (e) “certified copy” means a copy certified to be a true copy; | certified copy |
| (f) “collective agreement” means a collective agreement as defined in clause 7(1)(c) of the <i>Labour Act</i> R.S.P.E.I. 1988, Cap. L-1; | collective agreement |

commuted value	(g) “commuted value” means the value, calculated in the prescribed manner and as of a fixed date, of a pension, a deferred pension, a pension benefit or an ancillary benefit;
continuous	(h) “continuous” means, in relation to employment, membership or service, continuous without regard to periods of temporary suspension of the employment, membership or service and without regard to periods of layoff from employment;
contributory benefit	(i) “contributory benefit” means a pension benefit or part of a pension benefit to which a member is required to make contributions under the terms of the pension plan;
deferred pension	(j) “deferred pension” means a pension benefit, payment of which is deferred until the person entitled to the pension benefit reaches the normal retirement age under the pension plan;
defined benefit	(k) “defined benefit” means a pension benefit other than a defined contribution benefit or a target benefit;
defined contribution benefit	(l) “defined contribution benefit” means a pension benefit determined with reference to and provided by contributions, and the interest on the contributions, paid by or for the credit of a member and determined on an individual account basis, but does not include an optional benefit;
designated jurisdiction	(m) “designated jurisdiction” means any jurisdiction in Canada, including Canada itself, that is prescribed as a jurisdiction in which there is in force legislation substantially similar to this Act;
designated multi-jurisdictional pension plan	(n) “designated multi-jurisdictional pension plan” means a pension plan to which this Act applies and to which the pension benefits legislation of one or more designated jurisdictions also applies;
effective date	(o) “effective date” means, in respect of this Act, the date on which this Act comes into force;
employee	(p) “employee” means an individual who is employed by an employer to do work or provide a service and who is in receipt of or entitled to remuneration for the work or service;
employer	(q) “employer” means, in relation to a member, former member or retired member of a pension plan, the person from whom or the organization from which the member, former member or retired member receives or received remuneration to which the pension plan relates;
file	(r) “file” means file with the Superintendent;

- (s) “former member” means an individual who has either terminated employment that relates to a pension plan or has terminated membership in a pension plan and former member
- (i) is entitled to a deferred pension payable from the pension fund, or
 - (ii) is entitled to receive any other payment from the pension fund,
- but does not include a retired member of a pension plan or an individual who was a member and who has transferred an amount under section 60 in connection with the pension plan;
- (t) “going concern unfunded liability” means, with respect to a pension plan, a going concern unfunded liability as determined in accordance with the prescribed requirements; going concern unfunded liability
- (u) “insurance company” means a corporation authorized to undertake life insurance in Canada; insurance company
- (v) “joint and survivor pension” means a pension payable during the joint lives of the person entitled to the pension and that person’s spouse and thereafter during the life of the survivor of them; joint and survivor pension
- (w) “jointly sponsored pension plan” means a pension plan that has the following characteristics and includes such other pension plans as may be prescribed: jointly sponsored pension plan
- (i) it provides defined benefits,
 - (ii) the defined benefits are contributory benefits,
 - (iii) members are required, by virtue of the documents that create and support the plan, to make contributions in respect of any going concern unfunded liability and solvency deficiency of the plan, and
 - (iv) the plan satisfies such additional criteria as may be prescribed;
- (x) “member” means, in respect of a pension plan, a member of the pension plan; member
- (y) “Minister” means the Minister of Environment, Labour and Justice and Attorney General; Minister
- (z) “multi-employer pension plan” means a pension plan established and maintained for employees of two or more employers who contribute or on whose behalf contributions are made to a pension fund by reason of agreement, statute or municipal bylaw to provide a pension benefit that is determined by service with one or more of the employers, but does not include a pension plan if multi-employer pension plan
- (i) all the employers who contribute, or on whose behalf contributions are made, to the pension fund are affiliates of each

	<p>other, within the meaning of the <i>Companies Act</i> R.S.P.E.I. 1988, Cap. C-14, or</p> <p>(ii) the regulations specify that the plan is not a multi-employer pension plan;</p>
normal cost	(aa) “normal cost” means, with respect to a pension plan, the normal cost as determined in accordance with the regulations;
normal retirement age	(bb) “normal retirement age” means the date or age specified in the pension plan as the normal retirement age of members;
operative date	(cc) “operative date” means the date that is 12 months after the date on which this Act comes into force;
optional benefit	(dd) “optional benefit” means a benefit that is prescribed for the purpose of section 58 as an optional benefit;
optional contribution	(ee) “optional contribution” means a contribution to the pension fund that is made to obtain an optional benefit under the pension plan and that is made by a member beyond any amount that the member is required to make;
original pension plan	(ff) “original pension plan” means, except in section 105, a pension plan from which assets are transferred and includes the pension fund for that pension plan;
partial wind-up	(gg) “partial wind-up” means the termination of part of a pension plan and the distribution of the assets of the pension fund related to that part of the pension plan;
participating employer	(hh) “participating employer” means, in relation to a jointly sponsored pension plan or a multi-employer pension plan, an employer required to make contributions to the pension fund;
pension	(ii) “pension” means a pension benefit that is in payment;
pension benefit	(jj) “pension benefit” means the aggregate monthly, annual or other periodic amounts payable to a member or former member during the lifetime of the member or former member, to which the member or former member will become entitled under the pension plan or to which, any other person is entitled upon the death of a member or former member, and includes contractually provided escalation adjustments;
pension committee	(kk) “pension committee” means a committee that is an administrator;
pension fund	(ll) “pension fund” means the fund maintained to provide benefits under or related to a pension plan;
pension plan	(mm) “pension plan” means a plan organized and administered to provide pensions for employees, but does not include

- (i) an employees' profit-sharing plan or a deferred profit-sharing plan as defined in sections 144 and 147 of the *Income Tax Act* (Canada),
 - (ii) a plan to provide a retiring allowance as defined in subsection 248(1) of the *Income Tax Act* (Canada),
 - (iii) a plan under which all pension benefits are provided by contributions made by members, or
 - (iv) any other prescribed type of plan;
- (nn) "personal representative" has the same meaning as in the *Probate Act* R.S.P.E.I. 1988, Cap. P-21; personal representative
- (oo) "prescribed" means prescribed by the regulations; prescribed
- (pp) "qualification date" means, in respect of the province, the operative date and, in respect of a designated province, the date on which under the law of the designated province a pension plan must be registered by the proper authority in the designated province; qualification date
- (qq) "reciprocal transfer agreement" means an agreement related to two or more pension plans that provides for the transfer of money or credits for employment or both in respect of individual members; reciprocal transfer agreement
- (rr) "registered retirement savings arrangement" means a registered retirement savings plan established in accordance with the *Income Tax Act* (Canada) or a registered retirement income fund established in accordance with that Act; registered retirement savings arrangement
- (ss) "registration" means registration pursuant to this Act; registration
- (tt) "retired member" means an individual who has either terminated employment that relates to a pension plan or has terminated membership in a pension plan and satisfies one or more of the following criteria: retired member
- (i) the individual is receiving a pension payable from the pension fund,
 - (ii) the individual is entitled to begin to receive a pension from the pension fund by virtue of having reached the normal retirement age under the pension plan, even though the individual has not yet elected to receive the pension,
 - (iii) the individual has elected, under subsection 59(1), to receive an early retirement pension, or
 - (iv) the individual has elected, under the terms of the pension plan, to begin payment of a pension payable from the pension fund, whether or not receipt of the first payment of the pension is deferred until a later date,
- but does not include an individual who was a member and who has transferred an amount under section 60 in connection with the pension plan;

solvency deficiency	(uu) “solvency deficiency” means, with respect to a pension plan, a solvency deficiency as determined in accordance with the prescribed requirements;
solvency liabilities	(vv) “solvency liabilities” means, with respect to a pension plan, solvency liabilities as determined in accordance with the regulations;
spouse	(ww) “spouse” means a spouse as defined in clause 29(1)(b) of the <i>Family Law Act</i> R.S.P.E.I. 1988, Cap. F-2.1;
successor pension plan	(xx) “successor pension plan” means, except in section 105, a pension plan to which assets are transferred and includes the pension fund for that pension plan;
Superintendent	(yy) “Superintendent” means the Superintendent of Pensions appointed pursuant to section 8 in accordance with the <i>Civil Service Act</i> R.S.P.E.I. 1988, Cap. C-8;
surplus	(zz) “surplus” means the excess of the value of the assets of a pension fund related to a pension plan over the value of the liabilities under the pension plan, both calculated in the prescribed manner;
target benefit	(aaa) “target benefit” means a pension benefit that is a target benefit as determined under section 56;
termination	(bbb) “termination”, in relation to employment, includes retirement and death;
trade union	(ccc) “trade union” means a trade union as defined in clause 7(1)(m) of the <i>Labour Act</i> ;
wind-up	(ddd) “wind-up” means the termination of a pension plan and the distribution of the assets of the pension fund following plan termination;
Year’s Maximum Pensionable Earnings	(eee) “Year’s Maximum Pensionable Earnings” has the same meaning as in the <i>Canada Pension Plan</i> .
Deemed province of employment	2. (1) For the purpose of this Act, a person is deemed to be employed in the province of Canada in which the establishment of the employer is located and to which the person is required to report for work.
<i>Idem</i>	(2) A person who is not required to report for work at an establishment of the employer is deemed to be employed in the province of Canada in which is located the establishment of the employer from which the person’s remuneration is paid.

APPLICATION OF ACT

- 3.** (1) This Act applies to every pension plan that is provided for persons employed in the Province. Application to pension plans
- (2) This Act does not bind the Crown. Crown not bound
- 4.** This Act and the regulations shall not be construed to prevent the registration or administration of a pension plan and related pension fund that provide pension benefits or ancillary benefits more advantageous to members than those required by this Act and the regulations. More advantageous plans
- 5.** (1) This section applies with respect to a designated multi-jurisdictional pension plan if there is an agreement under section 8 between the Crown and any designated jurisdiction whose pension benefits legislation applies to the pension plan. Designated multi-jurisdictional pension plan
- (2) The administrator of the designated multi-jurisdictional pension plan shall comply with the requirements in the agreement that apply with respect to the pension plan and with any requirements imposed under the authority of the agreement. Administrator, duties
- (3) Without limiting the generality of section 9, the agreement governs the manner and extent to which this Act and the regulations apply with respect to the designated multi-jurisdictional pension plan. Agreement governs application of this Act
- (4) An employer or person required to make contributions to a designated multi-jurisdictional pension plan on the employer's behalf shall comply with the requirements in the agreement that apply with respect to the pension plan and with any requirements imposed under the authority of the agreement. Contributors to comply with agreement
- (5) The amount of the pension benefits, deferred pension, pension or ancillary benefits or any other amount payable under a designated multi-jurisdictional pension plan in relation to a member, former member or retired member is determined in accordance with such requirements as may be contained in the agreement. Benefits, determination
- (6) This section applies notwithstanding any documents that create and support a designated multi-jurisdictional pension plan and the pension fund. Application of this section
- (7) This section applies notwithstanding any trust that may exist in favour of any person. *Idem*

ADMINISTRATION OF ACT

Administration of Act and regulations	6. The Minister has the general supervision and management of this Act and the regulations and may designate persons to act on behalf of the Minister.
Powers of Minister	<p>7. (1) Subject to the approval of the Lieutenant Governor in Council, the Minister may</p> <ul style="list-style-type: none"> (a) enter into agreements with another province of Canada 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 Minister as the Minister may require; and (c) delegate to or accept delegation from a pension supervisory authority or a designated jurisdiction of such functions and powers pursuant to this Act as the Minister may determine.
Delegation under agreement	<p>(2) Without limiting the generality of subsection (1), an agreement may provide for</p> <ul style="list-style-type: none"> (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; and (b) the delegation to the Superintendent of any powers and duties of a pension supervisory authority or the government of a designated jurisdiction under pension benefits legislation.
Delegation to Superintendent	(3) The Superintendent may accept a delegation described in clause (2)(b).
Agreements, entering into	8. (1) With the approval of the Lieutenant Governor in Council, the Minister may enter into one or more agreements on behalf of Her Majesty in right of the Province with a representative of a designated jurisdiction concerning the pension benefits legislation that governs designated multi-jurisdictional pension plans in the Province and in the designated jurisdiction.
Agreements, scope	(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.
<i>Idem</i>	(3) Without limiting the generality of subsection (2), an agreement in relation to a designated multi-jurisdictional pension plan may provide

- (a) for the establishment of 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;
- (b) that this Act and the regulations, or any part thereof, does not apply with respect to the pension plan in specified circumstances;
- (c) for the establishment of additional requirements that apply with respect to the pension plan in specified circumstances; and
- (d) 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.

(4) For greater certainty, an agreement may provide

Idem

- (a) where, under a designated multi-jurisdictional pension plan, a member or former member has service in the Province and in a designated jurisdiction, for the establishment of 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, which requirements may result in an increase or a decrease in the amount to which the person would otherwise be entitled;
- (b) that an employer, or a person or entity required to make contributions to the pension plan on the employer's behalf, shall 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; and
- (c) for the allocation of the assets of the pension plan between jurisdictions at the times and in the manner specified.

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

Idem

- (a) matters respecting the administration and enforcement of this Act and the regulations and of the pension benefits legislation of the designated jurisdiction;
- (b) the reciprocal application and enforcement of pension benefits legislation and the reciprocal registration, audit and inspection of the designated multi-jurisdictional pension plans;
- (c) 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;

- (d) 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; and
- (e) 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 purpose 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.

Agreement or amendment, commencement	(6) An agreement or an amendment to an agreement with a designated jurisdiction does not come into effect in the Province until a date that is specified by the regulations.
Agreement, termination	(7) An agreement with a designated jurisdiction ceases to have effect in the Province on a date that is specified by the regulations.
Notice of agreement	(8) The Minister shall publish notice of each agreement and notice of any amendments to the agreement in the Royal Gazette, together with specification as to the means by which the agreement or amendments to the agreement may be viewed.
Agreement, enforcement	9. (1) An agreement entered into under section 8 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.
<i>Idem</i>	(2) An agreement entered into under section 8 is not enforceable until notice of the agreement is published in the Royal Gazette in accordance with subsection 8(8).
Superintendent and other personnel, appointment	10. (1) A Superintendent of Pensions, who is the chief administrative officer, and such officers and employees as are necessary to enable the Superintendent to perform the duties of the Superintendent shall be appointed in accordance with the <i>Civil Service Act</i> .
Superintendent to act in accordance with directions of Minister	(2) The Superintendent, in exercising and performing the Superintendent's functions, duties and powers pursuant to this Act and the regulations, shall act in accordance with the directions of the Minister.
Experts	11. The Minister may engage the services of counsel, actuaries, accountants and other experts to <ol style="list-style-type: none"> (a) advise the Superintendent in respect of such matters as the Minister considers necessary for the efficient carrying out of the Superintendent's duties and functions pursuant to this Act; and

(b) carry out the functions and for the purpose set out in section 121 of this Act.

12. The Superintendent shall

Duties of
Superintendent

(a) promote the establishment, extension and improvement of pension plans throughout the Province;

(b) make recommendations to the Minister in respect of pension plans throughout the Province;

(c) supervise all persons who establish or administer a pension plan within the meaning of this Act and all employers or other persons who on an employer's behalf are required to contribute to any such pension plan; and

(d) perform such functions and discharge such duties as are assigned from time to time by the Lieutenant Governor in Council or the Minister.

13. The Superintendent may delegate in writing any of the Superintendent's powers or duties under this Act, the regulations or an agreement made pursuant to section 8 to any person, subject to any limitations or conditions set out in the delegation, and all acts done and decisions made under the delegation are as valid and effective as if done or made by the Superintendent.

Superintendent,
delegation by

14. (1) The Superintendent may conduct surveys and research programs and compile statistical information related to pensions and pension plans.

Surveys, research
and information

(2) The Superintendent may request an employer, an administrator or a member of a pension plan to provide information necessary to compile the statistical information and such person shall comply with the request within a reasonable period of time.

Information
requests

(3) The Superintendent shall use the information only for the purpose of compiling the statistical information and shall not otherwise reveal the information without the consent of the person who supplies the information.

Use of information

REGISTRATION AND ADMINISTRATION OF PENSION PLANS

15. No person shall administer a pension plan, except during the first ninety days after the establishment of the plan, unless a certificate of registration or an acknowledgement of application for registration of the pension plan has been issued by the Superintendent.

Administration of
plan, requirement
for certificate of
registration or
acknowledgement

16. Where registration of a pension plan has been refused or revoked by the Superintendent, no person shall administer the plan except for the purpose of wind-up.

Registration refused
or revoked

17. (1) A pension plan must be administered by a person or entity described in subsection (3).
- Administrator, requirements
- (2) No person or entity other than a person or entity described in subsection (3) may administer a pension plan.
- Administrator, restrictions
- (3) A pension plan is not eligible for registration unless it is administered by an administrator who is
- Administrator required for registration of plan
- (a) the employer or, where there is more than one employer, one or more of the employers;
 - (b) a pension committee composed of one or more representatives of
 - (i) the employer or employers, or any person, other than the employer or employers, required to make contributions under the pension plan, and
 - (ii) members;
 - (c) a pension committee composed of representatives of members;
 - (d) the insurance company that provides the pension benefits under the pension plan, if all the pension benefits under the pension plan are guaranteed by the insurance company;
 - (e) where the pension plan is a multi-employer pension plan established pursuant to a collective agreement or a trust agreement, a board of trustees appointed pursuant to the pension plan or a trust agreement establishing the pension plan of whom at least one half are representatives of members of the multi-employer pension plan and a majority of such representatives of the members are Canadian citizens or permanent residents of Canada;
 - (f) a person appointed as administrator by the Superintendent;
 - (g) a corporation, board, agency or commission made responsible by an enactment for the administration of the pension plan;
 - (h) the Superintendent; or
 - (i) such other person or entity as may be prescribed.
- Representatives of retired members, inclusion in pension committee or board of trustees
- (4) A pension committee, or a board of trustees, that is the administrator of a pension plan may include one or more representatives of retired members.
- employer, defined
- (5) In clause (3)(b), “employer” includes
- (a) an affiliate, within the meaning of the *Companies Act*, of the employer; and
 - (b) such other persons or entities, or classes of persons or entities, as may be prescribed.
- Administrator, appointment by Superintendent
- (6) The Superintendent may, in prescribed circumstances, appoint an administrator for a pension plan and may terminate the appointment if the Superintendent considers the termination reasonable in the circumstances.

(7) The Superintendent may, in prescribed circumstances, act as administrator of a pension plan.

Superintendent as administrator

18. (1) In this section, “document” includes a collective agreement.

document, defined

(2) The administrator of a pension plan shall apply to the Superintendent, within the prescribed period, for registration of the pension plan.

Application for registration

(3) An application for registration may be made by paying the prescribed fee and filing

Idem

- (a) a completed application in the form approved by the Superintendent; and
- (b) all prescribed documents.

(4) The regulations may provide that the requirement to file a particular prescribed document does not apply in specified circumstances or for prescribed classes of pension plans.

Document filing requirements, exceptions

19. (1) The documents that create and support a pension plan must contain information as prescribed.

Required content of pension plan documents

(2) The regulations may provide that the requirement to include prescribed information referred to in subsection (1) in the documents that create and support a pension plan does not apply in specified circumstances or for prescribed classes of pension plans.

Exceptions

(3) The documents that create and support a jointly sponsored pension plan may authorize a prescribed person or entity to establish or maintain a separate jointly sponsored pension plan for persons employed in less than full-time continuous employment.

Jointly sponsored pension plan, documents

20. (1) A pension plan must provide for the accrual of pension benefits in a gradual and uniform manner.

Pension benefits accrual

(2) A pension plan must not provide that the formula for computation of the employer’s contributions to the pension fund or the pension benefit provided under the pension plan is variable at the discretion of the employer.

Variable contributions of employer, restriction

(3) A deferred profit-sharing pension plan or a pension plan that provides defined contribution benefits must not provide that the formula governing allocation of contributions to the pension fund and profits among members of the plan is variable at the discretion of the employer.

Variable deferred profit-sharing

(4) Notwithstanding subsections (1) to (3), the Superintendent may register a pension plan that does not comply with subsection (1), (2) or (3), and the Superintendent may permit the continued registration of such

Exception

a plan, if the Superintendent considers that registration is justified in the circumstances of the pension plan and the members.

Application for registration of amendment of plan

21. (1) The administrator of a pension plan shall apply to the Superintendent, within the prescribed period of time after the date on which the pension plan is amended, for registration of the amendment to the pension plan or the prescribed plan documents, along with any other required information.

Requirements for registration

(2) An application for registration of an amendment may be made by paying the prescribed fee to the Superintendent and filing

- (a) a certified copy of the amending document;
- (b) certified copies of any prescribed documents; and
- (c) any prescribed information.

Regulations

(3) The regulations may provide that the requirement to file a particular document or information described in subsection (2) does not apply in specified circumstances or for prescribed classes of pension plans.

Filing changes

(4) The administrator of a pension plan shall file a certified copy of each document that changes the documents that create and support the pension plan or pension fund.

Effective date of amendment

22. (1) An amendment to a pension plan is not effective until an application for registration of the amendment is made in accordance with this Act and the regulations.

Retroactive amendment

(2) An amendment to a pension plan may be made effective as of a date before the date on which the amendment is registered.

Amendment void

23. (1) An amendment to a pension plan is void if the amendment purports to reduce

- (a) the amount or the commuted value of a pension benefit accrued under the pension plan with respect to employment before the effective date of the amendment;
- (b) the amount or the commuted value of a pension or a deferred pension accrued under the pension plan; or
- (c) the amount or the commuted value of an ancillary benefit for which a member, former member or retired member has met all eligibility requirements under the pension plan necessary to exercise the right to receive payment of the benefit.

Void amendment

(2) An amendment to a pension plan is void if the amendment purports to increase an amount described in clause (1)(a), (b) or (c) and the increase would reduce the transfer ratio or the going concern funded ratio of the pension plan, determined in accordance with the regulations, below the prescribed level.

(3) Subsection (2) does not apply if an amendment is required as a result of a judicial decision or in such other circumstances as may be prescribed.

Application of subsection (2)

(4) Subsection (1) does not apply to

Application of subsection (1)

- (a) a multi-employer pension plan established pursuant to a collective agreement or a trust agreement;
- (b) a pension plan that provides defined benefits if the obligation of the employer to contribute to the pension fund is limited to a fixed amount set out in a collective agreement;
- (c) an amendment in respect of a pension plan that provides only target benefits or in respect of that part of a pension plan that provides target benefits;
- (d) an amendment that relates to a transfer of assets authorized by section 105, 106 or 107; or
- (e) an amendment that is necessary under the *Income Tax Act* (Canada) or any applicable pension legislation.

24. The Superintendent shall issue an acknowledgment of application for registration of a pension plan within thirty days after receiving an application for registration that complies with this Act and the regulations.

Acknowledgement of application

25. The Superintendent shall issue a certificate of registration for each pension plan registered pursuant to this Act.

Certificate of registration

26. The Superintendent shall issue a notice of registration for each amendment to a pension plan registered pursuant to this Act.

Notice of registration

27. (1) The Superintendent may

Refusal and revocation

- (a) refuse to register a pension plan that does not comply with this Act and the regulations;
- (b) revoke the registration of a pension plan that does not comply with this Act and the regulations;
- (c) revoke the registration of a pension plan that is not being administered in accordance with this Act and the regulations;
- (d) refuse to register an amendment or a part of an amendment to a pension plan if the amendment or part of the amendment is void or if the pension plan with the amendment or the part of the amendment would cease to comply with this Act and the regulations; or
- (e) revoke the registration of an amendment or a part of an amendment that does not comply with this Act and the regulations.

(2) The authority of the Superintendent pursuant to subsection (1) is subject to the right to a hearing pursuant to section 112.

Application of subsection (1)

Effect of refusal or revocation	(3) A refusal of registration of a pension plan or a revocation of registration of a pension plan operates to terminate the pension plan as of the date specified by the Superintendent.
<i>Idem</i>	(4) A refusal of registration of an amendment to a pension plan or the revocation of an amendment to a pension plan operates to terminate the amendment as of the date specified by the Superintendent.
Wind up of pension plan	(5) Where registration of a pension plan is refused or revoked, the administrator shall wind up the pension plan in accordance with this Act and the regulations.
Amendment of existing plans	28. (1) Every employer who maintains a pension plan on the effective date shall amend the pension plan to conform with this Act and the regulations within three years after that date.
<i>Idem</i>	(2) Where a pension plan is governed by a collective agreement or an arbitration award made pursuant to the <i>Labour Act</i> that requires a provision contrary to this Act or the regulations and that is in effect on the effective date, the parties to the collective agreement or arbitration award shall amend the pension plan to conform to this Act and the regulations not later than <ul style="list-style-type: none"> <li data-bbox="553 974 1154 999">(a) the date that is three years after the effective date; or <li data-bbox="553 1003 1294 1094">(b) where the collective agreement or arbitration award expires on or after the effective date, and before or on the date that is three years after the effective date, upon such expiry.
Registration of plan governed by collective agreement or arbitration award	(3) The Superintendent shall not refuse to register a pension plan that is governed by a collective agreement or an arbitration award made pursuant to the <i>Labour Act</i> that requires a provision contrary to this Act or the regulations and that is the subject of an application for registration submitted on or after the effective date if the pension plan would have been eligible for registration pursuant to the former Act.
Administrator, duties	29. (1) The administrator of a pension plan shall ensure that the pension plan and the pension fund are administered in accordance with this Act and the regulations.
Application of subsection (1)	(2) Subsection (1) applies whether or not the pension plan is amended to comply with this Act and the regulations.
Administrator, duties	(3) The administrator shall ensure that the pension plan and the pension fund are administered in accordance with <ul style="list-style-type: none"> <li data-bbox="553 1587 1294 1677">(a) the filed documents in respect of which the Superintendent has issued an acknowledgment of application for registration or a certificate of registration, whichever is issued later; and <li data-bbox="553 1682 1294 1734">(b) the filed documents in respect of an application for registration of an amendment to the pension plan, if the application complies

with this Act and the regulations and the amendment is not void pursuant to this Act.

(4) The administrator may administer or permit administration of the pension plan and the pension fund in accordance with an amendment pending registration or refusal of registration of the amendment. *Idem*

(5) Subsection (3) does not apply to enable the administrator to administer the pension plan contrary to this Act and the regulations. Application of subsection (3)

30. (1) The administrator of a pension plan shall file each year an annual information return in respect of the pension plan in the form approved by the Superintendent and shall pay the prescribed filing fee. Annual returns

(2) The administrator shall file additional reports at the times and containing the information prescribed together with any filing fees that may be prescribed. Additional reports

31. (1) The administrator of a pension plan shall file a certified copy of a reciprocal transfer agreement entered into in respect of the pension plan. Reciprocal transfer agreement, filing

(2) The reciprocal transfer agreement must satisfy such requirements as may be prescribed. Requirements

(3) The administrator shall not transfer money or credits for employment under a reciprocal transfer agreement unless the reciprocal transfer agreement complies with subsection (2). Transfer of money under reciprocal transfer agreement

32. (1) The administrator of a pension plan shall exercise the care, diligence and skill in the administration and investment of the pension fund that a person of ordinary prudence would exercise in dealing with the property of another person. Care, diligence, knowledge and skill

(2) The administrator of a pension plan shall use in the administration of the pension plan, and in the administration and investment of the pension fund, all relevant knowledge and skill that the administrator possesses or, by reason of profession, business or calling, ought to possess. Special knowledge and skill

(3) The administrator or, where the administrator is a pension committee or a board of trustees, a member of the committee or board shall not knowingly permit the administrator's or member's interest to conflict with the administrator's or member's duties and powers in respect of the pension fund. Conflict of interest

(4) Where it is reasonable and prudent in the circumstances to do so, an administrator may employ one or more agents to carry out any act Employment of agent

required to be done in the administration of the pension plan and in the administration and investment of the pension fund.

Trustee of a pension plan	(5) No person other than a prescribed person shall be a trustee of a pension fund.
Responsibility for agent	(6) An administrator who employs an agent shall personally select the agent and be satisfied of the agent's suitability to perform the act for which the agent is employed, and the administrator shall carry out such supervision of the agent as is prudent and reasonable.
Employee or agent, standards	(7) An employee or agent of an administrator is also subject to the standards that apply to the administrator pursuant to subsections (1) to (3).
Administrator not entitled to benefits	(8) The administrator is not entitled to any benefit from the pension plan other than pension benefits, ancillary benefits and a refund of contributions.
Application of subsections (2) and (8)	(9) Subsections (2) and (8) apply with such changes as are necessary to a member of a pension committee or board of trustees that is the administrator of a pension plan and to a member of a board, agency or commission made responsible by an Act for the administration of a pension plan.
Fees and Expenses of administrator	33. (1) The administrator of a pension plan is entitled to be paid from the pension fund the administrator's reasonable fees and expenses relating to the administration of the pension plan and the administration and investment of the pension fund.
Restrictions	(2) Notwithstanding subsection (1), the administrator is not entitled to be paid from the pension fund any fees and expenses relating to the administration of the pension plan or the administration and investment of the pension fund, if payment to the administrator is prohibited, or payment of the fees and expenses is otherwise provided for under, <ul style="list-style-type: none"> (a) the documents that create and support the pension plan or the pension fund; or (b) this Act or the regulations.
Pension committee, application of subsections (1) and (2)	(3) Subsections (1) and (2) apply with such changes as are necessary to a member of a pension committee or board of trustees that is the administrator of a pension plan and to a member of a board, agency or commission made responsible by an Act for the administration of a pension plan.
Payment of fees and expenses of agents and employer	(4) The administrator of a pension plan may pay from the pension fund to an agent of the administrator, to the employer or to any other person who provides services relating to the administration of the

pension plan or the administration and investment of the pension fund the reasonable fees and expenses of the agent, employer or other person.

(5) Notwithstanding subsection (4), the administrator is not permitted to pay from the pension fund to an agent, employer or other person described in subsection (4) the fees and expenses relating to the administration of the pension plan or the administration and investment of the pension fund, if payment to the agent, employer or other person is prohibited, or payment of the fees and expenses is otherwise provided for, under

- (a) the documents that create and support the pension plan or the pension fund; or
- (b) this Act or the regulations.

(6) Where the Superintendent appoints an administrator under subsection 17(6), the appointed administrator is entitled to be paid, from the pension fund, the appointed administrator's reasonable fees and expenses relating to the administration of the pension plan and the administration and investment of the pension fund.

(7) Where the Superintendent acts as administrator under subsection 17(7), the Superintendent is entitled to be paid, from the pension fund, the Superintendent's reasonable expenses relating to the administration of the pension plan and the administration and investment of the pension fund.

34. An employer shall provide to the administrator of a pension plan any information required by the administrator for the purpose of complying with the terms of the pension plan or of this Act or the regulations.

35. (1) The members and retired members of a pension plan, by the decision of a majority of them participating in a vote, may establish an advisory committee in accordance with such conditions and subject to such restrictions as may be prescribed.

(2) Where members are represented by a trade union, the trade union may act on their behalf for the purpose of establishing an advisory committee.

(3) The following rules govern the composition of the advisory committee:

- (a) each class of employees that is represented in the pension plan is entitled to appoint at least one representative on the advisory committee;
- (b) where there is only one class of employees that is represented in the pension plan, that class is entitled to appoint at least two representatives on the committee; and

(c) the retired members of the pension plan are entitled to appoint at least two representatives on the committee.

Former members,
appointment

(4) One or more former members of the pension plan may be appointed as representatives on the advisory committee.

Advisory
committee,
functions

(5) An advisory committee shall

- (a) monitor the administration of the pension plan;
- (b) make recommendations to the administrator respecting the administration of the pension plan; and
- (c) promote awareness and understanding of the pension plan.

Administrator,
provision of
assistance

(6) Upon receiving written notice from members, a trade union acting on their behalf or retired members of their intent to establish an advisory committee and, where such conditions as may be prescribed are satisfied, the administrator, in order to help them to establish the committee, shall

- (a) distribute the notice and such other information as may be prescribed to the members and retired members; and
- (b) provide such other assistance as may be prescribed.

Administrator,
meeting with
committee

(7) Once the advisory committee has been established, the administrator shall

- (a) meet with the committee in accordance with any requirements that may be prescribed;
- (b) provide such assistance to the committee as may be prescribed to help the committee carry out its purpose; and
- (c) give the committee or its representative such information as is under the administrator's control and is required by the committee or the representative for the purpose of the committee.

Records,
examination and
copies

(8) An advisory committee or its representative has the right to examine the records of the administrator in respect of the administration of the pension plan and the pension fund and to make extracts from and copies of the records, but this subsection does not apply in respect of information as to the service, salary, pension benefits or other personal information related to any specific person without that person's prior consent.

Application of
subsection (1)

(9) Subsection (1) does not apply

- (a) if the pension plan is administered by a pension committee at least one of the members of which is appointed by the members of the pension plan;
- (b) in respect of a multi-employer pension plan established pursuant to a collective agreement; or
- (c) in respect of a jointly sponsored pension plan.

(10) Such costs associated with the advisory committee as may be prescribed are payable out of the pension fund, subject to the prescribed restrictions.

Advisory committee, costs

RECORD KEEPING AND DISCLOSURE OF INFORMATION

36. The administrator of a pension plan shall retain the prescribed records concerning the pension plan and the pension fund in the prescribed manner and for the prescribed period of time.

Administrator, records of plan, retention

37. (1) The administrator of a pension plan shall provide in writing to each person who will be eligible or is required to become a member

Information for member

(a) an explanation of the provisions of the plan that apply to that person;

(b) an explanation of that person's rights and obligations in respect of the pension plan; and

(c) any other prescribed information.

(2) The administrator shall provide the information mentioned in subsection (1) to

Administrator to provide information

(a) each person who becomes a member within the prescribed period of time after the date on which the pension plan is established;

(b) a person who is likely to become eligible to become a member, within the prescribed period of time before the date on which that person is likely to become eligible; and

(c) each person who becomes eligible to become a member upon becoming employed by the employer, within the prescribed period of time after the date on which that person becomes so employed.

(3) The employer shall transmit to the administrator the information necessary to enable the administrator to comply with subsection (2) and shall transmit the information in sufficient time to enable the administrator to comply with the time limits set out in that subsection.

Employer to transmit information to administrator

38. (1) Before the administrator of a pension plan applies for registration of an amendment to the pension plan, the administrator shall give a notice to the members, former members and retired members and the notice must contain the prescribed information.

Notice of proposed amendment to pension plan

(2) The administrator shall also give a notice to a trade union that represents members and the notice must contain the prescribed information.

Idem

(3) The notice must be given within the prescribed period.

Time for giving notice

When notice may be given after amendment filed	(4) In such circumstances as may be prescribed and notwithstanding subsection (1), the administrator may give the notice required by subsection (1) to the members, former members and retired members after the amendment to the pension plan is filed.
Application of this section	(5) This section does not apply with respect to an amendment that relates to a transfer of assets authorized by section 103, 105, 106 or 107.
Annual statement, transmission to each member	39. (1) The administrator of a pension plan shall transmit annually to each member a written statement containing the prescribed information in respect of the pension plan, the member's pension benefits and any ancillary benefits.
Transmission to former and retired members	(2) When required by the regulations, the administrator of a pension plan shall transmit to each former member and retired member a written statement containing the prescribed information about the pension plan or about the pension benefits and any ancillary benefits of the former member or retired member.
Information to be given on person ceasing to be member	40. (1) Where a member of a pension plan terminates employment with the employer or otherwise ceases to be a member, the administrator of the pension plan shall give to the member, or to any other person who as a result becomes entitled to a payment under the pension plan, a written statement setting out the prescribed information in respect of the benefits, rights and obligations of the member or other person.
Application of subsection (1)	(2) Subsection (1) applies in respect of a multi-employer pension plan if a member ceases to be a member, but does not apply if a member terminates employment with an employer but continues to be a member.
Persons entitled to information	41. (1) On written request, the administrator of a pension plan shall make available the prescribed records in respect of the pension plan and the pension fund for inspection without charge by <ul style="list-style-type: none"> (a) a member; (b) a former member; (c) a retired member; (d) the spouse of a member, former member or retired member; (e) any other person entitled to pension benefits under the pension plan; (f) a former spouse of a member, former member or retired member but only in such circumstances and for such purpose as may be prescribed; (g) an agent authorized in writing by a person referred to in clauses (a) to (f) or (h) to (j); (h) a representative of a trade union that represents members; (i) an employer;

- (j) a person required to make contributions under the pension plan on behalf of an employer; or
- (k) any other prescribed person.

- (2) The administrator shall make the prescribed records available Place of inspection
- (a) for a member, at the premises of the employer where the member is employed;
 - (b) for a former member or retired member, at the premises where the former member or retired member was employed; and
 - (c) for a member, former member or retired member or any other person, at such other location as may be agreed upon by the administrator and the member, former member or retired member or other person making the request.

(3) A person described in clauses (1)(a) to (e) or that person's agent is entitled to make an inspection under subsection (1) not more than once in a calendar year. Limitation

(4) The administrator shall permit the person making the inspection to make extracts from, or to copy, the prescribed records and, upon request, the administrator shall give the person a copy of any of the prescribed records upon payment of the applicable fee to the administrator. Extracts or copies

(5) Where the administrator receives a written request from a person described in subsection (1) and receives payment of the applicable fee, the administrator shall provide prescribed records by mail or electronically to the person in such circumstances as may be prescribed. Provision of prescribed records

(6) A person described in clauses (1)(a) to (e) or that person's agent is entitled to make a request under subsection (5) for a particular prescribed record not more than once in a calendar year. Request possible once a year

(7) The applicable fee referred to in subsection (4) or (5) must not exceed such amount as may be prescribed. Fee, restriction

42. (1) The persons mentioned in subsection 41(1) and the administrator are entitled to inspect the filed documents that comprise the pension plan and the pension fund and such other prescribed documents as are filed in respect of the pension plan and the pension fund. Inspection of plan documents

- (2) The inspection mentioned in subsection (1) must take place *Idem*
- (a) at a suitable time and location arranged by the administrator; or
 - (b) where the administrator is unable to arrange a suitable time and location for the inspection, at the office of the Superintendent during regular business hours.

Copies of documents	(3) The persons mentioned in subsection 41(1) and the administrator are entitled to copies of the documents mentioned in subsection (1) upon payment of the prescribed fees.
Prescribed records, provision	(4) Where the Superintendent receives a written request from the administrator or from a person described in subsection 41(1) and receives payment of the applicable fee, the Superintendent shall provide the prescribed records by mail or electronically to the administrator or other person in such circumstances as may be prescribed.
Notices may be sent by electronic means	43. (1) The administrator of a pension plan may use electronic means that comply with the <i>Electronic Commerce Act</i> R.S.P.E.I. 1988, Cap. E-4.1 to send notices, statements and other records to members, former members, retired members and other persons entitled to benefits under the pension plan if the administrator has the person's permission to do so.
Application of subsection (1)	(2) Subsection (1) does not apply in such circumstances as may be prescribed.

MEMBERSHIP

Eligibility of member	44. (1) Every employee of a prescribed class of employees for whom a pension plan is established is eligible to be a member.
Full-time employment	(2) An employee in a prescribed class of employees for whom a pension plan is maintained is entitled to become a member upon application at any time after completing twenty-four months, or such lesser time as the plan provides, of continuous full-time employment.
Part-time employment	(3) A pension plan may require not more than twenty-four months of less than full-time continuous employment with the employer with the lesser of <ul style="list-style-type: none"> (a) earnings of not less than thirty-five per cent of the Year's Maximum Pensionable Earnings; or (b) seven hundred hours of employment with the employer, in each of two consecutive calendar years immediately prior to membership in the pension plan, or such equivalent basis as is approved by the Superintendent, as a condition precedent to membership.
Multi-employer pension plan	(4) A multi-employer pension plan may require not more than the lesser of <ul style="list-style-type: none"> (a) earnings of not less than thirty-five per cent of the Year's Maximum Pensionable Earnings with one or more participating employers; or (b) seven hundred hours of employment with one or more participating employers,

in each of the two consecutive calendar years immediately before the year in which membership is applied for, or such equivalent basis as is approved by the Superintendent, as a condition precedent to membership in the multi-employer pension plan.

(5) The Superintendent may give the approval mentioned in subsection (3) or (4) if the Superintendent is of the opinion that the basis is equivalent in the circumstances to the earnings mentioned in the subsection. Approval

45. An employee who is a member of a pension plan continues as a member of that plan so long as the employee's employment, in respect of which the pension plan is maintained, continues. Continuation as member of plan

46. A member who is employed continuously on a less than full-time basis does not cease to be a member by reason only that the member has earnings of less than thirty-five per cent of the Year's Maximum Pensionable Earnings in a calendar year or is employed for fewer than seven hundred hours in a calendar year. Drop in part-time employment

47. (1) Where there is a dispute as to whether an employee is a member of a prescribed class of employees for whom a pension plan is established or maintained, the Superintendent may, subject to section 112, by order require the administrator to accept the employee as a member. Order to accept employee

(2) The Superintendent may make the order under subsection (1) if the Superintendent is of the opinion that, on the basis of the nature of the employment or of the terms of employment of the employee, the employee is a member of the prescribed class. Basis or ground for order

48. (1) An employer may establish or maintain a separate pension plan for employees employed in less than full-time continuous employment if the separate pension plan provides pension benefits and other benefits reasonably equivalent to those provided under the pension plan maintained by the employer for employees of the same class employed in full-time continuous employment. Separate plan for part-time employees

(2) Where the documents that create and support a jointly sponsored pension plan so authorize, a prescribed person or entity may establish a separate jointly sponsored pension plan for employees employed in less than full-time continuous employment if the separate plan provides pension benefits and other benefits reasonably equivalent to those provided under the jointly sponsored pension plan maintained for employees of the same class employed in full-time continuous employment. Separate jointly sponsored pension plan for part-time employees

RETIREMENT AND VESTING

Normal retirement date	49. (1) The normal retirement age under a pension plan submitted for registration on or after the operative date, must not be later than one year after the attainment of sixty-five years of age.
Transitional, deemed normal retirement date	(2) Every pension plan registered or submitted for registration before the operative date, is deemed to specify a normal retirement age in respect of pension benefits that accrue on or after the operative date, that is not later than one year after the attainment of sixty-five years of age, unless the pension plan specifies an earlier normal retirement age.
Continuation of employment past normal retirement age	(3) Where a member continues employment and membership in the pension plan after reaching the normal retirement age under the plan, the member is entitled, on termination of employment, to payment of <ul style="list-style-type: none"> (a) the pension benefits to which the member would have been entitled upon terminating employment at the normal retirement age; and (b) any additional pension benefits accrued under the pension plan that result from the member's employment after the normal retirement age.
<i>Idem</i>	(4) A member who continues employment after the normal retirement age, and who is not receiving a pension under the pension plan, has the right to continue membership in the pension plan and has the right to continue to accrue pension benefits under the pension plan subject to any terms of the pension plan <ul style="list-style-type: none"> (a) fixing a maximum number of years of employment or membership that can be taken into account for the purpose of determining a pension benefit; or (b) fixing a maximum amount of the pension benefit.
Phased retirement option, circumstances	50. (1) A pension plan that provides defined benefits may provide a phased retirement option for eligible members in the circumstances described in this section, and the option provided under the pension plan must comply with this Act and the regulations.
Participation application	(2) A member whose pension benefit is a defined benefit may apply to the administrator to participate in the phased retirement option if <ul style="list-style-type: none"> (a) the member is at least sixty years of age or is at least fifty-five years of age and entitled to an unreduced pension under the pension plan; (b) the member has not yet reached the normal retirement age; (c) the member and the member's employer have entered into a written agreement governing the employment arrangements relating to the phased retirement option for the member and governing payments under the phased retirement option;

(d) the agreement provides for a reduction in the member's regular hours of work when payments under the phased retirement option begin, and the reduction satisfies such requirements as may be prescribed; and

(e) the agreement complies with the requirements of the pension plan.

(3) The administrator shall approve an application that satisfies the requirements of this section and the regulations and shall do so within such period as may be prescribed.

Application,
approval

(4) Where the administrator approves the application, the member participates in the phased retirement option for the period specified by the agreement, and that period cannot begin before the date on which the administrator approves the agreement and it cannot end after the member's normal retirement age.

Period of
participation, on
approval

(5) During the period mentioned in subsection (4), the member continues to accrue pension benefits under the pension plan in the prescribed manner and all contributions must continue to be made as required under the pension plan.

Accrual of benefits
and continuation of
contributions

(6) During the period mentioned in subsection (4), the member is entitled to periodic payments under the pension plan that are equal to a portion of the pension payments to which the member would be entitled as a retired member, and the portion is specified in the agreement and must not exceed sixty per cent of the pension payments to which the member would be entitled as a retired member.

Periodic payments,
entitlement

(7) For the purpose of this Act, the periodic payments do not constitute a pension.

Periodic payments
are not a pension

(8) A member is not entitled to be paid any other amounts under the pension plan during that period.

Other amounts,
payment, restriction

(9) Subsection (8) does not prevent the refund of additional voluntary contributions and interest thereon to the member.

Refund of
additional voluntary
contributions

(10) Where the member ceases to be a member during that period, the member ceases to participate in the phased retirement option and the period referred to in subsections (4), (5) and (6) is deemed to have ended.

Participation in
phased retirement
option, ceasing on
end of membership

(11) A pension plan must not make payments under a phased retirement option if the pension plan is being wound up or while the pension plan does not satisfy prescribed funding requirements.

Winding up of
pension plan, effect

Information concerning phased retirement option	(12) Where a member asks the administrator for information concerning the phased retirement option, if any, provided under a pension plan, the administrator shall provide information to the member within such period as may be prescribed.
Termination before normal retirement age, benefit for period before operative date	51. (1) A member of a pension plan who terminates employment with the employer on or after the day on which this subsection comes into force and before reaching the normal retirement age under the pension plan is entitled to the benefit described in subsection (2) in connection with the member's employment, if any, before the operative date.
Benefit, amount	(2) The benefit is a deferred pension equal to the pension benefit provided under the pension plan as it existed on the effective date, in respect of employment before the operative date, in the Province or in a designated jurisdiction, <ul style="list-style-type: none"> (a) under the terms of the pension plan, with respect to employment on or after the qualification date; (b) by an amendment to the pension plan made on or after the qualification date; and (c) by the creation of a new pension plan on or after the qualification date.
Application of subsections (1) and (2)	(3) Subsections (1) and (2) do not apply in respect of benefits that result from additional voluntary contributions.
Termination before normal retirement age, benefit for period after operative date	52. (1) A member of a pension plan who is a member on or after the day on which this subsection comes into force and who terminates employment with the employer before reaching the normal retirement age is entitled to the benefit described in subsection (2) in connection with the member's employment after the operative date.
Benefit, amount	(2) The benefit is a deferred pension equal to the pension benefit provided in respect of employment in the Province or in a designated jurisdiction, <ul style="list-style-type: none"> (a) under the pension plan in respect of employment by the employer after the later of the operative date, or the qualification date; (b) under any amendment made to the pension plan after the operative date; and (c) under any new pension plan established after the effective date, for members.
Application of subsections (1) and (2)	(3) Subsections (1) and (2) do not apply in respect of benefits that result from additional voluntary contributions.
Membership, termination by member	53. (1) A person who is <ul style="list-style-type: none"> (a) a member of a multi-employer pension plan;

(b) a member of a pension plan who is employed by the employer on a less than full-time basis; or
 (c) a member of a pension plan who has been laid off from employment by the employer,
 is entitled to terminate membership in the pension plan if no contributions are paid or are required to be paid to the pension fund by or on behalf of the member for twenty-four consecutive months or for such shorter period of time as is specified in the pension plan.

(2) Where the person elects to terminate the person's membership in the pension plan, the membership is terminated when the person delivers written notice of the person's election to the administrator of the pension plan or at the end of the period described in subsection (1), whichever is later.

Membership,
 termination date

(3) For the purpose of determining benefits pursuant to this Act, a person who terminates membership in a pension plan is deemed to have terminated employment.

Membership,
 termination, effect
 of

(4) Subsections (1) and (3) do not apply if contributions are not paid or are not required to be paid because the person has become a member of another pension plan and there is a reciprocal transfer agreement respecting the two pension plans.

Applications of
 subsections (1) and
 (3)

(5) For the purpose of determining entitlement to a deferred pension, a member of a multi-employer pension plan who terminates employment with a participating employer or an employer on whose behalf contributions are made under the pension plan is deemed not to have terminated employment until the member terminates membership in the pension plan.

Determination of
 entitlement to a
 deferred pension

(6) Where a member of a multi-employer pension plan is represented by a trade union that, in accordance with the *Labour Act*, ceases to represent the member, and the member joins a different pension plan, the member is entitled to terminate membership in the first plan.

Termination where
 trade union ceases
 to represent
 member

(7) Subsection (6) does not apply if there is a reciprocal transfer agreement respecting the two pension plans.

Application of
 subsection (6)

BENEFITS

54. (1) Where the commuted value of a deferred pension accrued by a former member or a pension of accrued by a retired member in respect of employment before the operative date, is less than the value of the contributions that the former member or retired member, as the case may be, was required to make under the pension plan before that date plus interest credited to the contributions, the former member or retired member is entitled to have the commuted value of the deferred pension

Minimum
 commuted value

or pension increased so that the commuted value is equal to the value of the contributions and the interest.

Idem

(2) An increase in the value of the pension or deferred pension in respect of employment before the operative date, resulting from an amendment to the pension plan made on or after the operative date, may be included in calculating the commuted value of the deferred pension for the purpose of subsection (1).

Maximum percentage of commuted value to be provided by former member's contributions

(3) Contributions made on or after the operative date, by a member under a pension plan and the interest on the contributions must not be used to provide more than fifty per cent of the commuted value of the pension or deferred pension in respect of the contributory benefits accrued after that date to which the member is entitled under the pension plan on termination of membership or employment.

Termination payment of lump sum, amount

(4) A former member or retired member who is entitled to a deferred pension or pension is entitled upon termination of employment or membership to a lump sum payment from the pension fund of the amount by which the contributions of the former member or retired member, as the case may be, made under the pension plan on or after the operative date, plus the interest on the contributions, exceed one half of the commuted value of the deferred pension or pension in respect of the contributory benefits accrued after the operative date.

Payment to a registered retirement savings arrangement

(5) A person entitled to a lump sum payment under subsection (4) may require the administrator to pay the lump sum into a registered retirement savings arrangement by delivering a direction to the administrator within the prescribed period.

Section 70, application

(6) Section 70 applies with respect to the payment into the registered retirement savings arrangement referred to in subsection (5).

Lump sum, reduction, circumstances

(7) Where a former member transfers an amount under subsection 60(1) in connection with the former member's deferred pension under a pension plan that provides target benefits and, where the transferred amount was reduced under subsection 60(3),

- (a) the lump sum payment to which the former member is entitled under subsection (4) shall be reduced in the prescribed manner; and
- (b) subsection (3) does not apply with respect to the reduced lump sum payment.

Benefits not included in determination of commuted value

(8) The following may be excluded by the administrator when determining that part of the commuted value of a pension or deferred pension to which subsections (3) and (4) apply:

- (a) defined contribution benefits;
- (b) benefits that result from additional voluntary contributions;

- (c) in the case of a multi-employer pension plan that permits a member who has not accrued maximum pension benefits permitted under the plan in a fiscal year of the plan to make contributions to increase the member's pension benefit to the maximum permitted for the fiscal year, benefits resulting from such contributions;
- (d) benefits that result from voluntary contributions for past service as defined in the regulations;
- (e) optional benefits;
- (f) any other benefits prescribed for the purpose of this subsection.

(9) The following may be included by the administrator in calculating a member's contributory benefit for the purpose of subsection (3):

Benefits included in calculation of contributory benefit

- (a) ancillary benefits related to employment on or after the operative date;
- (b) increases to pension benefits and ancillary benefits related to employment before the date of the amendment resulting from an amendment to the pension plan made on or after the operative date, but that are not included in calculating commuted value under subsection (2);
- (c) pension benefits and ancillary benefits related to employment before the date of the establishment of the pension plan, in the case of a pension plan established on or after the operative date.

55. A pension plan that provides defined contribution benefits may authorize payment of the pensions or pension benefits to be made in any manner authorized by the *Income Tax Act* (Canada) and to be made in accordance with such requirements and subject to such restrictions as may be prescribed.

Defined contribution benefits, payment

56. (1) The pension benefits provided by a pension plan are target benefits if all of the following criteria are satisfied:

When pension benefits are target benefits

- (a) the pension benefits are not defined contribution benefits;
- (b) the obligation of the employer to contribute to the pension fund is limited to a fixed amount set out in one or more collective agreements;
- (c) the administrator is authorized, by the documents that create and support the pension plan and pension fund, to reduce benefits, deferred pensions or pensions accrued under the plan, both while the plan is ongoing and upon wind-up;
- (d) the reduction referred to in clause (c) is not prohibited by the terms of any applicable collective agreement or by the pension legislation of a designated jurisdiction;
- (e) the pension benefits satisfy such other criteria as may be prescribed;
- (f) the pension plan satisfies such other criteria as may be prescribed.

When pension benefits are not target benefits

(2) Notwithstanding subsection (1), the pension benefits provided by a pension plan are not target benefits if the administrator's authority to reduce benefits, deferred pensions or pensions accrued under the plan is restricted in a manner or to an extent that is prohibited by the regulations for target benefits.

When ancillary benefits are target benefits

(3) Ancillary benefits provided by a pension plan that provides target benefits are also target benefits.

Target benefits under designated multi-jurisdictional pension plans

(4) For a designated multi-jurisdictional pension plan, the pension benefits are target benefits in such circumstances as may be prescribed even though, in a designated jurisdiction, the administrator's authority to reduce benefits, deferred pensions or pensions for members, former members and retired members in that jurisdiction is prohibited or restricted under the pension legislation of that jurisdiction.

Ancillary benefits

57. (1) A pension plan may provide the following ancillary benefits:

- (a) disability benefits;
- (b) pre-retirement death benefits in excess of those provided in section 66;
- (c) bridging benefits;
- (d) supplemental benefits, other than bridging benefits, payable for a temporary period of time;
- (e) early retirement options and benefits in excess of those provided by section 59;
- (f) postponed retirement options and benefits in excess of those referred to in subsection 49(4);
- (g) any other prescribed benefit.

Use in calculating pension benefit

(2) An ancillary benefit for which a member has met all eligibility requirements under the pension plan necessary to exercise the right to receive payment of the benefit shall be included in calculating the member's pension benefit or the commuted value of the pension benefit.

Consent of employer

(3) For the purpose of subsection (2) and clause 23(1)(c), where the consent of an employer is an eligibility requirement for entitlement to receive an ancillary benefit and a member, former member or retired member has met all other eligibility requirements, the employer is deemed to have consented.

Administrator, deemed consent

(4) For the purpose of subsection (2) and clause 23(1)(c), where the consent of the administrator is an eligibility requirement for entitlement to receive an ancillary benefit under a jointly sponsored pension plan and a member, former member or retired member has met all other eligibility requirements, the administrator is deemed to have consented.

(5) Subsection (2) applies with respect to ancillary benefits under a pension plan that provides target benefits, except in such circumstances as may be prescribed.

Application of subsection (2) to ancillary benefits

(6) Subsection (2) applies with respect to ancillary benefits that are optional benefits, except in such circumstances as may be prescribed.

Idem

58. (1) A pension plan that provides defined benefits may provide as optional benefits such benefits as may be prescribed.

Optional benefits, provision, circumstances

(2) Optional contributions may be made by a member for optional benefits under the pension plan and, where the pension plan so permits, the member may choose or vary the amount of the optional contributions to be made.

Optional contributions

(3) The optional contributions made by a member must be applied, in accordance with the terms of the pension plan, to provide only optional benefits upon the termination of employment or membership.

Application of optional contributions

(4) A pension plan that provides optional benefits must satisfy such requirements as may be prescribed about the manner of determining the amount of the optional contributions for the optional benefits.

Requirements for pension plan that provides optional benefits

(5) The conversion of optional contributions into optional benefits is subject to such requirements as may be prescribed.

Conversion of optional contributions

(6) Such provisions of the Act and regulations as may be prescribed do not apply with respect to optional benefits and optional contributions.

Application of prescribed provisions of the Act and regulations

59. (1) A former member of a pension plan is entitled to elect to receive an early retirement pension under the pension plan if the former member has terminated employment and is within ten years of reaching the normal retirement age.

Early retirement option for former member

(2) A member who is within ten years of attaining the normal retirement age and who would be entitled to a deferred pension on termination of employment is entitled upon termination of the employment or on the wind-up of the pension plan to receive an early retirement pension under the pension plan.

Idem

(3) The commuted value of a member's early retirement pension shall not be less than the commuted value of the member's pension benefit payable at the normal retirement age under the pension plan.

Commuted value

(4) The commuted value of a former member's early retirement pension shall not be less than the commuted value of the former member's deferred pension benefit payable at the normal retirement age under the pension plan.

Commuted value, former member

Payment	(5) The member or former member is entitled to require the commencement of payment of the early retirement pension at any time within the ten-year period mentioned in subsection (1) or (2).
Election	(6) An election pursuant to subsection (1) or (2) must be made in writing, signed by the member or former member, and delivered to the administrator of the pension plan.
Transfer to another pension plan, payment of commuted value	<p>60. (1) A former member of a pension plan is entitled to require the administrator to pay an amount equal to the commuted value of the former member's deferred pension</p> <ul style="list-style-type: none"> (a) to the pension fund related to another pension plan, if <ul style="list-style-type: none"> (i) the other pension plan is a pension plan registered under this Act, a pension plan established or governed by a statute in a designated jurisdiction, a pension plan registered in a designated jurisdiction or a pension plan prescribed for the purpose of this section, and (ii) the administrator of the other pension plan agrees to accept the payment; (b) into a prescribed retirement savings arrangement; or (c) where the pension plan so permits, for the purchase for the former member of a life annuity that will not commence before the earliest date on which the former member would have been entitled to receive payment of pension benefits under the pension plan.
Limitation	(2) The entitlement pursuant to subsection (1) is subject to the prescribed limitations in respect of the transfer of funds from pension funds.
Reduction of amount transferable in respect of target benefits	(3) Where a pension plan that provides target benefits does not require contributions to be made in respect of any solvency deficiency that relates to the target benefits, the amount that a former member is entitled to require the administrator to pay under subsection (1) that relates to target benefits may be reduced in the prescribed manner and in the prescribed circumstances.
Application of subsection (1)	(4) Subsection (1) does not apply to a former member who is entitled to immediate payment of a pension under the pension plan or under section 59, unless the pension plan provides such an entitlement.
Direction required to exercise transfer entitlement	(5) A former member may exercise the former member's entitlement pursuant to subsection (1) by delivering a direction to the administrator within the prescribed period of time.
Compliance with direction	(6) Subject to compliance with the requirements of this section and the regulations, the administrator shall comply with the direction within the prescribed period of time after delivery of the direction.

- (7) The administrator shall not make payment pursuant to
- (a) clause (1)(b) unless the retirement savings arrangement meets the prescribed requirements; or
 - (b) clause (1)(c) unless the contract to purchase the deferred life annuity meets the prescribed requirements.
- Payment, terms of arrangement or deferred annuity
- (8) Where the amount of the commuted value of the former member's deferred pension to be paid into a prescribed retirement savings arrangement pursuant to clause (1)(b) is greater than the amount prescribed for such a transfer under the *Income Tax Act* (Canada), the administrator shall pay the portion that exceeds the prescribed amount as a lump sum to the former member.
- Commutated value of deferred pension requiring lump sum payment
- (9) Where the amount of the commuted value of the former member's deferred pension that is used to purchase a life annuity pursuant to clause (1)(c) is greater than the amount permitted under the *Income Tax Act* (Canada) for such a purchase, the administrator shall pay to the former member as a lump sum the portion of the commuted value that exceeds the amount permitted under the *Income Tax Act* (Canada) for the purchase of the life annuity.
- Idem*
- (10) Where a payment pursuant to subsection (1) does not meet the limitations prescribed in relation to transfers of funds from pension funds, the administrator shall not make the payment without the approval of the Superintendent.
- Approval of Superintendent
- (11) The Superintendent may approve the payment subject to such terms and conditions as the Superintendent considers appropriate in the circumstances.
- Terms and conditions
- (12) Where a payment that does not meet the limitations prescribed in relation to transfers of funds from pension funds is made without the approval of the Superintendent or there is failure to comply with a term or condition attached to the approval, the Superintendent may, subject to section 112, by order require any person to whom payment under subsection (1) has been made to repay an amount not greater than the amount of the payment together with interest thereon.
- Order for repayment
- (13) Subject to section 112, an order for payment pursuant to subsection (12), exclusive of the reasons therefor, may, for the purpose of enforcement of the order, be registered with the Supreme Court and is enforceable in the same manner as a judgment of that Court.
- Enforcement of repayment order
- (14) The administrator is discharged on making the payment or transfer in accordance with the direction of the former member if the payment or transfer complies with this Act and the regulations.
- Discharge of administrator

Purchase of pension from insurance company	61. (1) The administrator of a pension plan who is required by the pension plan to provide a pension, a deferred pension or an ancillary benefit may purchase the pension, deferred pension or ancillary benefit from an insurance company.
Limitations	(2) The authority of the administrator pursuant to subsection (1) is subject to the entitlement of a member pursuant to section 60 and to the limitations prescribed in relation to transfers of funds from pension funds.
Approval of Superintendent	(3) Where a purchase pursuant to subsection (1) does not meet the limitations prescribed in relation to transfers of funds from pension funds, the administrator shall not make the purchase without the prior approval of the Superintendent.
<i>Idem</i>	(4) The Superintendent may approve a purchase mentioned in subsection (3) subject to such terms and conditions as the Superintendent considers appropriate in the circumstances.
Order of repayment	(5) Where a purchase that does not meet the limitations prescribed in relation to transfers of funds from pension funds is made without the approval of the Superintendent or there is a failure to comply with a term or condition attached to the approval, the Superintendent may, subject to section 112, by order require any person to whom payment under subsection (1) has been made to repay an amount not greater than the amount of the payment together with interest thereon.
Enforcement of repayment order	(6) Subject to section 112, an order for payment pursuant to subsection (5), exclusive of the reasons therefor, may, for the purpose of enforcement of the order, be registered with the Supreme Court and is enforceable in the same manner as a judgment of that Court.
Joint and survivor pension	62. (1) Every pension paid under a pension plan to a retired member who has a spouse on the date that the payment of the first instalment of the pension is due is a joint and survivor pension.
Commuted value	(2) The commuted value of a joint and survivor pension pursuant to subsection (1) shall not be less than the commuted value of the pension that would be payable under the pension plan to the retired member.
Amount of survivor benefit	(3) Upon the death of the retired member, the amount of the pension payable to the surviving spouse of the retired member shall not be less than sixty per cent of the pension paid to the retired member during their joint lives.
Application of subsections (1) to (3)	(4) Subsections (1) to (3) do not apply in respect of <ol style="list-style-type: none"> (a) a pension benefit if payment of the pension has commenced before the operative date; or

(b) a retired member who is living separate and apart from the spouse of the retired member on the date that payment of the first instalment of the pension is due, with no reasonable prospect of the resumption of cohabitation, and the spouse,

(i) delivered a written waiver to the administrator in the form and manner set out in subsection 67(1) with respect to the pension benefit before the date that payment of the first instalment of the pension is due,

(ii) is not entitled to receive an amount in respect of the pension in accordance with the terms of a written agreement for the division of a pension or a pension benefit if such agreement has been entered into before the date that payment of the first instalment of the pension is due, or

(iii) is not entitled to receive an amount in respect of the pension by court order issued prior to the date that payment of the first instalment of the pension is due.

(5) A pension plan may provide for payment, upon the death of a retired member, of the commuted value of the joint and survivor benefit to a person who is entitled to the joint and survivor benefit if, at the date of death,

Payment of commuted value of joint and survivor benefit

(a) the annual benefit payable is not more than four per cent of the Year's Maximum Pensionable Earnings; or

(b) the commuted value of the benefit is less than twenty per cent of the Year's Maximum Pensionable Earnings.

(6) The person to whom the payment under subsection (5) is to be made may require the administrator to pay the commuted value into a registered retirement savings arrangement and the person may exercise this entitlement by delivering a direction to the administrator within the prescribed period.

Commuted value paid into a registered retirement savings arrangement

(7) Section 70 applies with respect to the payment into the registered retirement savings arrangement required under subsection (6).

Application of s.70

63. (1) Before commencing payment of a pension or pension benefit, the administrator of a pension plan shall require the person entitled to the payment to provide to the administrator the information needed to calculate and pay the pension or pension benefit.

Information for administrator

(2) The person entitled to the payment shall provide the information to the administrator.

Person to provide information

(3) In the absence of actual notice to the contrary, the administrator is discharged on paying the pension or pension benefit in accordance with the information provided by the person in accordance with subsection (2)

Discharge of administrator

or, where the person does not provide the information, in accordance with the latest information in the records of the administrator.

Waiver of entitlement

64. (1) The persons entitled to a joint and survivor pension benefit may waive the entitlement to receive payment of pension benefits in the form of a joint and survivor pension by delivering to the administrator of the pension plan or, in the case of a deferred life annuity, to the insurance company, a written waiver in the form approved by the Superintendent, or a certified copy of a written agreement that provides for the division of a pension benefit and contains the waiver.

Time for delivery of waiver

(2) The waiver is not effective unless

(a) for a written waiver in the form approved by the Superintendent, the form is dated and signed within the twelve months preceding the commencement of payment of the pension benefit and it is delivered to the administrator or insurance company within that twelve month period; or

(b) for a certified copy of a written agreement mentioned in subsection (1), the certified copy is delivered to the administrator or insurance company within the twelve months preceding commencement of payment of the pension benefit.

Cancellation of waiver

(3) Persons who have delivered a waiver pursuant to subsection (1) may jointly cancel the waiver by delivering a written and signed notice of cancellation to the administrator or the insurance company, as the case may be, before commencement of payment of the pension benefit.

Surviving spouse's new spousal relationship

65. (1) The spouse of a deceased former member or retired member of a pension plan who is receiving a pension under the pension plan is not disentitled to payment of the pension by reason only of becoming the spouse of another person after the death of the former member or retired member.

Application of subsection (1)

(2) Subsection (1) applies in respect of pensions that are being paid on the operative date, or that commence to be paid on or after the operative date.

Pre-retirement death benefit for spouse

66. (1) Where a member of a pension plan who is entitled under the pension plan to a deferred pension described in section 52 dies before payment of the first instalment is due or where a former member or retired member dies before payment of the first instalment of the deferred pension or pension of the former member or retired member is due, the spouse of the member, former member or retired member on the date of death is entitled to

(a) receive a lump sum payment equal to the commuted value of the deferred pension;

- (b) require the administrator to pay an amount equal to the commuted value of the deferred pension into a registered retirement savings arrangement; or
- (c) receive an immediate or deferred pension, the commuted value of which is at least equal to the commuted value of the deferred pension.

(2) Where a member continues in employment after the normal retirement age under the pension plan and dies before payment of pension benefits referred to in section 52 begins, the person who is the spouse of the member on the date of death is entitled to

Post- retirement death benefit for spouse

- (a) receive a lump sum payment equal to the commuted value of the pension benefits;
- (b) require the administrator to pay an amount equal to the commuted value of the pension benefits into a registered retirement savings arrangement; or
- (c) receive an immediate or deferred pension, the commuted value of which is at least equal to the commuted value of the pension benefits.

(3) Subsections (1) and (2) do not apply if the member, former member or retired member and the spouse of the member, former member or retired member are living separate and apart on the date of death, there is no reasonable prospect of the resumption of cohabitation and the spouse of the member, former member or retired member

Application of subsections (1) and (2)

- (a) delivered a written waiver to the administrator in accordance with subsection 67(1) with respect to the deferred pension or pension benefits before the death of the member, former member or retired member;
- (b) is not entitled to receive an amount in respect of the deferred pension or pension benefits in accordance with the terms of a written agreement that provides for the division of a deferred pension or a pension benefit; or
- (c) is not entitled to receive an amount in respect of the deferred pension or pension benefits by court order.

(4) A spouse may exercise the spouse's entitlement under subsection (1) or (2) by delivering a direction to the administrator within the prescribed period and, where the spouse does not do so, the spouse is deemed to have elected to receive an immediate pension.

Direction to exercise spouse's entitlement

(5) For the purpose of this section, the deferred pension or pension benefits to which a member is entitled if the member dies while employed must be calculated as if the member's employment were terminated immediately before the member's death.

Calculation of deferred pension or pension benefits

- Designation and entitlement of a beneficiary
- (6) A member, former member or retired member described in subsection (1) may designate a beneficiary and the beneficiary is entitled to be paid an amount equal to the commuted value of the deferred pension mentioned in subsection (1) or (2) if the member, former member or retired member
- (a) does not have a spouse on the date of death; or
 - (b) is living separate and apart from the spouse of the member, former member or retired member on the date of death, there is no reasonable prospect of the resumption of cohabitation and one or more of the circumstances set out in clauses (3)(a) to (3)(c) exist.
- Personal representative, entitlement
- (7) The personal representative of a member, former member or retired member described in subsection (1) is entitled to receive payment of the commuted value mentioned in subsection (1) or (2) as the property of the member, former member or retired member if the member, former member or retired member has not designated a beneficiary under subsection (6) and
- (a) does not have a spouse on the date of death; or
 - (b) is living separate and apart from a spouse on the date of death, there is no reasonable prospect of the resumption of cohabitation and one or more of the circumstances set out in clauses (3)(a) to (3)(c) exist.
- Dependent children
- (8) Where the pension plan provides for payment of pension benefits to or for a dependent child or dependent children of the member, former member or retired member upon the death of the member, former member or retired member,
- (a) the commuted value of the payments in respect of employment after the operative date, may be deducted from the entitlement of a beneficiary designated under subsection (6) or of a personal representative under subsection (7); and
 - (b) the commuted value of the payments in respect of employment before the operative date, may be deducted from the entitlement under subsection (9) of a beneficiary designated under subsection (6) or of a personal representative under subsection (7).
- Lump sum payment to spouse, beneficiary or personal representative
- (9) A spouse who has an entitlement under subsection (1) or (2), or a designated beneficiary who has an entitlement under subsection (6) or a personal representative who has an entitlement under subsection (7), is entitled to a lump sum payment from the pension fund equal to the amount of any contributions that the member or former member was required to make under the pension plan in respect of employment before the operative date, plus interest credited to the contributions.
- Payment of lump sum into a registered retirement savings arrangement
- (10) A spouse entitled to a lump sum payment under subsection (9) may require the administrator to pay the lump sum into a registered

retirement savings arrangement and may exercise this entitlement by delivering a direction to the administrator within the prescribed period.

(11) Section 70 applies with respect to any payment into a registered retirement savings arrangement. Application of section 70

(12) The entitlements under this section are subject to the prescribed limitations in respect of the transfer of funds from pension funds. Prescribed limitations re transfers of funds

(13) It is the responsibility of the person entitled to the payment to provide to the administrator the information needed to make the payment. Provision of information to administrator to enable payment

(14) In the absence of actual notice to the contrary, the administrator is discharged on making payment in accordance with the information provided by the person. Discharge of administrator on making payment

(15) A pension plan may provide for reduction of an amount to which a person is entitled under this section to offset any part of a prescribed additional benefit that is attributable to an amount paid by an employer, subject to the following: Reduction of entitlement

- (a) the reduction must be calculated in the prescribed manner;
- (b) the reduction must not exceed the prescribed limits.

(16) Payment in accordance with this section replaces the entitlement of a member, former member or retired member in respect of a deferred pension mentioned in section 52. Payment under this section replaces entitlement to deferred pension

(17) An entitlement to a benefit under this section is subject to any right to or interest in the benefit set out in a court order or a written agreement which provides for the division of a deferred pension or pension benefit. Entitlement subject to court order

67. (1) The spouse of a member, former member or retired member may waive the spouse's entitlement under subsection 66(1) or 66(2) by delivering a written waiver, in the form approved by the Superintendent, to the administrator of the pension plan. Waiver of spouse's entitlement under s.66(1) or (2)

(2) A spouse who has delivered a waiver may cancel it by delivering a written and signed notice of cancellation to the administrator before the date of death of the member, former member or retired member. Cancellation of waiver

(3) Where a waiver is in effect on the date of death of the member, former member or retired member, subsections 66(6) and 66(7) apply as if the member, former member or retired member does not have a spouse on the date of death. Application of s.66(6) and (7) on waiver

Variation of payment to disabled person	<p>68. (1) A pension plan may permit variation in the terms of payment of a pension benefit or deferred pension by reason of the mental or physical disability of a member or former member that is likely to shorten considerably the life expectancy of the member or former member.</p>
Variation in terms, deemed to be permitted on shortened life expectancy	<p>(2) Where the prescribed conditions are satisfied, a pension plan is deemed to permit variation in terms of payment of a pension or deferred pension in prescribed circumstances of shortened life expectancy.</p>
Payment of commuted value if benefit small	<p>69. (1) A pension plan may provide for payment to a former member or retired member of the commuted value of a benefit if the annual benefit payable at the normal retirement age is not more than four per cent of the Year's Maximum Pensionable Earnings in the year that the former member or retired member terminated employment or if the commuted value of a benefit is less than twenty per cent of the Year's Maximum Pensionable Earnings in the year that the former member or retired member terminated employment.</p>
Payment of 25% of commuted value of deferred pension	<p>(2) A pension plan registered before the operative date, may provide that upon termination of employment a person entitled to a deferred pension pursuant to section 51 is entitled to payment of an amount not greater than twenty-five per cent of the commuted value of the deferred pension.</p>
Direction to pay entitlement into registered retirement savings arrangement	<p>(3) A person entitled to a payment described in subsection (1) or (2) may require the administrator to pay the applicable amount into a registered retirement savings arrangement and may exercise this entitlement by delivering a direction to the administrator within the prescribed period.</p>
Section 70, application	<p>(4) Section 70 applies with respect to the payment into the registered retirement savings arrangement.</p>
Administrator to make payment into savings arrangement	<p>70. (1) When a person delivers a direction to the administrator of a pension plan in accordance with subsection 54(5), 62(8), 66(4), 66(10), 69(3) or 86(7) to pay an amount into a registered retirement savings arrangement, the administrator shall make the payment in accordance with the direction and shall do so within the prescribed period.</p>
Payment of portion as a lump sum rather than into savings arrangement	<p>(2) Where the amount to be paid into the registered retirement savings arrangement is greater than the amount prescribed under the <i>Income Tax Act</i> (Canada) for such a transfer, the administrator shall pay the portion that exceeds the prescribed amount as a lump sum to the person who gave the administrator the direction.</p>

(3) The administrator is discharged on making the payment in accordance with the person's direction if the payment complies with this Act and the regulations.

Administrator discharged on payment

71. (1) An administrator shall not take into account the sex of a member, former member, retired member or other beneficiary under a pension plan in

Sex of member or other beneficiary not to be a consideration

- (a) determining the amount of contributions required to be made by a member;
- (b) determining the pension benefits, deferred pension or pension or the commuted value of pension benefits, deferred pension or pension to which a member, former member, retired member or other beneficiary is or may become entitled;
- (c) the provision of eligibility conditions for membership; or
- (d) the provision of ancillary benefits.

(2) In order to comply with subsection (1), the administrator may

Administration

- (a) use annuity factors that do not differentiate as to sex;
- (b) provide for employer contributions that vary according to the sex of the employee; and
- (c) use any prescribed method of calculation or valuation.

(3) This section applies in respect of contributions, benefits and conditions in relation to

Application of section

- (a) employment on or after the operative date;
- (b) employment before the operative date, in so far as it is dealt with in an amendment made to the pension plan on or after that day; and
- (c) employment before the operative date, in so far as it is dealt with in a pension plan established on or after that day.

72. (1) The reduction of a pension benefit that may be required by a pension plan in relation to payments under the Canada Pension Plan, the Quebec Pension Plan or the *Old Age Security Act* (Canada) must not exceed the reduction calculated in accordance with the prescribed formula applied in the prescribed manner.

Maximum reduction for C.P.P., Q.P.P. and *Old Age Security Act* (Canada)

(2) The amount of a reduction in a pension benefit required under a pension plan in relation to the payments mentioned in subsection (1) shall not be increased by reason of an increase in the amount of any of the other payments after the date the member's employment or membership in the plan is terminated.

Idem

(3) A pension plan for registration of which application is made on or after the operative date, must not permit the reduction of a pension or a deferred pension based on a person's entitlement under the *Old Age Security Act* (Canada).

Reduction re *Old Age Security Act* (Canada)

Reduction (4) A pension plan must not permit the reduction of a pension or deferred pension based on a person's entitlement under the *Old Age Security Act* (Canada) in respect of a benefit accrued on or after the operative date.

Bridging benefit, reduction (5) Where a pension plan provides for the reduction of a bridging benefit because a person receives or is eligible to receive retirement benefits under the Canada Pension Plan or the Quebec Pension Plan before the person reaches sixty-five years of age, the reduction may only be made in the prescribed circumstances.

Deemed age of recipient at which variation is to occur (6) Where a pension plan provides for the variation of a pension benefit by reason of benefits payable under the Canada Pension Plan, the Quebec Pension Plan or the *Old Age Security Act* (Canada), the variation must be applied in the prescribed manner.

PENSION ENTITLEMENT ON MARRIAGE BREAKDOWN

Pension or pension benefit **73.** (1) Where a member, former member or retired member is entitled to a pension benefit, deferred pension or pension and the member, former member or retired member and that person's spouse have been living separate and apart and there is no reasonable prospect of the resumption of cohabitation, the pension benefit, deferred pension or pension earned during the marriage or cohabitation may be divided in accordance with the regulations between the member, former member or retired member and that person's spouse by an order of the Supreme Court, by a written agreement that provides for the division of a pension benefit, deferred pension or pension, or in such other manner as is prescribed.

Maximum percentage of benefit spouse may receive (2) Notwithstanding subsection (1), the spouse of the member, former member or retired member must not receive more than one half of the pension benefit, deferred pension or pension earned during the marriage or cohabitation.

CONTRIBUTIONS

Funding requirements **74.** (1) A pension plan must provide for funding sufficient to provide the pension benefits, ancillary benefits and other benefits under the pension plan in accordance with this Act and the regulations.

Employer contributions (2) An employer required to make contributions under a pension plan, or a person or entity required to make contributions under a pension plan on behalf of an employer, shall make the contributions to

- (a) the pension fund; or
- (b) where pension benefits under the pension plan are paid by an insurance company, the insurance company that is the administrator,

in the prescribed manner, at the prescribed times and in accordance with the prescribed requirements for funding.

(3) Where a pension plan provides contributory benefits, the members shall make the contributions required under the plan in the prescribed manner and at the prescribed times.

Member contributions re plan providing contributory benefit

(4) Where a pension plan is a jointly sponsored pension plan, the members shall make the contributions required under the plan, including contributions in respect of any going concern unfunded liability and any solvency deficiency, in accordance with the prescribed requirements for funding and shall make the contributions in the prescribed manner and at the prescribed times.

Member contributions re jointly sponsored pension plan

75. (1) Notwithstanding subsection 74(2), an employer required to make contributions under a pension plan, or a person or entity required to make contributions under a pension plan on behalf of an employer, may reduce or suspend, in the prescribed manner, contributions for the normal cost of the pension plan if

Employer contributions, reductions permitted

- (a) the pension plan has a surplus;
- (b) the documents that create and support the pension plan or pension fund do not prohibit the reduction or suspension; and
- (c) such other requirements as may be prescribed are satisfied.

(2) Notwithstanding subsections 74(3) and (4), the contributions that members are required to make for the normal cost of the pension plan may be reduced or suspended in the prescribed manner if

Member contributions, reductions permitted

- (a) the pension plan has a surplus;
- (b) the documents that create and support the pension plan or pension fund do not prohibit the reduction or suspension; and
- (c) such other requirements as may be prescribed are satisfied.

76. (1) Notwithstanding subsection 74(2), where a prescribed employer is required to make payments into the pension fund with respect to a solvency deficiency, the employer may provide a letter of credit to a prescribed person or entity instead of making payments into the pension fund with respect to the solvency deficiency, if the requirements of this section are satisfied.

Letter of credit provided by employer where solvency deficiency

(2) The letter of credit must satisfy such requirements as may be prescribed.

Requirements of letter of credit

(3) The employer is not entitled to provide a letter of credit under subsection (1) if the total amount of all letters of credit provided to the prescribed person or entity for the pension plan would exceed fifteen per cent of the solvency liabilities of the pension plan.

Restriction on provision of letter of credit

Determination of solvency liabilities, regulations	(4) For the purpose of subsection (3), the regulations may specify that solvency liabilities must be determined in a manner that may differ from the requirements that otherwise apply.
Provision of letter of credit by employer, requirements	(5) The employer shall, under subsection (1), provide the letter of credit to the prescribed person or entity within such period after it is issued as may be prescribed and the employer shall give a copy of the letter of credit to the administrator within the same period.
Notice to the Superintendent of provision of letter of credit	(6) The administrator shall notify the Superintendent in the prescribed manner and within the prescribed period that a letter of credit has been provided and, upon request, the administrator shall give the Superintendent such information about the letter of credit as the Superintendent may specify.
Letter of credit held in trust	(7) The prescribed person or entity who receives a letter of credit from an employer under subsection (5) holds the letter of credit in trust for the pension plan.
Demand to issuer of letter of credit to pay amount into fund	(8) In such circumstances as may be prescribed, the prescribed person or entity shall demand payment of the amount of the letter of credit into the pension fund by the issuer of the letter of credit.
Costs of letter of credit not payable from fund	(9) The fees or expenses associated with obtaining, holding, amending or cancelling a letter of credit are not payable from the pension fund.
Costs of enforcement of letter of credit payable from fund	(10) Subject to section 33, the fees and expenses associated with enforcing a letter of credit are payable from the pension fund.
Application of this section to multi-employer pension plans	(11) This section does not apply with respect to multi-employer pension plans.
Administrator to ensure contributions are paid	77. (1) The administrator of a pension plan and the agent, if any, of the administrator who is responsible for receiving contributions under the pension plan shall ensure that all contributions are paid when due.
Notice to Superintendent of unpaid contributions	(2) Where a contribution is not paid when due, the administrator and the agent, if any, shall notify the Superintendent in the prescribed manner and within the prescribed period.
Summary of required contributions	78. (1) The administrator shall give the persons who are prescribed for the purpose of subsection 32(5) a summary of the contributions required to be made in respect of the pension plan, and shall do so in the prescribed manner and within the prescribed period.

(2) Subsection (1) does not apply if the administrator is also the trustee of the pension fund.

Application of subsection (1)

(3) A person who is entitled to receive a summary shall notify the Superintendent in the prescribed manner and within the prescribed period if the person is not given the summary in accordance with subsection (1).

Notice person did not receive summary as required

(4) A person who is entitled to receive a summary shall notify the Superintendent in the prescribed manner and within the prescribed period if a contribution is not paid when due.

Notice contribution not paid

79. (1) Where an employer receives money from an employee pursuant to an arrangement that the employer will pay the money into a pension fund as the employee's contribution under the pension plan, the employer holds the money in trust for the employee until the employer pays the money into the pension fund.

Employee contribution received by employer held in trust

(2) For the purpose of subsection (1), money withheld by an employer, whether by payroll deduction or otherwise, from money payable to an employee is deemed to be money received by the employer from the employee.

Money withheld by employer deemed status

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

Employer holding in trust an amount equal to required contribution

(4) Where a pension plan is wound up an employer who is required to pay contributions to the pension fund holds in trust for the beneficiaries of the pension plan an amount of money equal to employer contributions accrued to the date of the wind-up but not yet due under the plan or the regulations.

On wind-up of plan, employer holding in trust a specified amount

(5) The administrator has a lien and charge on the assets of the employer in an amount equal to the amounts required to be held in trust pursuant to subsections (1), (3) and (4).

Lien and charge on assets of employer

(6) The lien referred to in subsection (5) is not a charge against a parcel registered pursuant to the *Registry Act* R.S.P.E.I. 1988, Cap. R-10 until a certificate evidencing the lien has been recorded in the judgment roll.

Lien not a charge against a parcel of land until recorded

(7) The administrator may record a notice of the lien referred to in subsection (5) in the parcel register of any property owned by a person for whom or on account of whom the amounts are required to be held in trust pursuant to subsections (1), (3) and (4) to which the lien applies and shall thereupon serve that person with a copy of the lien and recording particulars.

Lien recorded on parcel register of property

Release of lien, recording, circumstances	(8) Upon satisfaction of the lien including payment of the fees for recording the lien and the release, the administrator shall record a release of the lien in the parcel registers in which notice of the lien was recorded.
Money held in trust to be kept separate and apart	(9) Money held in trust pursuant to by subsection (1), (3) or (4) must be kept separate and apart from other money or property of the employer.
Application of subsections (1) to (9)	(10) Subsections (1) to (9) apply with such changes as are necessary in respect of money to be paid to <ul style="list-style-type: none"> (a) an insurance company that guarantees pension benefits under a pension plan; and (b) an administrator or other person who receives money from an employer pursuant to a multi-employer pension plan.
Daily accrual of interest re employer's contributions	80. (1) Money that an employer is required to pay into a pension fund accrues interest on a daily basis.
Interest on contributions	(2) Interest on contributions must be calculated and credited at a rate not less than the prescribed rates and in accordance with prescribed requirements.
Proceedings for payment	81. The administrator of a pension plan may commence proceedings in a court of competent jurisdiction to obtain payment of contributions due under the pension plan, this Act and the regulations.
Bonding	82. The administrator of a multi-employer pension plan may require a person who received contributions to the pension fund, or who administers or invests the pension fund, to be bonded in an amount required by the administrator or in the prescribed amount.
Transmission of agreement	83. An employer who is required to make contributions to a multi-employer pension plan shall transmit to the administrator a copy of the agreement that requires the employer to make the contributions or a written statement that sets out the contributions the employer is required to make and any other obligations of the employer under the pension plan.
Duty respecting investment	84. Every person engaged in selecting an investment to be made with the assets of a pension fund shall ensure that the investment is selected in accordance with the criteria set out in this Act and the regulations.
Employer payments, application of this section	85. (1) This section applies if an employer <ul style="list-style-type: none"> (a) pays an amount in respect of a pension plan that should have been paid out of the pension fund; or (b) makes an overpayment into the pension fund.

(2) The administrator of the pension plan shall not make or authorize a payment from the pension fund to reimburse the employer for a payment described in subsection (1) unless the Superintendent consents in advance to the payment from the pension fund to the employer.

Reimbursement of employer, consent required

(3) The employer or, in the case of a jointly sponsored pension plan or multi-employer pension plan, the administrator may apply to the Superintendent for consent to the payment from the pension fund to reimburse the employer for a payment described in subsection (1).

Consent, application

(4) The application must be made before the later of

(a) twenty-four months after the date on which the employer made the payment described in subsection (1); and

(b) six months after the date on which the administrator, acting reasonably, becomes aware of the payment described in subsection (1).

Idem

(5) Subject to section 112, the Superintendent may consent to the payment from the pension fund to the employer if the application is made before the deadline described in subsection (4).

Consent

LOCKING IN

86. (1) Except as authorized in this section, no member, former member, or retired member is entitled to a refund from a pension fund of contributions made in respect of employment in the Province or a designated jurisdiction on or after the qualification date.

Restriction on refunds

(2) Subsection (1) does not prevent the refund of an additional voluntary contribution and interest thereon to a member, former member or retired member or a payment pursuant to subsection 54(4).

Idem

(3) Subsection (1) does not prevent the refund of an optional contribution and interest thereon to a former member or retired member.

Idem

(4) Subsection (1) does not apply to

(a) prevent the commutation of a pension benefit pursuant to subsection 69(1);

(b) prevent a payment pursuant to subsection 69(2); or

(c) such other circumstances as are prescribed.

Application of subsection (1)

(5) Notwithstanding subsection (1), on application by the administrator, contributions may be refunded to a member, former member, or retired member with the consent of the Superintendent.

Refund of contributions with consent

(6) On application by the administrator, the Superintendent may consent to a refund pursuant to subsection (5) if the pension plan provides or has been amended to provide for the refund and the employer

Idem

has assumed responsibility for funding all pension benefits associated with the contributions.

Payment into a registered retirement savings arrangement

(7) A person entitled to a payment under subsection (2) or (5) may require the administrator to pay the applicable amount into a registered retirement savings arrangement and may exercise this entitlement by delivering a direction to the administrator within the prescribed period.

Application of section 70

(8) Section 70 applies with respect to the payment into the registered retirement savings arrangement.

Void transactions respecting money payable under pension plan

87. (1) Every transaction that purports to assign, charge, anticipate or give as security money payable under a pension plan is void.

Idem

(2) Every transaction that purports to assign, charge, anticipate or give as security money transferred from a pension fund in accordance with section 60 or 61 or subsection 66(1) or 95(2), is void.

Application of subsections (1) and (2)

(3) Subsections (1) and (2) do not apply to prevent the assignment, in accordance with section 73, of an interest in money payable under a pension plan or money payable as a result of a purchase or transfer pursuant to section 60 or 61 or subsection 66(1) or 95(2).

Exemption of money payable under plan from seizure

88. (1) Money payable under a pension plan is exempt from execution, seizure or attachment.

Idem

(2) Money transferred from a pension fund to a prescribed retirement savings arrangement or for the purchase of a life annuity pursuant to section 60, 61, 66 or 73 or subsection 95(2) is exempt from execution, seizure or attachment.

Idem

(3) Money payable from a prescribed retirement savings arrangement or from a life annuity purchased in accordance with section 60, 61, 66 or 73, or subsection 95(2) is exempt from execution, seizure or attachment.

Right to withdraw money from locked-in retirement account not to be considered

(4) The entitlement of a person, in the person's discretion, to withdraw money from a locked-in retirement account as defined in the regulations must not be considered when determining, for the purpose of any other Act, the income or assets available to the person.

Enforcement of maintenance order

89. (1) Notwithstanding any enactment, for the purpose of enforcement of a maintenance order as defined in the *Maintenance Enforcement Act* R.S.P.E.I. 1988, Cap. M-1,

(a) money payable under a pension plan to a former member or a person as a result of a division under section 60 or payable from a prescribed retirement savings arrangement or life annuity that results

from a purchase or transfer under section 49, 50 or 55 or subsection 78(2) is subject to a garnishment pursuant to the *Maintenance Enforcement Act* and the prescribed requirements under that Act respecting garnishment; and

(b) a deferred pension or pension benefit of a former member or of a person that results from a division under section 60 or a deferred life annuity or prescribed retirement savings arrangement of a person that results from a purchase or transfer under section 49, 50 or 55 or subsection 78(2) is subject to attachment by the Director of Maintenance Enforcement in accordance with the *Maintenance Enforcement Act* and the prescribed requirements under that Act respecting attachment of a pension entitlement.

(2) Where an amount has been attached by the Director of Maintenance Enforcement as described in clause (1)(b), the administrator shall deduct from the commuted value of the deferred pension, pension benefit or the deferred life annuity or from the money transferred to a prescribed retirement savings arrangement

Deduction where amount attached under subsection (1)

(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 deferred pension, pension benefit or deferred life annuity or the remainder of the money transferred to a prescribed retirement savings arrangement.

(3) Where an amount has been attached as described in clause (1)(b),

Effects of attached on entitlement to pension or benefit

(a) the person whose entitlement has been attached has no further claim or entitlement to any pension or benefit respecting the amount attached;

(b) the entitlement of a person after the person's entitlement has been attached is calculated on the basis of the commuted value of the person's deferred pension, pension benefit or deferred life annuity after the deduction of the amounts referred to in subsection (2) or the entitlement is the remainder of the money in the prescribed retirement savings arrangement after the deduction of the amounts referred to in subsection (2); and

(c) neither the administrator nor the plan is liable to any person by reason of having made payment pursuant to an attachment referred to in clause (1)(b).

Prohibition on commutation and surrender

90. (1) A pension, deferred pension, pension benefit, annuity or prescribed retirement savings arrangement that results from a purchase or transfer pursuant to section 60, 61, 66 or 73 or subsection 95(2) to which

a person is entitled is not capable of being commuted or surrendered, in whole or in part, during the person's life.

Void transaction	(2) A transaction that purports to commute or surrender, in whole or in part, such a pension, deferred pension, pension benefit, annuity or prescribed retirement savings arrangement is void.
Application of subsections (1) and (2)	(3) Subsections (1) and (2) do not apply to a variation of a pension or deferred pension pursuant to section 68 or to a commutation of a benefit pursuant to section 69.
<i>Idem</i>	(4) Subsections (1) and (2) do not apply to the commutation or surrender, in whole or in part, of a prescribed retirement savings arrangement in such circumstances or in such amounts as may be prescribed, subject to such restrictions as may be prescribed.
Consent by Superintendent to commutation or surrender	(5) Notwithstanding subsections (1) and (2), upon application, the Superintendent may consent to the commutation or surrender, in whole or in part, of a prescribed retirement savings arrangement of a type that is prescribed for the purpose of this subsection if the Superintendent is satisfied as to the existence of such circumstances of financial hardship as may be prescribed.
Consent, application	(6) The owner of the prescribed retirement savings arrangement may apply in writing to the Superintendent for the consent under subsection (5).
Consent, conditions and restrictions	(7) The Superintendent's authority to give consent under subsection (5) is subject to such conditions and restrictions as may be prescribed.

WINDING UP

Wind up by employer or administrator	91. (1) The employer or, in the case of a multi-employer pension plan, the administrator may windup the pension plan.
Wind up by administrator, the person or entity	(2) Notwithstanding subsection (1), where a jointly sponsored pension plan is also a multi-employer pension plan, the administrator may wind up the plan unless the documents that create and support the plan authorize another person or entity to do so, in which case the authorized person or entity may wind up the plan.
<i>Idem</i>	(3) Notwithstanding subsection (1), where a jointly sponsored pension plan is not a multi-employer pension plan, the administrator or another person or entity may wind up the plan if the documents that create and support the plan authorize the administrator, person or entity to do so.

(4) The employer, administrator or other person or entity who intends to wind up a pension plan shall, before doing so, give written notice of the intended wind-up of the pension plan to Notice of wind up

- (a) the Superintendent;
- (b) each member who is affected;
- (c) each former member who is affected;
- (d) each retired member who is affected;
- (e) each trade union that represents affected members or that, on the date of the wind-up, represented members, former members or retired members affected by the wind-up;
- (f) the advisory committee of the pension plan; and
- (g) any other person entitled to a payment from the pension fund who is affected.

(5) The notice of the intended wind-up shall contain such information as may be prescribed. *Idem*

(6) The Superintendent may require the administrator to give specified additional information and documents to the persons entitled to notice of the intended wind-up, and to do so within a specified period. Additional information and documents

(7) The effective date of the wind-up shall not be earlier than the date member contributions, if any, cease to be deducted, in the case of contributory pension benefits or, in any other case, the date notice is given to members. Effective date of wind up

(8) Subject to section 112, the Superintendent may, by order, change the effective date of the wind-up if the Superintendent is of the opinion that there are reasonable grounds for the change. *Idem*

92. (1) The Superintendent may, by order, require the wind-up of a pension plan if Order to wind up

- (a) there is a cessation or suspension of employer contributions to the pension fund;
- (b) the employer fails to make contributions to the pension fund as required by this Act or the regulations;
- (c) the employer is bankrupt within the meaning of the *Bankruptcy and Insolvency Act* (Canada);
- (d) a significant number of the members cease to be employed by the employer 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) all or a significant portion of the business carried on by the employer at a specific location is discontinued;
- (f) all or a significant part of the employer's business or all or a significant part of the assets of the employer's business are sold, assigned or otherwise disposed of and the person or entity who

acquires the business or assets, or a part thereof, does not provide a pension plan for the members of the employer's pension plan who become employees of the person or entity;

- (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
- (h) any prescribed event or prescribed circumstance occurs.

Idem

(2) In an order made under subsection (1), the Superintendent shall specify the effective date of the wind-up.

Notice of order

(3) The administrator, employer or other person or entity to whom an wind-up order issued under subsection (1) is directed shall, on receipt of the wind-up order, give notice of the order to the persons and entities listed in clauses 91(4)(b) to (g) and shall include in the notice such information about the wind-up as the order may specify.

Filing copy of notice of order with Superintendent

(4) The administrator, employer or other person or entity shall file with the Superintendent a copy of the notice given under subsection (3).

Reduction or suspension of contributions under s.75, effect

(5) A reduction or suspension of contributions under section 75 does not constitute a cessation or suspension of employer contributions for the purpose of clause (1)(a) or subclause(1)(g)(ii).

Wind-up report

93. (1) The administrator of a pension plan that is to be wound up 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, retired 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 information as is prescribed.

Approval of report before payments made

(2) Where an administrator has given a notice of the intended wind-up of a pension plan under sections 91 or 92, the administrator shall not make a payment out of the pension fund until the Superintendent has approved the wind-up report.

Application of subsection (2)

(3) Subsection (2) does not apply to prevent the continued payment of a pension or other benefit if the payment commenced before the giving of the notice of the intended wind-up or to prevent any other payment that is prescribed or that is approved by the Superintendent.

Payments to be made in accordance with approved report

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

(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 does not protect the interests of the members, former members, retired members and other persons entitled to benefits under the pension plan.

Refusal to approve
wind-up report

94. (1) Within the prescribed period of time, the administrator of a pension plan that is to be wound up 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 such other information as may be prescribed.

Statement of
entitlement on
wind-up

(2) Where a person to whom notice is given pursuant to subsection (1) is required to make an election, the person shall make the election within the prescribed period of time or is deemed to have elected to receive immediate payment of a pension benefit, if the person is eligible to receive the immediate payment.

Election

(3) Within the prescribed period of time, the administrator shall make payment in accordance with the election or deemed election.

Payment

95. (1) For the purpose of determining the amounts of pension benefits and any other benefits and entitlements on the winding up of a pension plan

Determination of
amount of benefits
on wind-up

(a) the employment of each member affected by the winding up is deemed to have been terminated on the effective date of the winding up; and

(b) each member's pension benefits as of the effective date of the wind-up must be determined as if the member had satisfied all eligibility conditions for a deferred pension.

(2) A person entitled to a pension benefit on the wind-up of a pension plan, other than a person who is receiving a pension, is entitled to the rights pursuant to subsection 60(1) of a member who terminates employment and for that purpose subsection 60(4) does not apply.

Rights of person
entitled to pension
benefit

96. (1) Where a pension plan is wound up, the employer shall pay into the pension fund an amount equal to the total of all payments that, pursuant to this Act, the regulations and the pension plan, are due or have accrued and that have not been paid into the pension fund.

Employer's
payments on wind-
up

(2) The employer shall pay the monies due pursuant to subsection (1) in the prescribed manner and at the prescribed time.

Idem

(3) This section does not apply to jointly sponsored pension plans.

Application of
section to jointly
sponsored pension
plans

Wind up of jointly sponsored pension plan, employer contribution payments

97. (1) Where a jointly sponsored pension plan is wound up, the employer or the person or entity required to make contributions under the plan on behalf of the employer shall, in accordance with this section, pay into the pension fund

(a) an amount equal to the total of all payments that, under this Act, the regulations and the plan, are payable by the employer or by the person or entity on behalf of the employer, that are due or have accrued and that have not been paid into the pension fund; and

(b) any additional amounts that, under the documents that create and support the plan, are payable in the circumstances by the employer or the person or entity on behalf of the employer.

Wind up of jointly sponsored pension plan, member contribution payments

(2) Where a jointly sponsored pension plan is wound up, the members shall, in accordance with this section, pay into the pension fund,

(a) an amount equal to the total of all payments that, under this Act, the regulations and the plan, are payable by the members, that are due or have accrued and that have not been paid into the pension fund; and

(b) any additional amounts that, under the documents that create and support the plan, are payable in the circumstances by the members.

Contribution payments, manner and time of payment

(3) The payments required by subsections (1) and (2) shall be made in the prescribed manner and at the prescribed time.

Application of Act after wind-up

98. The pension fund of a pension plan that is wound up continues to be subject to this Act and the regulations until the employer satisfies the employer's obligations under section 96 and all the assets of the pension fund have been disbursed.

Reduction of benefits

99. Where the money in a pension fund is not sufficient to pay all the pension benefits and other benefits on the wind-up of the pension plan, the pension benefits and other benefits shall be distributed and, where appropriate, reduced in the prescribed manner.

SURPLUS

Consent of Superintendent to pay surplus

100. (1) No money that is surplus shall be paid out of a pension fund to the employer without the prior consent of the Superintendent.

Application for consent

(2) An employer who applies to the Superintendent for consent to payment of money to the employer out of the surplus of the pension fund shall transmit notice of the application, containing the prescribed information, to

(a) each member, former member and retired member of the pension plan to which the pension fund relates;

- (b) each trade union that represents members;
- (c) each trade union that represents the members, former members or retired members of the pension plan on the date of the wind-up, if the pension plan is being wound up;
- (d) any other individual who is receiving payments out of the pension fund; and
- (e) the advisory committee of the pension plan.

(3) A person to whom notice has been transmitted pursuant to subsection (2) may make written representation to the Superintendent with respect to the application within thirty days after receiving the notice.

Representations
respecting an
application for
consent

101. (1) Subject to section 112, the Superintendent shall not consent to payment of surplus money to the employer out of a continuing pension plan unless

Conditions for
consent to payment
out of surplus

- (a) the Superintendent is satisfied, based on reports provided with the employer's application for payment of the surplus, that the pension plan has a surplus;
- (b) the withdrawal of surplus by the employer while the pension plan continues in existence is authorized either as provided in section 104 or by a court order declaring that the employer is entitled to the surplus while the plan continues;
- (c) where all pension benefits under the pension plan are guaranteed by an insurance company, an amount equal to at least two years of the normal cost of the pension plan, determined in accordance with the regulations, is retained in the pension fund as surplus;
- (d) the greater of the following amounts is retained in the pension fund as surplus:
 - (i) the sum of A and B where,
 - A is an amount equal to twice the normal cost of the pension plan, and
 - B is an amount equal to five per cent of the liabilities of the pension plan, determined in accordance with the regulations, and
 - (ii) an amount equal to twenty-five per cent of the liabilities of the pension plan, determined in accordance with the regulations; and
- (e) the applicant and the pension plan comply with all other requirements prescribed pursuant to other sections of this Act in respect of the payment of surplus out of a pension fund.

(2) Subject to section 112, the Superintendent shall not consent to payment of surplus to an employer out of a pension plan that is being wound up unless

Consent of
Superintendent

- (a) the Superintendent is satisfied, based on reports provided with the employer's application for payment of the surplus, that the pension plan has a surplus;
- (b) the payment of surplus to the employer on the wind-up of the pension plan is authorized either as provided in section 104 or by a court order declaring that the employer is entitled to the surplus when the plan is being wound up;
- (c) provision has been made for the payment of all liabilities of the pension plan, as calculated for the purpose of the termination of the pension plan; and
- (d) the applicant and the pension plan comply with all other requirements prescribed pursuant to other sections of this Act in respect of the payment of surplus out of the pension fund.

Surplus, payment on wind-up to members, former members and others	(3) Where a pension plan is being wound up payment from surplus may be made to or for the benefit of members, former members, retired members and other persons, other than an employer, who are entitled to payments under the plan as of the date of the wind-up.
Surplus, distribution under order of Superintendent	(4) The Superintendent may order the administrator of a pension plan to distribute surplus in accordance with a written agreement described in subsection 102(7).
Order is final	(5) The order of the Superintendent is final.
Registration of order in Supreme Court	(6) An order under this section, excluding the reasons for the order, may, for the purpose of enforcement of the order, be registered with the Supreme Court and is enforceable in the same manner as a judgment of that Court.
Surplus under pension plan, payment governed by plan documents	102. (1) The documents that create and support a pension plan and pension fund govern the entitlement of the employer and other persons to payment of surplus under the pension plan, except as otherwise provided under this Act and subject to the restrictions on payment set out in sections 100 and 101.
Surplus, deemed prohibition of withdrawal during continuation of plan	(2) A pension plan that does not provide for the withdrawal of surplus money while the pension plan continues in existence is deemed to prohibit the withdrawal of surplus accrued on or after the operative date.
Surplus, deemed proportionate distribution on wind-up	(3) A pension plan that does not provide for payment of surplus money to the employer on the wind-up of the pension plan is deemed to require that surplus accrued on or after the operative date, be distributed proportionately on the wind-up among members, former members, retired members and any other persons entitled to payments under the pension plan on the date of the wind-up.

(4) Where a pension plan is a successor pension plan and it is being wound up the employer is not entitled to payment of surplus under the pension plan unless the documents that created and supported the original pension plan and pension fund and those that create and support the successor pension plan and pension fund both provide for payment of surplus to the employer on the wind-up of the pension plan.

Surplus, successor pension plan, employer's entitlement on wind-up

(5) Subsection (4) does not preclude a written agreement described in subsection (7) from providing for payment of surplus to the employer in the circumstances specified in the agreement.

Written agreement providing for payment of surplus

(6) Subsection (4) does not apply if the effective date of the transfer of assets from the original pension plan to the successor pension plan is earlier than the date on which this section is proclaimed in force.

Application of subsection (4)

(7) A written agreement among the following persons may provide for payment of surplus money to the employer in the circumstances specified in the agreement and as of the date specified in the agreement:

Written agreement providing for payment of surplus to employer

(a) where the surplus is to be paid to the employer while the pension plan continues in existence,

(i) the employer,

(ii) at least two thirds of the members and, for this purpose, a trade union that represents members may agree on behalf of those members, and

(iii) the prescribed number of former members, retired members and other persons who are entitled to payments under the pension plan as of the specified date for payment of the surplus; or

(b) where the surplus is to be paid to the employer on the wind-up of the pension plan,

(i) the employer,

(ii) at least two thirds of the members and, for this purpose, a trade union that represents or represented members on the date of the wind-up may agree on behalf of those members, and

(iii) the prescribed number of former members, retired members and other persons who are entitled to payments under the pension plan as of the date of the wind-up.

(8) Before entering into a written agreement described in subsection (7), an employer shall give notice in the prescribed manner of its intention to enter into such an agreement to all members, former members, retired members and other persons who are entitled to payments under the pension plan, and such notice must contain the prescribed information concerning the employer's proposal for payment of surplus money.

Employer's notice of intention to enter agreement

(9) A written agreement described in subsection (7) prevails over any document that creates and supports the pension plan and pension fund,

Paramourcy of written agreement

over subsections (2), (3) and (4) and notwithstanding any trust that may exist in favour of any person.

ASSET TRANSFERS BETWEEN PENSION PLANS

Transfer of assets between plans re defined benefits, restriction

103. (1) No person shall transfer assets between pension plans if the transferred assets relate to the provision of defined benefits unless

(a) the transfer is authorized under section 31, 60, 105, 106 or 107;
or

(b) the transfer satisfies the prescribed requirements and the Superintendent has consented in advance to the transfer.

Transfer of assets between plans re defined contribution benefits, restriction

(2) No person shall transfer assets between pension plans that provide only defined contribution benefits unless the transfer satisfies the prescribed requirements and the Superintendent consents to the transfer.

Transfer of assets between plans re target benefits, restriction

(3) No person shall transfer assets between pension plans if the transferred assets relate to the provision of target benefits unless the transfer satisfies the prescribed requirements and the Superintendent has consented in advance to the transfer.

Application of this section to transfers of assets

104. (1) This section applies to every transfer of assets between pension plans that is authorized under section 103, 105, 106 or 107.

Effective date of transfer

(2) The effective date of the transfer of assets is determined in accordance with the regulations.

Defined benefits, provision by transferred assets

(3) Where any of the assets to be transferred relate to the provision of defined benefits in the original pension plan, the transferred assets must be used to provide defined benefits in the successor pension plan at the effective date of the transfer, in accordance with such requirements as may be prescribed.

Prescribed funding requirements

(4) Every transfer of assets must satisfy such funding requirements as may be prescribed.

Plan with going concern unfounded liabilities, effect on transfer

(5) Where either the original or successor pension plan has going concern unfunded liabilities or solvency deficiencies determined as of the effective date of the transfer, the transfer of assets must satisfy such additional requirements as may be prescribed.

Administrator's duties re transfer

(6) The administrators of both the original and successor pension plan shall comply with such requirements as may be prescribed with respect to the transfer of assets between the pension plans, including any requirement to give notice about the transfer.

(7) Where the amount of the assets to be transferred in relation to an individual's pension benefits and other benefits under the original pension plan is greater than the amount allowed under the *Income Tax Act* (Canada) for such a transfer, the administrator of the original pension plan shall pay the portion that exceeds that allowed amount into a prescribed retirement savings arrangement on behalf of the individual.

Payment of portion of amount into savings arrangement

(8) Where the amount to be paid under subsection (7) into a prescribed retirement savings arrangement is greater than the amount prescribed under the *Income Tax Act* (Canada) for such a transfer, the administrator shall pay the portion that exceeds the prescribed amount as a lump sum to the individual.

Payment of portion of amount in lump sum

(9) When the assets are transferred in accordance with this Act and the regulations, the transferred assets become part of the assets of the pension fund for the successor pension plan and they cease to be identified as assets of the original pension plan.

Transferred assets form part of fund of successor pension plan

(10) When the assets are transferred in accordance with this Act and the regulations, the employer who is the sponsor of the successor pension plan assumes responsibility for providing pension benefits and other benefits under the original pension plan to the transferred members, former members, retired members and other persons entitled to payments under that plan, and the transferred members, former members, retired members and other persons entitled to payments have no further claim against the original pension plan.

Employer sponsoring successor pension plan, responsibility on transfer

(11) Subsection (10) does not require the successor pension plan to provide the same pension benefits and other benefits for the transferred members that were provided for them under the original pension plan.

Successor pension plan, benefits required for transferred members

(12) Subsection (11) does not affect any claims of the transferred members, former members, retired members or other persons under the successor pension plan.

Claims of transferred members

(13) Where the transfer of assets is made with the consent of the transferred member, former member, retired member or other person, the administrator of the original pension plan is discharged on transferring the assets in accordance with this Act and the regulations.

Administrator of original pension plan discharged on transfer

(14) The Superintendent may, by order, require the administrator of the successor pension plan to return to the original pension plan, with interest calculated in the prescribed manner, assets transferred in contravention of this Act or the regulations.

Transfers in contravention of Act, order to return assets

Order to return assets, registration in Supreme Court	(15) Subject to section 112, an order under subsection (14), exclusive of the reasons therefor, may, for the purpose of enforcement of the order, be registered with the Supreme Court and is enforceable in the same manner as a judgment of that Court.
Definitions	105. (1) In this section,
employers' agreement	(a) "employers' agreement" means the agreement described in subsection (6);
original employer	(b) "original employer" means the employer who sells, assigns or otherwise disposes of all or part of the employer's business or all or part of the assets of the employer's business;
original pension plan	(c) "original pension plan" means the original employer's pension plan;
sale of business	(d) "sale of business" means the sale, assignment or other disposal referred to in subsection (2) of all or part of a business or all or part of the assets of the business;
successor employer	(e) "successor employer" means the person who acquires the business or the assets of the original employer;
successor pension plan	(f) "successor pension plan" means the successor employer's pension plan;
transferred member	(g) "transferred member" means the original employer's employee who is a member of the original pension plan who becomes the successor employer's employee and a member of the successor pension plan in connection with the sale of the business.
Application of this section where employer sells business or its assets	(2) This section applies if an employer who contributes under a pension plan, or on whose behalf another person or entity makes contributions under a pension plan, sells, assigns or otherwise disposes of all or part of the employer's business or all or part of the assets of the employer's business to another person or entity.
Employee's employment deemed to not be terminated by change of employer	(3) Where, in conjunction with the sale of the business, an employee of the original employer who is a member of the original pension plan becomes an employee of the successor employer and a member of the successor pension plan, the employee's employment is deemed, for the purpose of this Act, not to have been terminated by the change of employer.
Continuation of entitlements of member of successor plan	(4) Where the original employer's employee who is a member of the original pension plan becomes the successor employer's employee and a member of the successor pension plan, the member (a) continues to be entitled to the benefits provided under the original pension plan in respect of employment in the Province or in

a designated jurisdiction to the effective date of the sale of the business without further accrual;

(b) is entitled to credit in the successor pension plan for the period of the employee's membership in the original pension plan, for the purpose of determining eligibility for membership in or entitlement to benefits under the successor pension plan; and

(c) is entitled to credit in the original pension plan for the period of employment with the successor employer for the purpose of determining entitlement to benefits under the original pension plan.

(5) Where the successor employer assumes responsibility for the accrued pension benefits of the transferred member under the original pension plan, clause (4)(a) does not apply with respect to the member and the successor pension plan is deemed to be a continuation of the original pension plan with respect to any benefits or assets transferred.

Successor plan deemed to be a continuation of the original plan

(6) The original employer and the successor employer may enter into an agreement to transfer

Transfer agreement re assets and responsibility for benefits

(a) to the successor employer the responsibility for providing pension benefits and other benefits under the original pension plan for transferred members, former members, retired members and other persons entitled to benefits or for classes of them; and

(b) assets from the original pension plan to the successor pension plan in connection with this transfer of responsibility,

and the agreement may require the prior consent of a member, former member, retired member or other person to the transfer of assets in respect of the pension benefits and ancillary benefits of the member, former member, retired member or other person for which eligibility requirements have been met.

(7) A person or entity required to make contributions on behalf of the original employer or the successor employer, as the case may be, under the employer's pension plan may enter into the employers' agreement on behalf of that employer.

Person entering into agreement on behalf of an employer

(8) Clause (6)(a) does not require the successor pension plan to provide the same pension benefits and other benefits for the transferred members that were provided for them under the original pension plan.

Agreement, transfer of responsibility for benefits, effect on Successor plan

(9) Where the employers' agreement provides for the consent of any member, former member, retired member or other person to the transfer of assets in respect of the pension benefits and ancillary benefits of the member, former member, retired member or other person for which any eligibility requirements have been met,

Consent of members, former members and retired members to employers' agreement

(a) the employers' agreement must give all members, former members, retired members or other persons the opportunity to consent; and

(b) the prior consent of the members, former members, retired members or other persons must be obtained in accordance with the prescribed requirements.

Transfer of assets,
Superintendent's
consent required

(10) The Superintendent's prior consent is required to authorize the transfer of assets from the original pension plan to the successor pension plan.

Application for
Superintendent's
consent

(11) The administrator of either pension plan or such other person as may be prescribed may apply for the Superintendent's consent to the transfer of assets from the original pension plan to the successor pension plan.

Notice of
application for
Superintendent's
consent

(12) Where the employers' agreement to transfer assets requires the consent of transferred members, former members, retired members or other persons, the applicant shall ensure that notice of the application for the Superintendent's consent is given in accordance with such requirements as may be prescribed.

Superintendent to
consent

(13) The Superintendent shall consent to the transfer of assets in accordance with the application and the employers' agreement to the extent that

(a) the original employer and the successor employer have entered into an agreement to transfer the assets, and the applicant has given the Superintendent notice of their agreement;

(b) where the agreement requires the consent of the transferred members, former members and retired members of the original pension plan or the consent of other persons entitled to benefits under the original pension plan, their consent has been given for the transfer, and the applicant has given the Superintendent notice of their consent;

(c) the administrators of the two pension plans have agreed upon the manner of determining the amount of the assets to be transferred, and the applicant has given the Superintendent notice of their agreement;

(d) where the pension benefits and other benefits to be provided under the successor pension plan for the transferred members are not the same as the pension benefits and other benefits provided for them under the original pension plan, the commuted value of the benefits provided for the transferred members under the successor pension plan are not less than the commuted value of the benefits provided for them under the original pension plan, as adjusted for any payments made from the original pension plan to a prescribed retirement savings arrangement or directly to the transferred members in connection with the transfer of the assets;

(e) the commuted value of the benefits referred to in clause (d) is determined as of the effective date of the transfer of the assets;

(f) where the original pension plan has a surplus as of the effective date of the transfer of assets, the amount of assets to be transferred includes a portion of the surplus determined in accordance with the regulations; and

(g) such other criteria as may be prescribed have been satisfied.

(14) The notices required by subsection (13) must comply with such requirements as may be prescribed. Notices, prescribed requirements

(15) The Superintendent may waive one or more of the conditions referred to in subsections 104(4) and (5) in the prescribed circumstances. Waiver of prescribed requirements

106. (1) This section applies if Application of this section

(a) a group of members of a multi-employer pension plan are represented by a trade union;

(b) in accordance with the *Labour Act*, the trade union ceases to represent the members and a different trade union becomes certified as the members' bargaining agent; and

(c) the members become members of a different pension plan, regardless of whether that pension plan is a multi-employer pension plan.

(2) For the purpose of this section, References to plans in subsection (1), clarification

(a) the multi-employer pension plan referred to in clause (1)(a) is the original pension plan; and

(b) the pension plan referred to in clause (1)(c) is the successor pension plan.

(3) The administrator of the original pension plan shall transfer to the successor pension plan all the assets and liabilities respecting those members who have elected under section 60 to transfer their entitlement to the successor pension plan and the administrator of the successor pension plan shall accept them as assets and liabilities of the successor pension plan. Transfer and acceptance of assets and liabilities between plans

(4) Where the members of the original pension plan are not entitled to make an election under section 60, the administrator of the original pension plan shall transfer to the successor pension plan all assets and liabilities of the pension plan attributable to such members determined as prescribed and the administrator of the successor pension plan shall accept them as assets and liabilities, determined as prescribed, of the successor pension plan. *Idem*

(5) This section does not apply if there is a reciprocal transfer agreement respecting the pension plans, or in such other circumstances as may be prescribed. Application of this section if there is a reciprocal transfer agreement

Establishment of successor plan deemed to be continuation of original plan

107. (1) Where a pension plan is established by an employer to be a successor to an existing pension plan and the employer ceases to make contributions to the original pension plan, the original pension plan is deemed not to be wound up and the successor pension plan is deemed to be a continuation of the original pension plan.

Benefits of original plan deemed benefits of successor plan

(2) The benefits under the original pension plan in respect of employment before the establishment of the successor pension plan are deemed to be benefits under the successor pension plan.

Application of subsection (2)

(3) Subsection (2) does not require the successor pension plan to provide the same pension benefits and other benefits for the transferred members that were provided for them under the original pension plan.

Idem

(4) Subsection (2) applies whether or not the assets and liabilities of the original pension plan are consolidated with those of the successor pension plan.

Prior consent of Superintendent to transfer

(5) The Superintendent's prior consent is required to authorize the transfer of assets from the original pension plan to the successor pension plan.

Application for consent of Superintendent

(6) The administrator of either pension plan or such other persons as may be prescribed may apply for the Superintendent's consent to the transfer of assets from the original pension plan to the successor pension plan.

Superintendent to consent

(7) The Superintendent shall consent to the transfer of assets in accordance with the application to the extent that

- (a) the administrators of the two pension plans have agreed upon the manner of determining the amount of assets to be transferred, and the applicant has given the Superintendent notice of their agreement;
- (b) where the pension benefits and other benefits to be provided under the successor pension plan for the transferred members are not the same as the pension benefits and other benefits provided for them under the original pension plan, the commuted value of the benefits provided for the transferred members under the successor pension plan is not less than the commuted value of the benefits provided for them under the original pension plan, as adjusted for any payments made from the original pension plan to a prescribed retirement savings arrangement or directly to the transferred members in connection with the transfer of the assets;
- (c) the commuted value of the benefits referred to in clause (b) is determined as of the effective date of the transfer of the assets;
- (d) where the original pension plan has a surplus as of the effective date of the transfer of assets, the amount of assets to be transferred

includes a portion of the surplus determined in accordance with the regulations; and

(e) such other criteria as may be prescribed, are satisfied.

(8) The Superintendent may waive one or more of the conditions referred to in subsections 104(4) and (5) in the prescribed circumstances. Waiver of conditions

INSOLVENCY AND BANKRUPTCY

108. (1) For the purpose of subsection 6(7) of the *Companies' Creditors Arrangement Act* (Canada), the Superintendent may approve an agreement by the relevant parties referred to in that subsection respecting the payment to a pension fund of certain amounts referred to in subsection 6(6) of that Act in connection with a compromise or arrangement under that Act. *Companies' Creditors Arrangement Act* (Canada), approval of agreement by Superintendent

(2) For the purpose of subsection 60(1.6) of the *Bankruptcy and Insolvency Act* (Canada), the Superintendent may approve an agreement by the relevant parties referred to in that subsection respecting the payment to a pension fund of certain amounts referred to in subsection 60(1.5) of that Act in connection with a proposal under that Act. *Bankruptcy and Insolvency Act* (Canada), approval of agreement by Superintendent

(3) The Superintendent shall not approve an agreement under this section unless it satisfies such requirements as may be prescribed. Approvals, restriction

(4) A decision by the Superintendent under this section to approve or not to approve an agreement is final and is not subject to a hearing or an appeal. Decision of Superintendent under this section is final

ORDERS

109. (1) The Superintendent, in the circumstances mentioned in subsection (2) and subject to section 112, may by a written order require an administrator or any other person to take or to refrain from taking any action in respect of a pension plan or a pension fund. Order of Superintendent

(2) The Superintendent may make an order pursuant to this section if the Superintendent is of the opinion, upon reasonable and probable grounds, that *Idem*

(a) the pension plan or pension fund is not being administered in accordance with this Act, the regulations or the pension plan;

(b) the pension plan does not comply with this Act and the regulations; or

(c) the administrator of the pension plan, the employer or the other person is contravening a requirement of this Act or the regulations.

(3) In an order pursuant to this section, the Superintendent may specify the time when or the period of time within which the person to Time for compliance

whom the order is directed must comply with the order, and may specify one or more such times or periods of time.

Reasons for order (4) An order pursuant to this section is not effective unless the reasons for the order are set out in the order.

Order as result of report **110.** (1) Where the Superintendent is of the opinion that
 (a) the assumptions or methods used in the preparation of a report required pursuant to this Act or the regulations in respect of a pension plan are inappropriate in the circumstances for the pension plan, whether or not those assumptions or methods are otherwise consistent with accepted actuarial practice;
 (b) the assumptions or methods used in the preparation of a report required pursuant to this Act or the regulations in respect of a pension plan are not consistent with accepted actuarial practice; or
 (c) a report submitted in respect of a pension plan does not meet the requirements and qualifications of this Act, the regulations or the pension plan,
 the Superintendent may, subject to section 112, make an order requiring the administrator to take an action specified in subsection (2).

Idem (2) An order made pursuant to 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 must be used in the preparation of the new report.

Deadline (3) An order made under subsection (1) may specify one or more deadlines or periods for complying with the order.

Order requiring administrator or employer to prepare and file a new report (4) In such circumstances as may be prescribed, the Superintendent may make an order requiring an administrator, an employer or any other person to prepare and file a new report or another prescribed type of report in respect of a pension plan if the Superintendent is of the opinion that there are reasonable and probable grounds to believe that
 (a) there is a substantial risk to the security of the benefits payable under the pension plan to members, former members, retired members or other persons entitled to payments under the pension plan; or
 (b) there has been a significant change in the circumstances of the pension plan.

Order may specify assumptions or methods to be used re new report (5) An order made under subsection (4) may
 (a) specify the assumptions or methods or both to be used in the preparation of the report;
 (b) require an employer or other person to give the administrator any information necessary to prepare the report;

- (c) require the administrator, employer or other person to pay all or part of the cost of preparing the report; and
- (d) specify one or more deadlines or periods for complying with the order.

(6) The Superintendent shall serve a copy of the order made under subsection (4), together with written reasons, upon the administrator, the employer and every other person who is required to comply with it.

Copy of order,
service

- (7) The order made under subsection (4) takes effect on the later of
 - (a) the date on which a person is served under subsection (6) with a copy of the order; and
 - (b) the date specified in the order.

Effective date of
order

111. (1) A person who is required to comply with an order made under subsection 110(4) is entitled to a hearing by the Superintendent about the order if the person delivers a written request to the Superintendent within thirty days after a copy of the order is served on the person.

Hearing re order,
entitlement on
delivery of request,
deadline

(2) The request for a hearing by the Superintendent does not stay the order, but the Superintendent may grant a stay until it disposes of the request.

Delivery of request
for hearing, order
not stayed

(3) Upon receiving the request made in accordance with subsection (1), the Superintendent shall appoint a time for and hold the hearing.

Time for hearing,
Superintendent to
appoint

(4) The parties to the hearing are the person who requests the hearing, the Superintendent and such other persons as the Superintendent specifies.

Parties to hearing

(5) At or after the hearing, the Superintendent by order may confirm, vary or revoke the order or substitute another order.

Confirmation,
variance or
revocation of order

NOTICES OF INTENDED DECISIONS

112. (1) Where 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 therefor, on the applicant or administrator of the plan.

Notice of proposed
refusal or
revocation

(2) Where the Superintendent intends to make an order pursuant to subsection 60(12), 61(5), 91(8), 104(14), 109(1) or 110(1), the Superintendent shall serve notice of the intended decision, together with written reasons therefor, on the administrator and on any person to whom the Superintendent intends to direct the order.

Notice of proposed
order

- Notice of intention re order to accept an employee (3) Where the Superintendent intends to make or to 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 therefor, on the administrator, and the Superintendent shall serve or require the administrator to serve a copy of the notice and the written reasons on the employee.
- Notice of intention to refuse consent or approval re payment to employer (4) Where the Superintendent intends to consent or refuse to consent under subsection 85(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.
- Notice of intention to consent or refuse to consent to payment of surplus (5) Where an application is filed in accordance with subsection 100(2) for the payment of surplus to the employer and the Superintendent intends to consent or refuse to consent under subsection 100(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 100(3).
- Notice of intention to refuse approval or consent or to attach terms and conditions (6) Where the Superintendent intends to refuse to give an approval or consent or intends to attach terms and conditions to an approval or consent pursuant to this Act or the regulations, other than a consent pursuant to subsection (4) or (5), the Superintendent shall serve notice of the intended decision, together with written reasons therefor, on the applicant for the approval or consent.
- Notice of proposed order re wind-up (7) Where 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 therefor, on the administrator and the employer, and the Superintendent may require the administrator to transmit a copy of the notice and the written reasons to such other persons or classes of persons or both as the Superintendent specifies in the notice to the administrator.
- Reconsideration (8) A notice pursuant to subsection (1), (2), (3), (4), (5), (6) or (7) must state that the person on whom the notice is served is entitled to a hearing by the Superintendent if the person delivers to the Superintendent, within thirty days after service of the notice pursuant to that subsection, notice in writing requiring a hearing, and the person may so require such a hearing.

(9) Where the person on whom the notice is served does not require a hearing in accordance with subsection (8), the Superintendent may make the intended decision indicated in the notice. *Idem*

(10) Where the person requires a hearing by the Superintendent in accordance with subsection (8), the Superintendent shall appoint a time for and hold the hearing. Hearing, time

(11) The Superintendent, the person who requires a hearing and such other persons as the Superintendent specifies are parties to the proceeding before the Superintendent under this section. Parties to proceeding before Superintendent

(12) Within a reasonable time after the hearing, the Superintendent shall make a decision in respect of the matter and may decide Decision
 (a) to make the decision indicated in the notice;
 (b) to not make the decision indicated in the notice; or
 (c) to make such other decision or take such other action, in accordance with this Act and the regulations, as the Superintendent considers appropriate.

(13) The Superintendent shall provide a written copy of the decision to each party to the proceeding, other than the Superintendent, within a reasonable time after making the decision. Decision, notice

(14) Documents and things put in evidence at a hearing must, upon the request of the person who produced them, be released within a reasonable time after the matter in issue has been finally determined. Release of documents and things put in evidence

APPEALS FROM ORDERS AND DECISIONS

113. (1) A party to a proceeding before the Superintendent under section 111 or 112 may appeal to the Supreme Court from the order or decision of the Superintendent. Appeal to Supreme Court

(2) Upon the request of a party desiring to appeal to the Supreme Court and upon payment of any fee which may be prescribed, the Superintendent 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. Certified copy of the record of the proceeding before Superintendent

GENERAL

114. (1) The Superintendent may, by order, require an employer, an administrator or any other person to supply to the Superintendent or a person designated by the Superintendent such information as the order specifies, for the purpose of enabling the Superintendent or a person designated to ascertain whether this Act and the regulations are being complied with. Information, supply, order requiring

Appraisal of assets of fund, required by order	(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 of 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.
Information, order may specify form and time limit	(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.
Reasons for order, requirement	(4) The order has no effect unless the reasons for the order are set out in it.
Registration of order with Supreme Court	(5) An order under this section, excluding the reasons for the order, may, for the purpose of enforcement of the order, be registered with the Supreme Court and is enforceable in the same manner as a judgment of that Court.
Personal liability	115. The Superintendent or the staff of the Superintendent are not personally liable for anything done in good faith in the execution or intended execution of a duty or authority pursuant to this Act or the regulations or for alleged neglect or default in the execution in good faith of such a duty or authority.
Examination by Auditor General	116. The Auditor General may from time to time examine the accounts and financial transactions of the Superintendent.
Annual report to Minister	117. (1) Within a reasonable time after the end of each fiscal year, the Superintendent shall file with the Minister an annual report on the matters for which the Superintendent is responsible under this Act.
<i>Idem</i>	(2) The Minister shall submit the annual report to the Lieutenant Governor in Council and then table the report in the Legislative Assembly if it is then sitting or, if it is not then sitting, file the report with the Clerk of the Legislative Assembly.
Agency	118. The Lieutenant Governor in Council may, by order, establish or designate an agency for the purpose, among others, of receiving, holding and disbursing pension benefits pursuant to this Act.
Extension of procedural or filing time limit	119. (1) Upon application by an affected person, the Superintendent may extend, before or after it has expired, (a) a procedural time limit related to the powers and duties of the Superintendent under this Act or the regulations; or (b) subject to subsection (2), a time limit related to the filing of such documents as may be prescribed that, under this Act or the regulations, must be filed,

if the Superintendent is satisfied that there are reasonable grounds for doing so.

(2) The time limit referred to in clause (1)(b) may be extended for a maximum of sixty days and, where the Superintendent is satisfied that extraordinary grounds exist and that no person will be unduly prejudiced, for further periods.

Maximum extension of time limit

(3) When extending a time limit under this section, the Superintendent may impose such conditions as the Superintendent considers appropriate in the circumstances.

Conditions on extension of time limit

120. (1) In this section, “specified purpose” means

specified purpose, defined

- (a) the administration of this Act and the regulations;
- (b) the enforcement of any provision of this Act or the regulations;
- (c) the exercise of a power or the carrying out of a duty under this Act or the regulations; or
- (d) the carrying out of an order made under this Act.

(2) For a specified purpose, the Superintendent may, at any reasonable time,

Entry to business premises, examinations, production of materials and making of copies

- (a) enter and have access to, through and over any business premises if the Superintendent has reasonable grounds to believe that books, papers, documents or things are kept that relate to a pension plan or a pension fund;
- (b) make any examinations, investigations or inquiries and require the production of any book, paper, document or thing related to a pension plan or a pension fund;
- (c) make, take and remove or require the making, taking and removal of copies or extracts in relation to the subject matter of an examination, investigation or inquiry; and
- (d) upon giving a receipt, remove any books, papers, documents or things related to the subject matter of an examination, investigation or inquiry for the purpose of making copies, but the copying must be carried out with reasonable dispatch and the books, papers, documents and things must be returned immediately after the copying is completed.

(3) Subsection (2) is not authority to enter a private residence without

Private residence, consent or court order required for entry

- (a) the consent of the occupier; or
- (b) a court order.

(4) The Superintendent shall provide identification at the time of entry when exercising a power of entry under this section.

Identification, Superintendent to provide on entry
Certified copy of material found, admissible in evidence

(5) A copy of any written or recorded material found in an examination, investigation or inquiry and purporting to be certified by

the Superintendent is admissible in evidence in any action, proceeding or prosecution for all purposes for which the original would be admissible.

Powers and duties of person engaged by Minister

(6) A person whose services are engaged by the Minister pursuant to clause 12(b) may exercise and perform all of the powers, duties and authority conferred on the Superintendent by subsections (2), (4) and (5) and subsection 123(1).

Results of any examination, investigation or inquiry, preparation of opinion or report

(7) The Superintendent may by order require a person referred to in subsection (6) to prepare an opinion, report or professional attestation about the results of any examination, investigation or inquiry made by the person under this section.

Cost of examination, investigation or inquiry, order to pay

(8) The Superintendent may by order require any person to pay all or part of the cost of an examination, investigation or inquiry under this section and to pay all or part of the cost of any opinion, report or professional attestation prepared following such an examination, investigation or inquiry, whether or not the opinion, report or attestation was required by the Superintendent, if the Superintendent considers it to be reasonable and fair in the circumstances to do so.

Payments

(9) Without limiting the generality of subsection (8), an administrator or employer may be required to make a payment under that subsection.

Costs of report, order re payment

121. The Superintendent may by order require an administrator, an employer or any other person to pay all or part of the cost of preparing any report required by this Act or the regulations, if the Superintendent considers it to be reasonable and fair in the circumstances to do so.

Obstruction of Superintendent

122. (1) No person shall hinder or obstruct the Superintendent or a person referred to in subsection 120(6) in lawfully carrying out a duty under this Act.

Refusal to consent to entry of private residence

(2) A refusal of consent to enter a private residence is not hindering or obstructing within the meaning of subsection (1).

Inspection order, application by Superintendent

123. (1) Where an occupier of premises

- (a) denies entry or access to, through or over the premises to the Superintendent;
- (b) instructs the Superintendent to leave the premises;
- (c) obstructs the Superintendent while the Superintendent is acting for a specified purpose; or
- (d) refuses to comply with a request for the production of any thing the production of which is requested for the purpose of an examination, investigation or inquiry or for a specified purpose,

the Superintendent may apply to a justice of the peace for an inspection order under this section.

(2) Where a justice of the peace is satisfied on evidence upon oath or affirmation that

Inspection order,
issuance

(a) there is reasonable and probable ground for believing that it is necessary to

- (i) enter and have access to, through and over any premises,
- (ii) make examinations, investigations or inquiries, and
- (iii) make, take and remove photographs, samples, copies or extracts related to an examination, investigation or inquiry,

or to do any of such things for a specified purpose as defined by subsection 120(1); and

(b) the Superintendent

- (i) has been denied entry to the premises,
- (ii) has reasonable grounds to believe that entry to the premises will be denied,
- (iii) has been instructed to leave the premises,
- (iv) has been obstructed, or
- (v) has been refused production of any thing related to an examination, investigation or inquiry,

by the occupier of the premises,

the justice of the peace may issue an inspection order authorizing the Superintendent or person referred to in subsection 120(6) to act as mentioned in clause (a) in respect of the premises specified in the inspection order, by force if necessary, together with such police officer or officers as the person calls upon for assistance.

(3) An inspection order issued under this section must be executed between six o'clock in the morning and nine o'clock in the evening unless the justice of the peace otherwise authorizes in the order.

Inspection order,
time of execution

(4) An inspection order issued under this section must state the date on which it expires, which must be not later than fifteen days after the inspection order is issued.

Date of expiry

(5) A justice of the peace may receive and consider an application for an inspection order under this section without notice to and in the absence of the owner or the occupier of the premises.

Application without
notice to owner or
occupier

124. (1) Every person who contravenes any provision of this Act or the regulations is guilty of an offence.

Contravention of
Act or regulations

(2) Every person who contravenes an order made pursuant to this Act is guilty of an offence.

Contravention of
order

125. (1) Every person who is guilty of an offence contrary to this Act is liable on summary conviction to a fine of not more than one hundred thousand dollars for the first offence and not more than two hundred thousand dollars for each subsequent offence.

Fines

Directors and officers, offences	<p>(2) Every director, officer, official or agent of a corporation and every person acting in a similar capacity or performing similar functions in an unincorporated association is guilty of an offence if the person</p> <p style="padding-left: 40px;">(a) causes, authorizes, permits, acquiesces or participates in the commission of an offence referred to in section 124 by the corporation or unincorporated association; or</p> <p style="padding-left: 40px;">(b) fails to take all reasonable care in the circumstances to prevent the corporation or unincorporated association from committing an offence referred to in section 124.</p>
Fines	<p>(3) A person who is guilty of an offence described in subsection (2) is liable on summary conviction to a fine of not more than one hundred thousand dollars for the first offence and not more than two hundred thousand dollars for each subsequent offence, whether or not the corporation or unincorporated association has been prosecuted for or convicted of an offence arising from the same facts or circumstances.</p>
Order to pay pension fund or insurance company	<p>(4) Where a person is convicted of an offence related to the failure to submit or make payment to a pension fund or to an insurance company, the court that convicts the person may, in addition to any fine imposed, assess the amount not submitted or not paid and order the person to pay the amount to the pension fund or to the insurance company.</p>
Order of Supreme Court	<p>(5) An order for payment pursuant to subsection (4) may, for the purpose of enforcement of the order, be registered with the Supreme Court and is enforceable in the same manner as a judgment of that Court.</p>
No proceeding after two years	<p>(6) No proceeding pursuant to this Act may be commenced more than two years after the date when the subject-matter of the proceeding came to the knowledge of the Superintendent.</p>
Prosecutions, limitation period	<p>(7) No prosecution for an offence under this Act may be commenced after five years after the date when the offence occurred or is alleged to have occurred.</p>
Proof of facts in statement of Superintendent	<p>(8) A statement by the Superintendent as to the date when the subject-matter of a proceeding first came to the knowledge of the Superintendent is admissible in evidence in or in respect of the proceeding as proof, in the absence of evidence to the contrary, of the facts stated therein without proof of the appointment or signature of the Superintendent.</p>
Document signed by Superintendent must be received in evidence	<p>126. (1) A document, including a certificate, order, decision, direction, inquiry or notice, that purports to be signed by or on behalf of the Superintendent must be received in evidence in any proceeding as proof, in the absence of evidence to the contrary, of the facts stated in the document without proof of the signature or the position of the person appearing to have signed the document.</p>

(2) A true copy certified by the Superintendent of a document or thing in the custody of the Superintendent is admissible in evidence to the same extent and has the same evidentiary value as the document or thing of which it is a copy.

Certified copy, admissible in evidence

127. (1) To register an order with the Supreme Court pursuant to subsection 60(13), 61(6), 101(6), 104(15), 114(5) or 125(5) for the purpose of enforcement of the order, the Superintendent shall make a certified copy of the order, upon which is the following endorsement, signed by the Superintendent:

Order, registration with Supreme Court, requirements

Register the within with the Supreme Court of Prince Edward Island.

Dated this day of , 20

.....
Superintendent of Pensions

(2) The Superintendent may forward the certified copy referred to in subsection (1), so endorsed, to a Prothonotary of the Supreme Court who shall, upon receipt, enter it as a record and it shall thereupon be registered with and enforceable in the same manner as a judgment of that Court.

Prothonotary to enter order as a record, effect

128. Where a provision of this Act or the regulations or an order, approval or consent of the Superintendent under this Act is contravened, notwithstanding any other remedy or penalty imposed, the Superintendent may apply to the Supreme Court for an order prohibiting the continuation or repetition of the contravention or the carrying on of any activity specified in the order that, in the opinion of the Court, will or will likely result in the continuation or repetition of the contravention by the person committing the contravention, and the Court may make the order and the order may be enforced in the same manner as any other order of the Court.

Injunction

129. Where a provision of this Act or the regulations or an order, approval or consent of the Superintendent under this Act is contravened, in addition to any other remedy and to any penalty imposed by law, the contravention may be restrained by action at the instance of the administrator of the pension plan affected by the contravention.

Contravention, restraint by action

130. (1) A notice, order or other document pursuant to this Act or the regulations is sufficiently given, served or delivered if delivered personally or sent by regular mail addressed to the person to whom it is to be given, served or delivered at the person's last known address.

Manner of giving, serving or delivery

Deemed date of giving, serving or delivery	(2) A notice, order or other document sent by regular mail in accordance with subsection (1) is deemed to be given, served or delivered on the fifth day after the day of mailing, unless the person to whom it is sent establishes that, acting in good faith, the person did not receive the notice, order or other document, or did not receive it until a later date, through absence, accident, illness or other cause beyond that person's control.
Notice by public advertisement	(3) Where the Superintendent is of the opinion that because the persons who are to be given any notice or document under this Act or the regulations are so numerous or for any other reason it is not reasonable to give the notice or document to all of any of the persons individually, the Superintendent may authorize the giving of the notice or document or reasonable notice of the contents of the notice or document to the persons by public advertisement or otherwise as the Superintendent may direct and the date on which the notice or document or the reasonable notice of the contents is first published or otherwise given as directed is deemed to be the date on which the notice or document is given.
Time limit for action	131. The administrator of a pension plan who is required to take an action pursuant to this Act or the regulations shall take the action within the prescribed period of time.
Forms, approval by Superintendent	132. (1) The Superintendent may approve forms for any purpose of this Act and require their use.
Information required by approved form must be provided	(2) Any person required to use forms approved by the Superintendent shall provide the information specified in them.
Conflict between this Act and any other Act	133. In the event of a conflict between this Act and any other Act, this Act prevails unless the other Act states that it is to prevail over this Act.
Regulations	134. (1) The Lieutenant Governor in Council may make regulations <ul style="list-style-type: none"> (a) prescribing any matter that, under this Act, is permitted or required to be prescribed or to be otherwise done by regulation or in accordance with the regulations; (b) prescribing the times for filing or the last dates for filing of documents that are required to be filed pursuant to this Act; (c) prescribing reports that must be submitted to the Superintendent, the contents and the method of preparation of the reports and the persons or classes of persons by whom the reports must be prepared; (d) prescribing <ul style="list-style-type: none"> (i) procedures governing the establishment of advisory committees and the appointments of members of advisory committees,

- (ii) requirements respecting meetings between the administrator and an advisory committee and the provision of assistance to the committee, and
- (iii) the costs associated with an advisory committee that are payable out of a pension fund and any restrictions on such costs;
- (e) prescribing procedures governing the appointment of members of pension committees;
- (f) prescribing requirements and restrictions that apply with respect to actuarial methods and assumptions that may be used in the preparation of reports required under this Act or the regulations;
- (g) prescribing classes of employees for the purpose of this Act and the regulations;
- (h) prescribing the methods of calculating
 - (i) the values of assets and liabilities of pension plans and pension funds, and
 - (ii) the normal cost of pension benefits and ancillary benefits;
- (i) prescribing criteria that must be complied with before any surplus may be paid out of a pension fund;
- (j) prescribing the rate or the method of determining the rate at which an employer shall pay money due from the employer pursuant to this Act on a wind-up, the manner of payment and to whom payment must be made;
- (k) regulating or prohibiting the investment of money from pension funds and prescribing investments or classes of investments in which such money may be invested;
- (l) prescribing requirements for retirement savings contracts and life annuity contracts between members, former members and retired members of pension plans and trustees to whom administrators may make payment when required in accordance with this Act, requiring such trustees to file specimens of such contracts before such payments may be made and authorizing the Superintendent to refuse to file a specimen contract that does not meet the requirements;
- (m) respecting the division of pensions or pension benefits pursuant to section 73;
- (n) respecting commencement of payment of a pension for the purpose of section 73;
- (o) respecting circumstances in which section 61 is applicable to a spouse of a member or former member for the purpose of section 74;
- (p) respecting the entitlement to a pension or pension benefit divided under section 73 upon the death of
 - (i) a member or former member, or
 - (ii) a spouse of a member or former member;
- (q) prohibiting, prescribing or limiting fees and expenses that may be charged or paid by administrators, and charged by other persons or entities, in relation to the administration of a pension plan or the

administration and investment of a pension fund, and prescribing limitations on fees that may be charged by administrators in relation to the division of a pension or pension benefits made pursuant to section 73 of this Act and the regulations;

(r) prescribing the rate of interest and the method of calculating interest payable pursuant to this Act or the regulations, if such rate or method is not specified in the requirement for payment of the interest;

(s) prescribing the time within which any document specified in the regulations that this Act requires to be given, transmitted, filed or served must be given, transmitted, filed or served;

(t) prescribing requirements that must be complied with in the administration of a pension plan and pension fund;

(u) prescribing records that must be kept by an administrator, and the manner in which and period of time for which such records must be retained;

(v) requiring the audit of pension plans or classes of pension plans and pension funds or classes of pension funds and prescribing the persons or classes of persons who may perform the audits and the manner of performing the audits;

(w) prescribing the manner of determining the portion of a pension benefit, pension, deferred pension or ancillary benefit that is attributable to employment before, on or after the effective date;

(x) prohibiting or regulating the reduction of bridging benefits or the variation of pension benefits by reference to benefits payable under the *Canada Pension Plan*, the *Quebec Pension Plan* or the *Old Age Security Act (Canada)*;

(y) governing the wind-up of pension plans or classes of pension plans and prescribing priorities or the method of determining priorities on wind-up, including priorities in allocation of assets;

(z) governing the receiving, holding and disbursing of pension benefits by any agency established or designated pursuant to this Act;

(aa) exempting pension plans, classes of pension plan, pension funds, employees, classes of employees, administrators or other persons from the application of this Act or the regulations or from any section of this Act or the regulations;

(bb) prescribing for the purpose of section 89, the cost of complying with an attachment;

(cc) prescribing retirement savings arrangements, circumstances and amounts and restrictions for the purpose of section 88;

(dd) prescribing the information concerning an employer's proposal for payment of surplus money that must be contained in a notice given pursuant to subsection 102(8);

- (ee) prescribing, for the purpose of the definition of “designated jurisdiction” in clause 1(m), any jurisdiction in Canada, including Canada itself, as a jurisdiction in which there is in force legislation substantially similar to this Act;
- (ff) prescribing the date on which an agreement under section 8 comes into effect with respect to a designated jurisdiction and the date on which such an agreement ceases to have effect with respect to the designated jurisdiction;
- (gg) providing for any matter that the Lieutenant Governor in Council considers necessary or advisable for the implementation of an agreement under section 8;
- (hh) establishing one or more classes of multi-employer pension plans and prescribing the requirements and restrictions that apply to transfers pursuant to section 106 in relation to multi-employer pension plans;
- (ii) prescribing additional criteria that must be satisfied by a pension plan to be a jointly sponsored pension plan and prescribing other pension plans that are included within the definition of “jointly sponsored pension plan” in clause 1(w);
- (jj) prescribing requirements in relation to phased retirement options pursuant to section 50;
- (kk) prescribing
 - (i) requirements for determining solvency deficiencies, solvency liabilities, transfer ratios, and going concern funded ratios in respect of a pension plan, and
 - (ii) prescribing levels at which transfer ratios and going concern funded ratios must be maintained;
- (ll) prescribing persons or entities that may be an administrator of a pension plan, the circumstances in which the Superintendent may appoint or terminate the appointment of an administrator of a pension plan, and the circumstances in which the Superintendent may act as administrator of a pension plan;
- (mm) prescribing documents and information that must be filed with the Superintendent in making an application for registration of a pension plan or an amendment to a pension plan, and the circumstances in which the requirement to file a particular prescribed document or piece of information does not apply;
- (nn) prescribing information that must be contained in the documents that create and support a pension plan, and the specified circumstances in which the requirement to include prescribed information does not apply;
- (oo) prescribing persons or entities that may be authorized by the documents which create and support a jointly sponsored pension plan to establish or maintain a separate jointly sponsored pension

plan for persons employed in less than full-time continuous employment in accordance with the requirements set out in the Act;

(pp) prescribing

(i) employers who may provide a letter of credit, persons and entities to whom a letter of credit may be provided and the time period within which the letter of credit must be provided,

(ii) circumstances in which the persons and entities to whom a letter of credit has been provided shall demand payment of the amount of the letter of credit, and

(iii) requirements, time periods and the manner of notification of the Superintendent that must be satisfied in relation to a letter of credit;

(qq) prescribing requirements and restrictions that apply with respect to asset transfers between pension plans, the circumstances in which the Superintendent may waive a condition in relation to a transfer of assets, and the means by which the effective date of a transfer of assets is determined;

(rr) prescribing requirements for agreements for the purpose of section 108;

(ss) prescribing requirements in relation to reciprocal transfer agreements;

(tt) prescribing the manner, times and requirements for funding in relation to contributions that must be made under a pension plan and the circumstances and manner in which contributions may be reduced or suspended;

(uu) prescribing

(i) persons who may be a trustee of a pension fund, and

(ii) the manner and period within which such a person shall provide notification to the Superintendent if a summary has not been received pursuant to subsection 78(3) or a contribution is not paid when due as required by subsection 78(4);

(vv) prescribing the period within which a person may deliver a direction to the administrator pursuant to section 54, 60, 62, 66, 69 or 86;

(ww) prescribing requirements and restrictions in relation to target benefits and target benefit plans;

(xx) prescribing requirements and restrictions in relation to the payment of pensions or pension benefits under a pension plan that provides defined contribution benefits;

(yy) prescribing requirements and exemptions in relation to optional benefits and optional contributions;

(zz) prescribing a pension plan for the purpose of section 60;

(aaa) prescribing limitations in respect of the transfer of funds from pension funds;

(bbb) prescribing

- (i) an additional benefit that is attributable to an amount paid by an employer, and
- (ii) the manner of calculation and limits of a reduction of such additional benefit;
- (ccc) requiring the payment of fees in respect of any services provided under this Act and prescribing the amount of such fees;
- (ddd) defining any word or expression used but not defined in this Act;
- (eee) generally for carrying into effect the provisions of this Act.

(2) A regulation made under subsection (1) may be general or particular in its application and may be limited as to time or place. Application

(3) A regulation made under subsection (1) may adopt by reference with such changes as the Lieutenant Governor in Council considers necessary, any code, formula, standard or procedure and may require compliance with a code, formula, standard or procedure so adopted. Adoption and application of codes or standards

(4) Any provision of a regulation made under subsection (1) may be subject to such terms, conditions, qualifications or requirements as are specified in the regulation. Terms and conditions

135. The *Pension Benefits Act* S.P.E.I. 1990, Cap. 41 is repealed. Repeal

136. This Act comes into force on a date that may be fixed by proclamation of the Lieutenant Governor in Council. Commencement

EXPLANATORY NOTES

SECTION 1 sets out the definitions for the words and terms used in this Act.

SECTION 2 specifies the circumstances in which a person is deemed to be employed in a particular province in Canada for the purposes of this Act.

SECTION 3 specifies the scope of application of this Act and the regulations.

SECTION 4 confirms that this Act and the regulations set out minimum standards.

SECTION 5 applies to designated multi-jurisdictional pension plans if there is an agreement under section 8 between the Crown and any designated jurisdiction. This section also provides for the duties of the administrator of such a plan and the determination of benefits payable thereunder.

SECTION 6 specifies that Minister is responsible for the administration of this Act.

SECTION 7 authorizes the Minister, with the approval of the Lieutenant Governor in Council, to enter into reciprocal agreements with the other provinces and the federal government concerning the application and enforcement of pension benefits legislation.

SECTION 8 authorizes the Minister, with the approval of the Lieutenant Governor in Council, to enter into agreements with designated jurisdictions concerning the pension benefits legislation that governs multi-jurisdictional pension plans.

SECTION 9 provides for the enforcement and paramountcy of an agreement made under section 8.

SECTION 10 specifies that the Superintendent of Pensions shall be the chief administrative officer under the direction of the Minister.

SECTION 11 stipulates that the Minister may engage expert services to advise the Superintendent.

SECTION 12 specifies the duties of the Superintendent.

SECTION 13 provides for the delegation by the Superintendent of his or her powers or duties under this Act.

SECTION 14 confirms that the Superintendent may conduct research, request information and use information related to pensions and pension plans.

SECTION 15 specifies that a pension plan may only be administered if it is registered with the Superintendent or if an acknowledgement of application for registration in respect of the plan has been issued by the Superintendent.

SECTION 16 specifies that pension plans may not be administered, except for the purpose of a wind-up, if registration has been refused or revoked.

SECTION 17 requires an administrator to administer a pension plan and explains who may be an administrator. The section also defines the word “employer”, specifies that retired members may have a representative on a pension committee or board of trustees, and explains when the Superintendent may appoint or act as an administrator.

SECTION 18 specifies when an administrator must apply, and the manner of the application, for the registration of a pension plan.

SECTION 19 specifies the required content of pension plan documents.

SECTION 20 indicates that a pension plan must provide for the non-discretionary accrual of benefits as a condition for registration.

SECTION 21 establishes the requirements for the registration of an amendment to a pension plan.

SECTION 22 specifies the effective date for an amendment to a pension plan.

SECTION 23 outlines the conditions under which an amendment to a pension plan is void.

SECTION 24 specifies when the Superintendent shall issue an acknowledgment of application for registration of a pension plan.

SECTION 25 specifies that the Superintendent shall issue a certificate of registration for each pension plan registered under this Act.

SECTION 26 specifies that the Superintendent shall issue a notice of registration for each pension plan amendment registered under this Act.

SECTION 27 explains when the Superintendent may refuse or revoke an application for the registration of a pension plan, and specifies the effect of such a refusal or revocation.

SECTION 28 stipulates the time period within which an employer who maintains a pension plan on a stated date must amend the pension plan to conform with this Act.

SECTION 29 specifies the duties of an administrator of a pension plan.

SECTION 30 requires administrators to file annual returns and additional reports.

SECTION 31 requires administrators to file with the Superintendent a copy of any reciprocal transfer agreement entered into in respect of their pension plans.

SECTION 32 stipulates further duties and standards of care for plan administrators of pension plans.

SECTION 33 provides for the remuneration of the administrator of a pension plan.

SECTION 34 requires employers to provide certain information to administrators.

SECTION 35 provides for the establishment and functions of pension plan advisory committees.

SECTION 36 requires an administrator of a pension plan to retain prescribed records in the manner and for the time prescribed.

SECTION 37 requires an administrator of a pension plan to provide certain information to the members of the plan and the persons who are eligible to become members.

SECTION 38 outlines the notice requirements regarding applications to register plan amendments that may reduce pension plan benefits.

SECTION 39 requires an administrator of a pension plan to give members an annual statement in respect of the pension plan.

SECTION 40 specifies the reporting requirements that an administrator has to former members.

SECTION 41 outlines the rights of members and other persons to access pension plan information from the administrator of the pension plan without charge.

SECTION 42 specifies the rights of members and other persons to inspect documents.

SECTION 43 allows an administrator of a pension plan to use electronic means to send notices and records to members.

SECTION 44 specifies who is eligible for membership in a pension plan.

SECTION 45 provides that a member of a pension plan continues in the plan as long as the employee's employment continues.

SECTION 46 provides for the continued membership of part-time employee members in a pension plan.

SECTION 47 empowers the Superintendent to order an administrator of a pension plan to accept an employee as a member of the plan.

SECTION 48 permits an employer to establish a separate pension plan for part-time employees.

SECTION 49 explains when a member of a pension plan is entitled to a pension and sets the normal retirement date.

SECTION 50 authorizes the provision of a phased retirement option for members of a pension plan that provides defined benefits.

SECTIONS 51 and 52 explain when a member of a pension plan is entitled to a deferred pension.

SECTION 53 explains when a member of a pension plan is entitled to terminate membership in the plan and when that termination takes effect.

SECTION 54 provides for the minimum pension benefits that are payable under a pension plan to its members.

SECTION 55 explains the manner in which pension benefits may be made under a plan that provides for defined contribution benefits.

SECTION 56 explains when pension benefits are “target benefits”.

SECTION 57 indicates that a pension plan may provide certain ancillary benefits.

SECTION 58 permits a pension plan that provides defined benefits to provide optional benefits on the payment of optional contributions.

SECTION 59 explains the early retirement entitlements of former members.

SECTION 60 permits a former member of a pension plan who is entitled to a deferred pension to require the transfer of funds from that plan to another one.

SECTION 61 authorizes the administrator of a pension plan to purchase a pension, deferred pension or ancillary benefit from an insurance company.

SECTION 62 provides joint and survivor pension benefits for a person who is a spouse of a retired member on the date the first instalment of the pension is due to the retired member.

SECTION 63 specifies pension recipient information requirements for administrator.

SECTION 64 explains when and how a person who is entitled to joint and survivor pension benefits may waive the entitlement to receive payment of pension benefits in the form of a joint and survivor pension.

SECTION 65 explains the pension entitlements of a surviving spouse in a new spousal relationship.

SECTION 66 sets out the pre-retirement death benefit entitlements of a surviving spouse.

SECTION 67 permits a surviving spouse to waive the spouse’s entitlement to pre-retirement death benefits.

SECTION 68 provides for variation in the terms of payment due to disability likely to considerably shortened life expectancy of a member or former member.

SECTION 69 provides for payment to a former or retired member of the commuted value of a pension benefit if the benefit is small in relation to maximum pensionable earnings in year of termination of employment.

SECTION 70 requires an administrator of a plan to pay an amount into a registered retirement savings arrangement when directed to do so.

SECTION 71 specifies certain circumstances in which an administrator may not take the sex of a member or other beneficiary into consideration.

SECTION 72 specifies the maximum pension benefit and bridging benefit reduction or variation for that may be required by a pension plan in relation to payments under the Canada Pension Plan, the Quebec Pension Plan or the *Old Age Security Act* (Canada).

SECTION 73 sets out the spousal pension benefit entitlements upon marriage breakdown.

SECTION 74 specifies the funding and notice requirements for employers and administrators of a pension plan.

SECTION 75 explains when an employer may reduce or suspend contributions for the cost of a pension plan.

SECTION 76 permits an employer in certain circumstances to provide a letter of credit instead of making payments into a pension plan.

SECTION 77 requires an administrator of a pension plan to ensure all contributions are paid when due.

SECTION 78 requires an administrator of a pension plan to provide a summary of the required contributions for the pension plan to certain persons.

SECTION 79 provides that an employer who receives an employee's contribution for payment into a pension fund holds the money in trust for the employee until it is paid into the fund.

SECTION 80 provides for the daily accrual of interest on employer contributions to a pension plan.

SECTION 81 authorizes an administrator to commence proceedings in court to obtain the payment of contributions due under a pension plan.

SECTION 82 permits an administrator of a multi-employer pension plan to impose bonding requirements on any person who invests the monies in or handles the contributions to a pension plan.

SECTION 83 requires an employer to transmit to the administrator of a pension plan a copy of the agreement requiring the employer to make contributions to the pension plan.

SECTION 84 requires a person selecting investments for a pension fund to do so in accordance with the criteria in the Act and the regulations.

SECTION 85 provides for the reimbursement of an employer from a pension fund, with the consent of the Superintendent, in respect of an overpayment into the pension fund or a payment that should have been made out of the fund.

SECTION 86 limits the refunds that a member, former member or retired member can obtain from a pension fund of the contributions made by such person in respect of employment in the Province or a designated jurisdiction on or after the qualification date.

SECTION 87 indicates that transactions purporting to assign, charge, anticipate or give as security money payable under a pension plan are void.

SECTION 88 exempts money payable under a pension plan from execution, seizure or attachment.

SECTION 89 specifies that money payable under a pension plan is subject to a maintenance order made under the *Maintenance Enforcement Act*.

SECTION 90 restricts the commutation or surrender of a pension, deferred pension, pension benefit, annuity or prescribed retirement savings arrangement during the life of the person who is entitled to the pension, annuity or arrangement.

SECTION 91 indicates that an employer may wind-up a pension plan and that an administrator may wind up a multi-employer pension plan. The section also requires notice to be given by specified persons of an intention to wind-up a pension plan and the section provides for the effective date of the wind-up.

SECTION 92 authorizes the Superintendent, in certain circumstances, to order the wind-up of a pension plan.

SECTION 93 requires an administrator of a pension plan that is to be wound up to file a wind-up report for the approval of the Superintendent.

SECTION 94 requires an administrator of a pension plan to give a statement of entitlement on wind-up to each person who is entitled to a pension, deferred pension or other benefit under the plan.

SECTION 95 clarifies, for the purpose of determining the amounts of pension benefits due on the winding up of a pension plan, the date on which a member's employment is deemed to have been terminated. The section also specifies the rights of a person who is entitled to a pension benefit on wind-up.

SECTION 96 specifies the employer's payment obligations on the wind-up of a pension plan other than a jointly sponsored pension plan.

SECTION 97 sets out the payment obligations of the employer and the members on the winding up of a jointly sponsored pension plan.

SECTION 98 states that this Act and the regulations continue to apply to a pension fund of a plan that is wound up until the employer's obligations under the Act have been satisfied and all of the assets of the fund disbursed.

SECTION 99 indicates that, on the wind-up of a pension plan, benefits may be reduced in a prescribed manner if the money in the pension fund is not sufficient to pay all benefits.

SECTION 100 prohibits the payment of surplus money from a pension fund without the prior consent of the Superintendent and explains how an application for such consent may be made.

SECTION 101 indicates when the Superintendent may consent to the payment of surplus money from a pension fund.

SECTION 102 indicates that the entitlements to the surplus in a pension plan are to be determined by the documents creating the plan.

SECTIONS 103 and 104 set out restrictions, requirements and responsibilities respecting the transfer of assets between pension plans.

SECTION 105 defines "successor employer," specifies the rights and obligations of a successor employer, and requires the consent of the Superintendent prior to any transfer of assets to the successor employer.

SECTION 106 provides for the transfer of assets and liabilities in respect of group of members of a multi-employer pension plan who become members of a different pension plan.

SECTION 107 deems an original pension plan not to be wound up when the employer ceases to make required contributions to its successor plan, and requires the consent of the Superintendent prior to any transfer to assets from the pension fund of the original plan to the pension fund of the new successor plan.

SECTION 108 provides for the approval by the Superintendent of agreements relating to the payment to a pension fund of certain amounts subject to the *Companies' Creditors Arrangement Act* (Canada) and the *Bankruptcy and Insolvency Act* (Canada).

SECTION 109 authorizes the Superintendent, in certain circumstances, to issue an order requiring an administrator to take or refrain from taking any action in respect of a pension plan or a pension fund.

SECTION 110 indicates that if a pension plan report prepared for the Superintendent pursuant to this Act is deficient because of one or more specified concerns, the Superintendent may order the administrator or employer for the plan to prepare and file a new report.

SECTION 111 permits a person who is ordered to prepare a new pension plan report to request a hearing with, and to be heard by, the Superintendent in respect of the matter.

SECTION 112 requires the Superintendent to issue a notice of his or her intention to refuse to register a pension or an amendment to a pension plan, to revoke a registration and to issue certain orders. The section also indicates what such notices must contain, who must be given such notice and that the recipients have rights of reconsideration and appeal.

SECTION 113 permits the parties to a proceeding before the Superintendent to appeal to the Supreme Court from a decision or order of the Superintendent.

SECTION 114 authorizes the Superintendent to issue an order requiring an employer or administrator to supply information for the purpose of ensuring that this Act and the regulations are being complied with.

SECTION 115 indicates that the Superintendent and his or her staff are not personally liable for acts done in good faith in the execution or

intended execution of a duty or authority pursuant to this Act or the regulations.

SECTION 116 permits the Auditor General to examine the accounts and financial transactions of the Superintendent.

SECTION 117 requires the Superintendent to make an annual report to the Minister, and it requires the Minister to submit that annual report to the Legislative Assembly.

SECTION 118 authorizes the Lieutenant Governor in Council to establish an agency for the purposes of holding and disbursing pension benefits pursuant to this Act.

SECTION 119 authorizes the Superintendent to extend both procedural time limits related to the powers and duties of the Superintendent and other time limits related to filing prescribed documents.

SECTION 120 authorizes the Superintendent, and staff, to enter business premises at a reasonable time, to make examinations, to require the production of books and documents and to make copies of such books and documents. The section also permits the Superintendent to apply to a justice of the peace for an inspection order when denied access to a premises, to require the preparation of a report concerning the results of an examination and to make an order against an administrator or employer for the costs of an examination.

SECTION 121 authorizes the Superintendent to order an administrator or employer to pay the cost of preparing any report required under this Act.

SECTION 122 prohibits the obstruction or hindrance of the Superintendent or his or her staff.

SECTION 123 provides for the issuance, required time of execution and expiry of an inspection order authorizing the Superintendent and staff to enter premises and make examinations.

SECTION 124 indicates that every person who contravenes a provision of this Act or the regulations, or an order made pursuant to this Act, is guilty of an offence.

SECTION 125 specifies that every person who is guilty of an offence contrary to this Act or the regulations is liable to a fine of not more than \$100,000 for a first offence and not more than \$200,000 for a second

offence. The section also indicates when the director or office of a corporation is guilty of an offence and bars commencing a proceeding under this Act more than two years after the subject matter in question came to the attention of the Superintendent.

SECTION 126 requires a document purporting to be signed by the Superintendent to be received in evidence in any proceeding as proof, in the absence of evidence to the contrary, of the facts stated in the document without proof of the signature.

SECTION 127 explains the procedure for, the requirements pertaining to and the effect of, the registration in the Supreme Court of an order of the Superintendent.

SECTION 128 permits the Superintendent to apply to the Supreme Court for an injunction order to restrain the contravention of the Act, or the regulations.

SECTION 129 permits an administrator to restrain a contravention of the Act, regulations or an order by an action.

SECTION 130 specifies the manner of giving, serving or delivering an order or other document pursuant to this Act.

SECTION 131 requires an administrator to take any required action within a prescribed period.

SECTION 132 provides for the use of forms approved by the Superintendent.

SECTION 133 provides for a conflict between this Act and another Act.

SECTION 134 specifies that the Lieutenant Governor in Council may make certain regulations under this Act.

SECTION 135 repeals the *Pension Benefits Act* S.P.E.I. 1990, Cap. 41, which has never been proclaimed.

SECTION 136 provides for the commencement of this Act.

BILL NO. 41

Pension Benefits Act

<i>STAGE:</i>	<i>DATE:</i>
<i>1st Reading:</i>	May 17, 2012
<i>2nd Reading:</i>	
<i>To Committee:</i>	
<i>Reported:</i>	
<i>3rd Reading and Pass:</i>	
<i>Assent:</i>	

SIGNATURES:

Honourable H. Frank Lewis, Lieutenant Governor

Honourable Carolyn I. Bertram, Speaker

Clerk

Honourable Janice A. Sherry
Minister of Environment, Labour and Justice
and Attorney General

GOVERNMENT BILL
