



BILL NO. 96

Government Bill

*3rd Session, 61st General Assembly
Nova Scotia
60 Elizabeth II, 2011*

An Act Respecting Pension Benefits

CHAPTER 41
ACTS OF 2011

**AS ASSENTED TO BY THE LIEUTENANT GOVERNOR
DECEMBER 15, 2011**

The Honourable Marilyn More
Minister of Labour and Advanced Education

*Halifax, Nova Scotia
Printed by Authority of the Speaker of the House of Assembly*

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An Act Respecting Pension Benefits

WHEREAS the Government of Nova Scotia 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

AND WHEREAS the Government of Nova Scotia intends to promote and facilitate the implementation and continuation of pension plans;

THEREFORE, be it enacted by the Governor and Assembly as follows:

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

2 In this Act,

(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;

(b) “administrator” means the person that administers a pension plan;

(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;

(d) “Board” means the Labour Board established by the *Labour Board Act*;

(e) “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 *Old Age Security Act* (Canada) or is either eligible for or commences to receive retirement benefits under the *Canada Pension Plan* or the *Quebec Pension Plan*;

(f) “certified copy” means a copy certified to be a true copy;

(g) “collective agreement” has the same meaning as in the *Trade Union Act*;

(h) “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;

(i) “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 lay-off from employment;

(j) “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;

(k) “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;

(l) “defined benefit” means a pension benefit other than a defined contribution benefit or a target benefit;

(m) “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;

(n) “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;

(o) “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;

(p) “effective date” means the date on which this Act comes into force;

(q) “employee” means an individual employed to do work or provide a service, who is in receipt of or entitled to remuneration for the work or service;

(r) “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;

(s) “file” means file with the Superintendent;

(t) “former Act” means Chapter 340 of the Revised Statutes, 1989, the *Pension Benefits Act*;

(u) “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

- (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 61 in connection with the pension plan;

(v) “going concern unfunded liability” means, with respect to a pension plan, a going concern unfunded liability as determined in accordance with the prescribed requirements;

(w) “insurance company” means a corporation authorized to undertake life insurance in Canada;

(x) “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;

(y) “jointly sponsored pension plan” means a pension plan that has the following characteristics and includes such other pension plans as may be prescribed:

- (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;
- (z) “member” means, in respect of a pension plan, a member of the pension plan;
- (aa) “Minister” means the Minister of Labour and Advanced Education;
- (ab) “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 by-law 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
 - (i) all the employers who contribute, or on whose behalf contributions are made, to the pension fund are affiliates of each other, within the meaning of the *Companies Act*, or
 - (ii) the regulations specify that the plan is not a multi-employer pension plan;
- (ac) “normal cost” means, with respect to a pension plan, the normal cost as determined in accordance with the regulations;
- (ad) “normal retirement age” means the date or age specified in the pension plan as the normal retirement age of members;
- (ae) “optional benefit” means a benefit that is prescribed for the purpose of Section 59 as an optional benefit;
- (af) “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;
- (ag) “original pension plan” means, except in Section 108, a pension plan from which assets are transferred and includes the pension fund for that pension plan;
- (ah) “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;
- (ai) “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;
- (aj) “pension” means a pension benefit that is in payment;
- (ak) “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;
- (al) “pension committee” means a committee that is an administrator;

(am) “pension fund” means the fund maintained to provide benefits under or related to a pension plan;

(an) “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;

(ao) “personal representative” has the same meaning as in the *Probate Act*;

(ap) “prescribed” means prescribed by the regulations;

(aq) “qualification date” means, in respect of the Province, January 1, 1977, and, in respect of a designated jurisdiction, the date on which under the law of the designated jurisdiction a pension plan must be registered by the proper authority in the designated jurisdiction;

(ar) “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;

(as) “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;

(at) “registration” means registration pursuant to this Act;

(au) “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:

(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 60(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 61 in connection with the pension plan;

(av) “solvency deficiency” means, with respect to a pension plan, a solvency deficiency as determined in accordance with the prescribed requirements;

(aw) “solvency liabilities” means, with respect to a pension plan, solvency liabilities as determined in accordance with the regulations;

(ax) “spouse” means either of two persons who

(i) are married to each other,

(ii) are married to each other by a marriage that is voidable and has not been annulled by a declaration of nullity,

(iii) have gone through a form of marriage with each other, in good faith, that is void and are cohabiting or, where they have ceased to cohabit, have cohabited within the twelve-month period immediately preceding the date of entitlement,

(iv) are domestic partners within the meaning of Section 52 of the *Vital Statistics Act*, or

(v) not being married to each other, cohabited in a conjugal relationship with each other

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

(B) for a period of at least one year, if neither of them is married;

(ay) “successor pension plan” means, except in Section 108, a pension plan to which assets are transferred and includes the pension fund for that pension plan;

(az) “Superintendent” means the Superintendent of Pensions;

(ba) “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;

(bb) “target benefit” means a pension benefit that is a target benefit as determined under Section 57;

(bc) “termination”, in relation to employment, includes retirement and death;

(bd) “trade union” has the same meaning as in the *Trade Union Act*;

(be) “wind-up” means the termination of a pension plan in whole or in part and the distribution of the assets of the pension fund following plan termination;

(bf) “Year’s Maximum Pensionable Earnings” has the same meaning as in the *Canada Pension Plan*.

3 (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.

(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

4 This Act applies to every pension plan that is provided for persons employed in the Province.

5 This Act and the regulations must 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.

6 (1) This Section applies with respect to a designated multi-jurisdictional pension plan if there is an agreement under Section 9 between the Crown and any designated jurisdiction whose pension benefits legislation applies to the 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.

(3) Without limiting the generality of Section 10, the agreement governs the manner and extent to which this Act and the regulations apply with respect to the designated multi-jurisdictional pension plan.

(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.

(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.

(6) This Section applies notwithstanding any documents that create and support a designated multi-jurisdictional pension plan and the pension fund.

(7) This Section applies notwithstanding any trust that may exist in favour of any person.

ADMINISTRATION OF ACT

7 The Minister has the general supervision and management of this Act and the regulations.

- 8 (1)** Subject to the approval of the Governor in Council, the Minister may
- (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;

(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.

(2) Without limiting the generality of subsection (1), an agreement may provide for

(a) the delegation of any powers and duties of the Superintendent under this Act and the regulations to a pension supervisory authority or the government of a designated jurisdiction;

(b) the delegation to the Superintendent of any powers and duties of a pension supervisory authority or the government of a designated jurisdiction under pension benefits legislation.

(3) The Superintendent may accept a delegation described in clause (2)(b).

9 (1) With the approval of the 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.

(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.

(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;

(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

(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 require-

ments 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;

(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

(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.

(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.

(7) An agreement with a designated jurisdiction ceases to have effect in the Province on a date that is specified by the regulations.

(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.

10 (1) An agreement under Section 9 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.

(2) An agreement under Section 9 is not enforceable until notice of the agreement is published in the Royal Gazette in accordance with subsection 9(8).

(3) An agreement under Section 9 is not a regulation within the meaning of the *Regulations Act*.

11 (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 *Civil Service Act*.

(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.

12 The Minister may engage the services of counsel, actuaries, accountants and other experts to

(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 124 of this Act.

13 The Superintendent shall

(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 Governor in Council or the Minister.

14 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 9 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.

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

(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.

(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.

REGISTRATION AND ADMINISTRATION
OF PENSION PLANS

16 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.

17 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.

18 (1) A pension plan must be administered by a person or entity described in subsection (3).

(2) No person or entity other than a person or entity described in subsection (3) may administer a pension plan.

(3) A pension plan is not eligible for registration unless it is administered by an administrator who is

(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.

(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.

(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.

(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.

19 (1) In this Section, “document” includes a collective agreement.

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

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

- (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.

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

(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.

(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.

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

(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.

(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.

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

22 (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.

(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.

(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.

(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.

23 (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.

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

24 (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.

(2) An amendment to a pension plan is void if the amendment purports to increase an amount described in subclause (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.

(4) Subsection (1) does not apply to

(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 108, 109 or 110; or

(e) an amendment that is necessary under the *Income Tax Act* (Canada) or any applicable pension legislation.

25 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.

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

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

28 (1) The Superintendent may

(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;

(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 115.

(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.

(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.

(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.

29 (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.

(2) Where a pension plan is governed by a collective agreement or an arbitration award made pursuant to the *Trade Union Act* 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

(a) the date that is three years after the effective date; or

(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.

(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 *Trade Union Act* 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.

30 (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.

(2) Subsection (1) applies whether or not the pension plan is amended to comply with this Act and the regulations.

(3) The administrator shall ensure that the pension plan and the pension fund are administered in accordance with

(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

(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.

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

31 (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.

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

32 (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.

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

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

33 (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.

(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.

(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.

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

(5) No person other than a prescribed person may be a trustee of a pension fund.

(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.

(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).

(8) The administrator is not entitled to any benefit from the pension plan other than pension benefits, ancillary benefits and a refund of contributions.

(9) Subsections (2) and (8) apply *mutatis mutandis* 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.

34 (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.

(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,

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

(3) Subsections (1) and (2) apply *mutatis mutandis* 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.

(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 18(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 18(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.

35 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.

36 (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.

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

(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.

(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.

(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.

(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.

(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.

RECORD KEEPING AND DISCLOSURE OF INFORMATION

37 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.

38 (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

(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

(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.

39 (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.

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

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

(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.

(5) This Section does not apply with respect to an amendment that relates to a transfer of assets authorized by Section 106, 108, 109 or 110.

40 (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.

(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.

41 (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.

(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.

42 (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

- (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

(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.

(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.

(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.

(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.

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

43 (1) The persons mentioned in subsection 42(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.

(2) The inspection mentioned in subsection (1) must take place

(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.

(3) The persons mentioned in subsection 42(1) and the administrator are entitled to copies of the documents mentioned in subsection (1) upon payment of the prescribed fees.

(4) Where the Superintendent receives a written request from the administrator or from a person described in subsection 42(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.

44 (1) The administrator of a pension plan may use electronic means that comply with the *Electronic Commerce Act* 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.

(2) Subsection (1) does not apply in such circumstances as may be prescribed.

MEMBERSHIP

45 (1) Every employee of a prescribed class of employees for whom a pension plan is established is eligible to be a member.

(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.

(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

(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.

(4) A multi-employer pension plan may require not more than the lesser of

(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.

46 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.

47 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.

48 (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 115, by order require the administrator to accept the employee as a member.

(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.

49 (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.

(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.

RETIREMENT AND VESTING

50 (1) The normal retirement age under a pension plan submitted for registration on or after January 1, 1988, must not be later than one year after the attainment of sixty-five years of age.

(2) Every pension plan registered or submitted for registration before January 1, 1988, is deemed to specify a normal retirement age in respect of pension benefits that accrue on or after January 1, 1988, 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.

(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

(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.

(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

(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.

51 (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.

(2) A member whose pension benefit is a defined benefit may apply to the administrator to participate in the phased retirement option if

(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.

(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.

(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.

(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.

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

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

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

(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.

(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.

(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.

52 (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 January 1, 1988.

(2) The benefit is a deferred pension equal to the pension benefit provided under the pension plan as it existed on December 31, 1987, in respect of employment before January 1, 1988, in the Province or in a designated jurisdiction,

(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.

(3) Subsections (1) and (2) do not apply in respect of benefits that result from additional voluntary contributions.

53 (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 December 31, 1987.

(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,

(a) under the pension plan in respect of employment by the employer after the later of December 31, 1987, or the qualification date;

(b) under any amendment made to the pension plan after December 31, 1987; and

(c) under any new pension plan established after December 31, 1987, for members.

(3) Subsections (1) and (2) do not apply in respect of benefits that result from additional voluntary contributions.

54 (1) A person who is

(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.

(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.

(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.

(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.

(6) Where a member of a multi-employer pension plan is represented by a trade union that, in accordance with the *Trade Union 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.

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

BENEFITS

55 (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 January 1, 1988, 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 or pension increased so that the commuted value is equal to the value of the contributions and the interest.

(2) An increase in the value of the pension or deferred pension in respect of employment before January 1, 1988, resulting from an amendment to the pension plan made on or after January 1, 1988, may be included in calculating the commuted value of the deferred pension for the purpose of subsection (1).

(3) Contributions made on or after January 1, 1988, 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.

(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 January 1, 1988, 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 January 1, 1988.

(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.

(6) Section 71 applies with respect to the payment into the registered retirement savings arrangement referred to in subsection (5).

(7) Where a former member transfers an amount under subsection 61(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 61(3),

(a) the lump sum payment to which the former member is entitled under subsection (4) must be reduced in the prescribed manner; and

(b) subsection (3) does not apply with respect to the reduced lump sum payment.

(8) The following may be excluded 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; and

(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):

(a) ancillary benefits related to employment on or after January 1, 1988;

(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 January 1, 1988, but that are not included in calculating commuted value under subsection (2); and

(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 January 1, 1988.

56 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.

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

(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; and

(f) the pension plan satisfies such other criteria as may be prescribed.

(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.

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

(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.

58 (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 67;

- (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 60;
- (f) postponed retirement options and benefits in excess of those referred to in subsection 50(4); and
- (g) any other prescribed 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 must be included in calculating the member's pension benefit or the commuted value of the pension benefit.

(3) For the purpose of subsection (2) and clause 24(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.

(4) For the purpose of subsection (2) and clause 24(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.

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

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

(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.

(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.

(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.

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

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

60 (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.

(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.

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

(4) The commuted value of a former member's early retirement pension must 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.

(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).

(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.

61 (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

(a) to the pension fund related to another pension plan, if

(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.

(2) The entitlement pursuant to subsection (1) is subject to the prescribed limitations in respect of the transfer of funds from pension funds.

(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.

(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 60, unless the pension plan provides such an 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.

(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.

(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.

(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.

(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.

(11) The Superintendent may approve the payment subject to such terms and conditions as the Superintendent considers appropriate in the circumstances.

(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 115, 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.

(13) Subject to Section 115, 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 of Nova Scotia and is enforceable in the same manner as a judgment of that Court.

(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.

62 (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.

(2) The authority of the administrator pursuant to subsection (1) is subject to the entitlement of a member pursuant to Section 61 and to the limitations prescribed in relation to transfers of funds from pension funds.

(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.

(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.

(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 115, 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.

(6) Subject to Section 115, 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 of Nova Scotia and is enforceable in the same manner as a judgment of that Court.

63 (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.

(2) The commuted value of a joint and survivor pension pursuant to subsection (1) must not be less than the commuted value of the pension that would be payable under the pension plan to the retired member.

(3) Upon the death of the retired member, the amount of the pension payable to the surviving spouse of the retired member must not be less than sixty per cent of the pension paid to the retired member during their joint lives.

(4) Subsections (1) to (3) do not apply in respect of

(a) a pension benefit if payment of the pension has commenced before January 1, 1988; 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 68(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) Where

(a) before January 1, 1988, a deferred life annuity has been purchased from an insurance company for a person entitled to a deferred pension under Chapter 14 of the Acts of 1975;

(b) payments have not commenced under the annuity on January 1, 1988; and

(c) the recipient of the payments has a spouse on the date payments commence,

the annuity must be paid as a joint and survivor pension in accordance with the requirements of this Section and the insurance company shall make payments accordingly.

(6) For the purpose of subsection (5), the insurance company is deemed to be the administrator under Sections 64 and 65.

(7) 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,

(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.

(8) The person to whom the payment under subsection (7) 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.

(9) Section 71 applies with respect to the payment into the registered retirement savings arrangement.

64 (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.

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

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

65 (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.

(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.

(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.

66 (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.

(2) Subsection (1) applies in respect of pensions that are being paid on January 1, 1988, or that commence to be paid on or after January 1, 1988.

67 (1) Where a member of a pension plan who is entitled under the pension plan to a deferred pension described in Section 53 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 53 begins, the person who is the spouse of the member on the date of death is entitled to

(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

(a) delivered a written waiver to the administrator in accordance with subsection 68(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.

(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.

(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.

(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.

(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 December 31, 1987, 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 January 1, 1988, may be deducted from the entitlement under subsection (9) of a beneficiary designated under subsection (6) or of a personal representative under subsection (7).

(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 January 1, 1988, plus interest credited to the contributions.

(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 71 applies with respect to any payment into a registered retirement savings arrangement.

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

(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.

(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:

- (a) the reduction must be calculated in the prescribed manner; and
- (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 53.

(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.

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

(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.

(3) Where a waiver is in effect on the date of death of the member, former member or retired member, subsections 67(6) and 67(7) apply as if the member, former member or retired member does not have a spouse on the date of death.

69 (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.

(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.

70 (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.

(2) A pension plan registered before January 1, 1988, may provide that upon termination of employment a person entitled to a deferred pension pursuant to Section 52 is entitled to payment of an amount not greater than twenty-five per cent of the commuted value of the deferred pension.

(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.

(4) Section 71 applies with respect to the payment into the registered retirement savings arrangement.

71 (1) When a person delivers a direction to the administrator of a pension plan in accordance with subsection 55(5), 63(8), 67(4), 67(10), 70(3) or 87(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.

(2) Where the amount to be paid into the registered 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 person who gave the administrator the direction.

(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.

72 (1) The sex of a member, former member, retired member or other beneficiary under a pension plan must not be taken into account in

- (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

- (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

- (a) employment on or after January 1, 1988;
- (b) employment before January 1, 1988, 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 January 1, 1988, in so far as it is dealt with in a pension plan established on or after that day.

73 (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.

(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.

(3) A pension plan for registration of which application is made on or after January 1, 1988, 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).

(4) Subsection (3) does not apply to a pension plan that is a successor of a pension plan registered pursuant to Chapter 14 of the Acts of 1975 that permitted such a reduction.

(5) 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 January 1, 1988.

(6) 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.

(7) 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

74 (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 of Nova Scotia, 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.

(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

75 (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.

(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.

(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.

76 (1) Notwithstanding subsection 75(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

- (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 75(3) and 75(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

- (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.

77 (1) Notwithstanding subsection 75(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.

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

(3) The employer shall not provide a letter of credit 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.

(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.

(5) The employer shall 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.

(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.

(7) The prescribed person or entity holds the letter of credit in trust for the pension plan.

(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.

(9) The fees or expenses associated with obtaining, holding, amending or cancelling a letter of credit are not payable from the pension fund.

(10) Subject to Section 34, the fees and expenses associated with enforcing a letter of credit are payable from the pension fund.

(11) This Section does not apply with respect to multi-employer pension plans.

78 (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.

(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.

79 (1) The administrator shall give the persons who are prescribed for the purpose of subsection 33(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.

(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).

(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.

80 (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.

(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.

(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.

(4) Where a pension plan is wound up in whole or in part, 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.

(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).

(6) The lien referred to in subsection (5) is not a charge against a parcel registered pursuant to the *Land Registration Act* until a certificate evidencing the lien has been recorded in the judgment roll.

(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.

(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.

(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.

(10) Subsections (1) to (9) apply *mutatis mutandis* in respect of money to be paid to

(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.

81 (1) Money that an employer is required to pay into a pension fund accrues on a daily basis.

(2) Interest on contributions must be calculated and credited at a rate not less than the prescribed rates and in accordance with prescribed requirements.

82 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.

83 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.

84 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.

85 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.

86 (1) This Section applies if an employer

- (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.

(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).

(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).

(5) Subject to Section 115, 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).

LOCKING IN

87 (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.

(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 55(4).

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

(4) Subsection (1) does not apply to

(a) prevent the commutation of a pension benefit pursuant to subsection 70(1);

(b) prevent a payment pursuant to subsection 70(2); or

(c) such other circumstances as are prescribed.

(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.

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

(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.

(8) Section 71 applies with respect to the payment into the registered retirement savings arrangement.

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

(2) Every transaction that purports to assign, charge, anticipate or give as security money transferred from a pension fund in accordance with Section 61 or 62 or subsection 67(1) or 96(2), is void.

(3) Subsections (1) and (2) do not apply to prevent the assignment, in accordance with Section 74, of an interest in money payable under a pension plan or money payable as a result of a purchase or transfer pursuant to Section 61 or 62 or subsection 67(1) or 96(2).

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

(2) Money transferred from a pension fund to a prescribed retirement savings arrangement or for the purchase of a life annuity pursuant to Section 61, 62, 67 or 74 or subsection 96(2) is exempt from execution, seizure or attachment.

(3) Money payable from a prescribed retirement savings arrangement or from a life annuity purchased in accordance with Section 61, 62, 67 or 74, or subsection 96(2) is exempt from execution, seizure or attachment.

(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.

90 (1) Notwithstanding any enactment, for the purpose of enforcement of a maintenance order as defined in the *Maintenance Enforcement Act*,

(a) money payable under a pension plan to a retired member or a person as a result of a division under Section 74 or payable from a prescribed retirement savings arrangement or life annuity that results from a purchase or transfer under Section 61, 62, 67 or 74 or subsection 96(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 74 or a deferred life annuity or prescribed retirement savings arrangement of a person that results from a purchase or transfer pursuant to Sections 61, 62, 67 or 74 or subsection 96(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

(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),

(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).

91 (1) A pension, deferred pension, pension benefit, annuity or prescribed retirement savings arrangement that results from a purchase or transfer pursuant to Section 61, 62, 67 or 74 or subsection 96(2) to which a person is entitled must not be commuted or surrendered, in whole or in part, during the person's life.

(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.

(3) Subsections (1) and (2) do not apply to a variation of a pension or deferred pension pursuant to Section 69 or to a commutation of a benefit pursuant to Section 70.

(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.

(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.

(6) The owner of the prescribed retirement savings arrangement may apply in writing to the Superintendent for the consent under subsection (5).

(7) The Superintendent's authority to give consent under subsection (5) is subject to such conditions and restrictions as may be prescribed.

WINDING UP

92 (1) The employer or, in the case of a multi-employer pension plan, the administrator may wind up the pension plan in whole or in part.

(2) Notwithstanding subsection (1), where a jointly sponsored pension plan is also a multi-employer pension plan, the administrator may wind up the plan, in whole or in part, 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, in whole or in part.

(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, in whole or in part, 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 shall give written notice of an intended wind-up of the pension plan to

- (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) Where the intended wind-up is a partial wind-up of the pension plan, the administrator, employer or other person or entity is not required to give written notice to members, former members, retired members or other persons entitled to payment from the pension fund if those persons will not be affected by the partial wind-up.

(6) The notice of the intended wind-up must contain such information as may be prescribed.

(7) 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.

(8) The effective date of the wind-up must 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, on the date notice is given to members.

(9) Subject to Section 115, 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.

93 (1) The Superintendent may, by order, require the wind-up of a pension plan if

- (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.

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

(3) The administrator, employer or other person or entity shall give notice of the order to the persons and entities listed in clauses 92(4)(b) to (g) and shall include in the notice such information about the wind-up as the order may specify.

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

(5) A reduction or suspension of contributions under Section 76 does not constitute a cessation or suspension of employer contributions for the purpose of clause (1)(a) or subclause (1)(g)(ii).

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

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

(b) the benefits to be provided under the pension plan to members, former members, 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.

(2) No payment shall be made out of the pension fund in respect of which notice of the intended wind-up has been given by the administrator under Sections 92 or 93 until the Superintendent has approved the wind-up report.

(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.

(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.

(6) On the partial wind-up of a pension plan, members, former members, retired members and other persons entitled to benefits under the pension plan shall have rights and benefits that are not less than the rights and benefits they would have on a full wind-up of the pension plan on the effective date of the partial wind-up.

95 (1) Within the prescribed period of time, the administrator of a pension plan that is to be wound up, in whole or in part, 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.

(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

(a) immediate payment of a pension benefit, if the person is eligible to receive the immediate payment; or

(b) a pension beginning at the earliest date mentioned in clause 97(1)(b), if the person is ineligible to receive the immediate payment.

(3) Where the notice under subsection (1) is given in respect of a pension plan for which an election under Section 98 is in effect and the person to whom the notice is given does not make an election within the prescribed period of time, the person is deemed to have elected to receive

(a) immediate payment of a pension benefit, if the person is eligible to receive the immediate payment; or

(b) a pension beginning at the earliest date on which the person would be entitled to an unreduced pension under the pension plan as of the effective date of the wind-up, if the person is ineligible to receive the immediate payment.

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

96 (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, in whole or in part,

(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;

(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; and

(c) provision must be made for the rights, if any, pursuant to Section 97.

(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 61(1) of a member who terminates employment and for that purpose subsection 61(4) does not apply.

(3) Except as provided under subsection (2), the administrator is not required to purchase life annuities for members, former members, retired members or other persons entitled to benefits under the pension plan in order to distribute the assets of the pension fund in connection with a partial wind-up.

(4) Where the administrator does not purchase life annuities in the circumstances described in subsection (3), the administrator shall comply with such requirements as may be prescribed in connection with the distribution of the assets of the pension fund in connection with a partial wind-up.

97 (1) A member of a pension plan whose combination of age plus years of continuous employment or membership in the pension plan equals at least fifty-five, at the effective date of the wind-up of the pension plan, in whole or in part, has the right to receive

(a) a pension in accordance with the terms of the pension plan if, under the pension plan, the member is eligible for immediate payment of the pension benefit;

(b) a pension in accordance with the terms of the pension plan, beginning at the earlier of

(i) the normal retirement age under the pension plan, and

(ii) the date on which the member would be entitled to an unreduced pension under the pension plan if the pension plan were not wound up and if the member's membership continued to that date; or

(c) a reduced pension in the amount payable under the terms of the pension plan, beginning on the date on which the member would be entitled to the reduced pension under the pension plan if the pension plan were not wound up and if the member's membership continued to that date.

(2) In determining the combination of age plus employment or membership, one-twelfth credit must be given for each month of age and for each month of continuous employment or membership at the effective date of the wind-up.

(3) Bridging benefits offered under the pension plan to which a member would be entitled if the pension plan were not wound up and if the membership of the member were continued must be included in calculating the pension benefit pursuant to subsection (1) of a person who has at least ten years of continuous employment with the employer or has been a member for at least ten years.

(4) For the purpose of subsection (3), where the bridging benefit offered under the pension plan is not related to periods of employment or membership in the pension plan, the

bridging benefit must be pro-rated by the ratio that the member's actual period of employment bears to the period of employment that the member would have to the earliest date on which the member would be entitled to payment of pension benefits and a full bridging benefit under the pension plan if the pension plan were not wound up or partially wound up.

(5) Membership in a pension plan that is wound up, in whole or in part, includes the period of notice of termination of employment required pursuant to the *Labour Standards Code*.

(6) Subsection (5) does not apply for the purpose of calculating the amount of a pension benefit of a member who is required to make contributions to the pension fund unless the member makes the contributions in respect of the period of notice of termination of employment.

(7) For the purpose of this Section, where the consent of an employer is an eligibility requirement for entitlement to receive an ancillary benefit, the employer is deemed to have given the consent.

(8) For the purpose of this Section, where the consent of the administrator of a jointly sponsored pension plan is an eligibility requirement for entitlement to receive an ancillary benefit, the administrator is deemed to have given the consent.

(9) A benefit described in subsection (1) for which a member has met all eligibility requirements under this Section must be included in calculating the member's pension benefit or the commuted value of the pension benefit.

(10) This Section does not apply in respect of a multi-employer pension plan.

(11) This Section does not apply in respect of a jointly sponsored pension plan while an election made under Section 98 for the plan and its members is in effect.

98 (1) The employers, or any persons or entities who make contributions on behalf of the employers or who represent the employers, and the members, or the representatives of the members, of a jointly sponsored pension plan may elect, in accordance with this Section, to exclude the plan and its members from the operation of Section 97.

(2) An election may only be made within the prescribed period and the persons or entities making the election must satisfy such requirements as may be prescribed in connection with the election.

(3) Only one election may be made in respect of a pension plan.

(4) An election to exclude a pension plan and its members from the operation of Section 97 takes effect when notice of the election is filed with the Superintendent or on a later date specified in the notice.

(5) An election may be rescinded by the persons and entities described in subsection (1), and the rescission takes effect when notice of the rescission is filed with the Superintendent or on a later date specified in the notice.

99 (1) Where a pension plan is wound up in whole or in part, 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.

(2) Where, at the wind-up on or after May 1, 2007, of a pension plan other than a multi-employer pension plan, the assets in the pension fund are less than the value of the benefits provided under the plan and under Section 97, the employer shall make such payments into the pension fund of the amount necessary to fund the benefits provided under the plan and under Section 97.

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

(4) This Section does not apply to jointly sponsored pension plans.

100 (1) Where a jointly sponsored pension plan is wound up in whole or in part, the employer or the person or entity required to make contributions under the plan on behalf of the employer shall 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.

(2) Where a jointly sponsored pension plan is wound up in whole or in part, the members shall 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.

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

101 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 its obligations under Section 99 and all the assets of the pension fund have been disbursed.

102 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 must be distributed and, where appropriate, reduced in the prescribed manner.

SURPLUS

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

(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, in whole or in part;

(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.

104 (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 103 and 105.

(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 January 1, 1988.

(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 January 1, 1988, 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 in whole or in part, 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.

(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.

(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.

(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:

(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 or, in the case of a partial wind-up, are affected by the partial wind-up and are entitled to payments under the pension plan.

(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.

(9) A written agreement described in subsection (7) prevails over any document that creates and supports the pension plan and pension fund, over subsections (2), (3) and (4) and notwithstanding any trust that may exist in favour of any person.

105 (1) Subject to Section 115, the Superintendent shall not consent to payment of surplus money to the employer out of a continuing pension plan unless

(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 115, the Superintendent must not consent to payment of surplus to an employer out of a pension plan that is being wound up, in whole or in part, unless

(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.

(3) Where a pension plan is being wound up in whole or in part, 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.

(4) The Superintendent may order the administrator of a pension plan to distribute surplus in accordance with a written agreement described in subsection 104(7).

(5) The order of the Superintendent is final.

(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 of Nova Scotia and is enforceable in the same manner as a judgment of that Court.

ASSET TRANSFERS BETWEEN PENSION PLANS

106 (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 32, 61, 108, 109 or 110; or
- (b) the transfer satisfies the prescribed requirements and the Superintendent has consented in advance to the transfer.

(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.

(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.

107 (1) This Section applies to every transfer of assets between pension plans that is authorized under Section 106, 108, 109 or 110.

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

(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, in accordance with such requirements as may be prescribed.

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

(5) Where either 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.

(6) The administrator of each 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.

(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.

(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.

(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.

(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.

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

(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.

(14) The Superintendent by order may 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.

(15) Subject to Section 115, 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 of Nova Scotia and is enforceable in the same manner as a judgment of that Court.

108 (1) In this Section,

(a) “employers’ agreement” means the agreement described in subsection (6);

(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;

(c) “original pension plan” means the original employer’s pension plan;

(d) “sale of the 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;

(e) “successor employer” means the person who acquires the business or the assets of the original employer;

(f) “successor pension plan” means the successor employer’s pension plan;

(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.

(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.

(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.

(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.

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

(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 under the employer's pension plan may enter into the employers' agreement on behalf of that 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.

(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,

(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.

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

(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.

(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.

(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.

(15) The Superintendent may waive one or more of the conditions referred to in subsections 107(4) and (5) in the prescribed circumstances.

109 (1) This Section applies if

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

(b) in accordance with Section 27 of the *Trade Union 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,

(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 61 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.

(4) Where the members of the original pension plan are not entitled to make an election under Section 61, 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.

(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.

110 (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.

(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.

(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.

(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.

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

(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.

(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 107(4) and (5) in the prescribed circumstances.

INSOLVENCY AND BANKRUPTCY

111 (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.

(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.

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

(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.

ORDERS

112 (1) The Superintendent, in the circumstances mentioned in subsection (2) and subject to Section 115, by a written order may 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.

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

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

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

113 (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 115, make an order requiring the administrator to take an action specified in subsection (2).

(2) An order 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.

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

(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.

(5) An order 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 under subsection (4), together with written reasons, upon the administrator, the employer and every other person who is required to comply with it.

(7) The order under subsection (4) takes effect on the later of

(a) the latest date on which a person is served under subsection (6) with a copy of the order; and

(b) the date specified in the order.

114 (1) A person who is required to comply with an order made under subsection 113(4) is entitled to a hearing by the Board about the order if the person delivers a written request to the Board within thirty days after a copy of the order is served on the person.

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

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

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

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

NOTICES OF, AND APPEALS FROM, INTENDED DECISIONS AND ORDERS

115 (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.

(2) Where the Superintendent intends to make an order pursuant to subsection 61(12), 62(5), 92(9), 107(14), 112(1) or 113(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.

(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.

(4) Where the Superintendent intends to consent or refuse to consent under subsection 86(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.

(5) Where an application is filed in accordance with subsection 103(2) for the payment of surplus to the employer and the Superintendent intends to consent or refuse to consent under subsection 103(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 103(3).

(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.

(7) Where the Superintendent intends to make an order requiring the wind-up of a pension plan or declaring a pension plan wound up, in whole or in part, 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.

(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 Board if the person delivers to the Board, 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 (6), the Superintendent may make the intended decision indicated in the notice.

(10) Where the person requires a hearing by the Board in accordance with subsection (6), the Board shall appoint a time for and hold the hearing.

(11) At or after the hearing, the Board by order may direct the Superintendent to make or refrain from making the intended decision indicated in the notice and to take such action as the Board considers the Superintendent ought to take in accordance with this Act and the regulations and, for such purpose, the Board may substitute its opinion for that of the Superintendent.

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

(13) 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.

116 (1) A party to a proceeding before the Board under Section 114 or 115 may appeal to the Supreme Court of Nova Scotia from the decision or order of the Board.

(2) Upon the request of a party desiring to appeal to the Supreme Court of Nova Scotia and upon payment of any fee which may be prescribed, the Board 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.

GENERAL

117 (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.

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

(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.

(4) The order has no effect unless the reasons for the order are set out in it.

(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 of Nova Scotia and is enforceable in the same manner as a judgment of that Court.

118 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.

119 The Auditor General may from time to time examine the accounts and financial transactions of the Superintendent.

120 (1) Within a reasonable time after the close 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.

(2) The Minister shall submit the annual report to the Governor in Council and then table the report in the House of Assembly if it is then sitting or, if it is not then sitting, file the report with the Clerk of the Assembly.

121 The Governor in Council may establish or designate an agency for the purpose, among others, of receiving, holding and disbursing pension benefits pursuant to this Act.

122 Every pension plan that was registered and that continued to be qualified for registration pursuant to the former Act, immediately before the effective date, is deemed to be registered pursuant to this Act upon the effective date.

123 (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.

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

124 (1) In this Section, “specified purpose” means

- (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,

(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

- (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.

(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.

(6) 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 Section 127.

(7) 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), (5) and (6).

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

(9) The Superintendent may order 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.

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

125 The Superintendent may order 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.

126 (1) No person shall hinder or obstruct the Superintendent or a person referred to in subsection 124(7) in lawfully carrying out a duty under this Act.

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

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

(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 124(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 124(7) 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.

(2) 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.

(3) 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.

(4) 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.

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

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

129 (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.

(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

(a) causes, authorizes, permits, acquiesces or participates in the commission of an offence referred to in Section 128 by the corporation or unincorporated association; or

(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 128.

(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.

(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.

(5) An order for payment pursuant to subsection (4) may, for the purpose of enforcement of the order, be registered with the Supreme Court of Nova Scotia and is enforceable in the same manner as a judgment of that Court.

(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.

(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.

(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 *prima facie* proof of the facts stated therein without proof of the appointment or signature of the Superintendent.

130 (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.

(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.

131 (1) To register an order with the Supreme Court of Nova Scotia pursuant to subsection 61(13), 62(6), 105(6), 107(15), 117(5) or 129(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:

Register the within with the Supreme Court of Nova Scotia.

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 of Nova Scotia 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.

132 Where a provision of this Act or the regulations is contravened, notwithstanding any other remedy or penalty imposed, the Superintendent may apply to the Supreme Court of Nova Scotia 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.

133 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.

134 (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.

(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.

(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.

135 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.

136 (1) The Minister may make regulations prescribing fees in relation to any matter under this Act.

(2) The exercise by the Minister of the authority contained in subsection (1) is regulations within the meaning of *Regulations Act*.

137 (1) The Superintendent may approve forms for any purpose of this Act and require their use.

(2) Any person required to use forms approved by the Superintendent shall provide the information specified in them.

138 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.

139 (1) The Governor in Council may make regulations

(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

(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 74;

(n) respecting commencement of payment of a pension for the purpose of Section 74;

(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 74 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 74 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;

(ab) prescribing for the purpose of Section 90, the cost of complying with an attachment;

(ac) prescribing retirement savings arrangements, circumstances and amounts and restrictions for the purpose of Section 89;

(ad) prescribing the information concerning an employer's proposal for payment of surplus money that must be contained in a notice given pursuant to subsection 104(8);

(ae) prescribing, for the purpose of the definition of "designated jurisdiction" in Section 2, any jurisdiction in Canada, including Canada itself, as a jurisdiction in which there is in force legislation substantially similar to this Act;

(af) prescribing the date on which an agreement under Section 9 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;

(ag) providing for any matter that the Governor in Council considers necessary or advisable for the implementation of an agreement under Section 9;

(ah) establishing one or more classes of multi-employer pension plans and prescribing the requirements and restrictions that apply to transfers pursuant to Section 109 in relation to multi-employer pension plans;

(ai) 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 Section 2;

(aj) prescribing requirements in relation to phased retirement options pursuant to Section 51;

(ak) 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;

(al) 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;

(am) 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;

(an) 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;

(ao) 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;

(ap) 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;

(aq) 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;

(ar) prescribing requirements for agreements for the purpose of Section 111;

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

(at) 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;

(au) 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 79(3) or a contribution is not paid when due as required by subsection 79(4);

(av) prescribing the period within which a person may deliver a direction to the administrator pursuant to Section 55, 61, 63, 67, 70 or 87;

(aw) prescribing the period within which an election may be made pursuant to Section 98, and the requirements that must be satisfied in relation to such an election;

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

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

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

- (ba) prescribing a pension plan for the purpose of Section 61;
- (bb) prescribing limitations in respect of the transfer of funds from pension funds;
- (bc) 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;
- (bd) defining any word or expression used but not defined in this Act;
- (be) generally for carrying into effect the provisions of this Act.

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

(3) A regulation may adopt by reference, in whole or in part, with such changes as the Governor in Council considers necessary, any code, formula, standard or procedure and may require compliance with a code, formula, standard or procedure so adopted.

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

(5) The exercise by the Governor in Council of the authority contained in this Section is regulations within the meaning of the *Regulations Act*.

140 Notwithstanding the repeal of the former Act, the former Act and the regulations made under that Act continue to apply to persons who have, before the effective date, ceased to be members of a pension plan or retired from a pension plan.

141 Subsection 24(1) of Chapter 282 of the Revised Statutes, 1989, the *Members' Retiring Allowances Act*, as recommended by the Nova Scotia Commission of Inquiry on Remuneration of Elected Provincial Officials for 1999 and amended by Chapter 29 of the Acts of 2000, is further amended by striking out "61" in the first line and substituting "74".

142 Clause 464A(2)(m) of Chapter 18 of the Acts of 1998, the *Municipal Government Act*, as enacted by Chapter 9 of the Acts of 2003, is amended by striking out "11(3)" in the first line and substituting "15(3)".

143 Clause 4A(2)(n) of Chapter 5 of the Acts of 1993, the *Freedom of Information and Protection of Privacy Act*, as enacted by Chapter 11 of the Acts of 1999 (2nd Session), is amended by striking out "11" in the first line and substituting "15".

144 The former Act is repealed.

145 This Act comes into force on such day as the Governor in Council orders and declares by proclamation.
