

# **Municipal and Other Authorities Pension Plan Transfer Act**

CHAPTER 19 OF THE ACTS OF 2016



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CHAPTER 19 OF THE ACTS OF 2016

**An Act to Facilitate the Transfer of Pension Plans  
of Municipal and Other Authorities  
to the Public Service Superannuation Plan**

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**Short title**

**1** This Act may be cited as the *Municipal and Other Authorities Pension Plan Transfer Act*. 2016, c. 19, s. 1.

**Interpretation**

**2** In this Act,

(a) “Administrator” means the Administrator as defined in the *Public Service Superannuation Act*;

(b) “authority” means

(i) a municipality, service commission, village or village commission as defined by the *Municipal Government Act*,

(ii) a public-sector employer, other than a public-sector employer that is already an employer under the Superannuation Plan and does not maintain a pension plan separate from the Superannuation Plan or that is prescribed by the regulations as not being an authority,

(iii) any legal entity that operates a body referred to in sub-clause (i) or (ii) or of which such a body is composed, or any association or other combination of such legal entities or bodies, or

- (iv) an entity prescribed by the regulations;
- (c) “designated plan” means a pension plan that is the subject of a transfer agreement;
- (d) “group agreement” means an agreement made under subsection 10(1);
- (e) “personal information” means personal information as defined in the *Freedom of Information and Protection of Privacy Act*;
- (f) “plan regulations” means the plan regulations as defined in the *Public Service Superannuation Act*;
- (g) “post-transfer employee” means, in respect of a transferring authority, a person who
  - (i) commences employment with the transferring authority on or after the transfer date,
  - (ii) under the person’s terms of employment, is entitled or required to participate in a pension plan with the transferring authority, and
  - (iii) is entitled under the transfer agreement to participate in the Superannuation Plan and satisfies the requirements of the Superannuation Plan for membership in the Superannuation Plan;
- (h) “public-sector employer” means a public-sector employer as defined in the *Public Services Sustainability (2015) Act*;
- (i) “superannuation allowance” means a superannuation allowance as defined in the *Public Service Superannuation Act*;
- (j) “Superannuation Fund” means the Superannuation Fund as defined in the *Public Service Superannuation Act*;
- (k) “Superannuation Plan” means the Pension Plan as defined in the *Public Service Superannuation Act*;
- (l) “survivor” means
  - (i) in respect of a retired member, a person who, under the designated plan, is or may become entitled to a pension or any other payment out of the pension fund of the designated plan in relation to the retired member, or
  - (ii) in respect of a transferring non-retired member, a person who, under the Superannuation Plan, is or may become entitled to a survivor allowance in relation to the transferring non-retired member;
- (m) “survivor allowance” means a superannuation allowance as defined in the *Public Service Superannuation Act*;
- (n) “transfer” means the transfer of assets and liabilities of a designated plan under a transfer agreement;
- (o) “transfer agreement” means an agreement made under Section 5;
- (p) “transfer date” means the effective date of a transfer as prescribed by the transfer agreement;

(q) “transferring active member” means, in respect of a designated plan, a person

(i) who is employed by the transferring authority immediately before the transfer date,

(ii) who is included, or eligible to be included, in the designated plan immediately before the transfer date, and

(iii) for whom a proportionate share of the designated plan’s assets and liabilities is included in a transfer;

(r) “transferring authority” means an authority that enters into a transfer agreement;

(s) “transferring former member” means, in respect of a designated plan, a person

(i) who has ceased to be employed by the transferring authority before the transfer date,

(ii) who is entitled to a deferred pension under the designated plan, and

(iii) for whom a proportionate share of the designated plan’s assets and liabilities is included in a transfer,

but does not include any person who has elected to transfer an amount equal to the commuted value of the person’s deferred pension out of the designated plan in accordance with the *Pension Benefits Act*;

(t) “transferring member” means, in respect of a designated plan, a transferring non-retired member or transferring retired member;

(u) “transferring non-retired member” means a transferring active member or transferring former member;

(v) “transferring retired member” means, in respect of a designated plan, a person

(i) who is in receipt of a pension under the designated plan immediately before the transfer date, and

(ii) for whom a proportionate share of the designated plan’s assets and liabilities is included in the transfer,

and, for greater certainty, includes the survivor of a retired member of the designated plan who died before the transfer date;

(w) “Trustee” means the Trustee as defined in the *Public Service Superannuation Act*. 2016, c. 19, s. 2.

### Conflict

**3** Where there is a conflict between this Act or the regulations and any other enactment or any contract, agreement, plan, order or representation respecting a designated plan, this Act and the regulations prevail. 2016, c. 19, s. 3.

### Supervision and management of Act

**4** The Minister of Finance and Treasury Board is responsible for the supervision and management of this Act and the regulations. 2016, c. 19, s. 4.

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**Transfer agreement**

- 5**        The Trustee may enter into an agreement with an authority to
- (a)        authorize the transfer, in whole or in part, of the assets and liabilities of a designated plan of the authority from the designated plan to the Superannuation Plan; and
  - (b)        allow the transferring members of the designated plan, the survivors of the transferring members, the post-transfer employees of the transferring authority and the survivors of the post-transfer employees to participate in the Superannuation Plan in accordance with the Superannuation Plan and any modifications thereto made by the agreement. 2016, c. 19, s. 5.

**Prerequisites**

- 6**        **(1)**        Before entering into a transfer agreement, a transferring authority shall
- (a)        make reasonable efforts to notify the active members, former members and retired members of the designated plan and the survivors of the deceased retired members about the proposed transfer and explain to them the implications of the proposed transfer; and
  - (b)        cause a vote of the transferring members of the designated plan to be held and obtain support for the proposed transfer from a majority of all such transferring members casting a vote.
- (2)**        When determining whether to enter into a transfer agreement, a transferring authority shall act in accordance with the obligations of the administrator of the designated plan under Section 33 of the *Pension Benefits Act*, irrespective of whether the transferring authority is the administrator of the designated plan.
- (3)**        A transferring authority may not enter into a transfer agreement in relation to a partial transfer unless the transferring authority has determined that the transfer will not reduce the pension benefits, ancillary benefits and other benefits of any persons entitled to such benefits under the designated plan who will continue to be so entitled under the designated plan after the transfer date. 2016, c. 19, s. 6.

**Content and effect**

- 7**        **(1)**        A transfer agreement must
- (a)        confirm that the transferring authority has complied with Section 6;
  - (b)        provide for the transferring authority to be prescribed by the plan regulations as an employer within the meaning of the *Public Service Superannuation Act*;
  - (c)        modify the application of the Superannuation Plan to
    - (i)        the transferring members of the designated plan, including any transferring members who will have accrued pensionable service under both the designated plan and the Superannuation Plan before the transfer date, and
    - (ii)        the survivors of the transferring members,

to the extent necessary to give effect to the transfer; and

(d) provide for the determination of the pensionable service and eligible service accrued by a transferring member of the designated plan, in respect of the employment of the transferring member by the transferring authority before the transfer, for the purpose of the Superannuation Plan.

(2) A transfer agreement may

(a) impose obligations or liabilities on, or continue obligations or liabilities of, the transferring authority, in its capacity as the employer or former employer of the transferring members of the designated plan or as the administrator of the designated plan, in respect of the designated plan on and after the transfer date;

(b) require the transferring authority, the transferring non-retired members of the designated plan or the post-transfer employees of the transferring authority to make payments to the Superannuation Fund in addition to those required to be made under the Superannuation Plan by an employer or by employees; and

(c) provide for any other matter or thing the parties consider necessary or advisable to effectively carry out the transfer.

(3) Where, in accordance with a transfer agreement, a transferring authority becomes an employer within the meaning of the *Public Service Superannuation Act*, Section 82 of that Act does not apply to the transferring members of the designated plan, the survivors of the transferring members, the post-transfer employees of the transferring authority or the survivors of the post-transfer employees.

(4) For the purpose of subsection 46(1) of the *Public Service Superannuation Act*, the terms of the Superannuation Plan include the terms set out in this Act, the regulations and any transfer agreement entered into under Section 5.

(5) As of the transfer date, the *Pension Benefits Act* ceases to apply to

(a) that portion of the designated plan and its pension fund that is the subject of the transfer agreement; and

(b) the transferring members of the designated plan and the survivors of the transferring members. 2016, c. 19, s. 7.

#### **Transferring non-retired members and their survivors**

8 (1) For greater certainty, on and after the transfer date,

(a) the amount of an annual superannuation allowance to which a transferring non-retired member of a designated plan is entitled upon retiring must be determined in accordance with the plan regulations and is payable in accordance with the terms and limitations prescribed by the plan regulations; and

(b) the amount of an annual survivor allowance to which the survivor of a transferring non-retired member of the designated plan is entitled upon the death of the transferring non-retired member

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must be determined in accordance with the plan regulations and is payable in accordance with the terms and limitations prescribed by the plan regulations.

**(2)** For the purpose of the Superannuation Plan, the pensionable service and eligible service accrued by a transferring non-retired member of the designated plan must be determined in accordance with the transfer agreement. 2016, c. 19, s. 8.

**Transferring retired members and their survivors**

**9 (1)** On and after the transfer date,

(a) every transferring retired member of the designated plan is deemed to be a retiree within the meaning of the *Public Service Superannuation Act*;

(b) the amount and form of a superannuation allowance payable to the transferring retired member must be determined in accordance with the designated plan as it read immediately before the transfer date and is payable in accordance with the terms and limitations prescribed by the designated plan; and

(c) the amount of a superannuation allowance payable under clause (b) must be adjusted for cost of living in accordance with the Superannuation Plan, and not in accordance with the designated plan.

**(2)** On and after the transfer date,

(a) every survivor of a transferring retired member of the designated plan is deemed to be the survivor of a retiree within the meaning of the *Public Service Superannuation Act*;

(b) the amount of a survivor allowance payable to the survivor of a transferring retired member must be determined in accordance with the designated plan as it read immediately before the transfer date and is payable in accordance with the terms and limitations prescribed by the designated plan; and

(c) the amount of a survivor allowance payable under clause (b) must be adjusted for cost of living in accordance with the Superannuation Plan, and not in accordance with the designated plan.

**(3)** For the purpose of the Superannuation Plan, the pensionable service and eligible service accrued by a transferring retired member of the designated plan must be determined in accordance with the transfer agreement. 2016, c. 19, s. 9.

**Group agreement**

**10 (1)** A transferring authority may enter into an agreement respecting a transfer with

(a) a trade union or other employees' association that represents transferring non-retired members of the designated plan; or

(b) an association that represents transferring retired members of the designated plan.

(2) A group agreement may impose obligations or liabilities on, or continue obligations or liabilities of,

- (a) the transferring authority in its capacity as
  - (i) the employer or former employer of the transferring members of the designated plan and post-transfer employees, or
  - (ii) the administrator of the designated plan; and
- (b) the transferring non-retired members of the designated

plan,

in respect of the designated plan on and after the transfer date.

(3) A group agreement may impose obligations or liabilities on, or continue obligations or liabilities of,

- (a) the transferring authority in its capacity as
  - (i) the employer or former employer of the transferring members of the designated plan and post-transfer employees, or
  - (ii) the administrator of the designated plan;
- (b) the transferring non-retired members of the designated plan; and
- (c) the post-transfer employees of the transferring authority,

in respect of the Superannuation Plan on and after the transfer date. 2016, c. 19, s. 10.

#### **Obligations and liabilities of transferring authority**

**11 (1)** Subject to the transfer agreement and any applicable group agreement, on and after the transfer date, a transferring authority has no further or continuing obligations or liabilities in respect of the designated plan, or that portion of the designated plan, that is the subject of the transfer agreement in its capacity as

- (a) the employer or former employer of the transferring members of the designated plan who transfer to the Superannuation Plan; or
- (b) the administrator of the designated plan.

(2) Subject to the transfer agreement and any applicable group agreement, on and after the transfer date, the transferring authority

(a) is responsible for making only those payments to the Superannuation Fund that the transferring authority is required to make under the transfer agreement or under the Superannuation Plan as an employer; and

(b) for greater certainty, is not liable to make any supplementary payments for the purpose of meeting any underfunding in the Superannuation Plan. 2016, c. 19, s. 11.

**Effect of transfer agreement or group agreement**

**12**    Neither a transfer agreement nor a group agreement is, for the purpose of the *Pension Benefits Act*, a pension plan or an amendment to a pension plan. 2016, c. 19, s. 12.

**Recourse solely to Superannuation Fund**

**13**    Subject to the transfer agreement and any applicable group agreement, on and after the transfer date a transferring member or the survivor of a transferring member has recourse solely to the Superannuation Fund for any benefit or other payment under the designated plan or the Superannuation Plan. 2016, c. 19, s. 13.

**Collection, use and disclosure of personal information**

**14    (1)**    For the purpose of facilitating the transfer and administering the Superannuation Plan on and after the transfer date, where the Trustee and a transferring authority have entered into, or are contemplating entering into, a transfer agreement,

- (a)    the transferring authority may disclose to the Trustee
  - (i)    personal information collected before the transfer date by the transferring authority in relation to the transferring members of the designated plan and the survivors of the transferring members, and
  - (ii)   personal information collected on and after the transfer date by the transferring authority in relation to
    - (A)   the transferring members of the designated plan and the survivors of the transferring members, and
    - (B)   the post-transfer employees of the authority and the survivors of the post-transfer employees; and
- (b)    the Trustee may collect and use the personal information disclosed to the Trustee by the transferring authority under clause (a),

regardless of whether the collection, use or disclosure occurs before or after the coming into force of this Act.

**(2)**    Where the Trustee and a transferring authority have entered into, or are contemplating entering into, a transfer agreement, the transferring authority may transfer to the Trustee any record, including a record that contains personal information, in the transferring authority's possession that relates to the designated plan and is required by the Trustee to facilitate the transfer or the administration of the Superannuation Fund following the transfer.

**(3)**    No action, grievance or claim lies against a transferring authority, the trustee or administrator of a designated plan, the Trustee, the Administrator, Her Majesty in right of the Province or any other person in relation to the collection, use or disclosure of personal information in accordance with subsection (1), regardless of whether the collection, use or disclosure occurs before or after the coming into force of this Act. 2016, c. 19, s. 14.

**No action lies**

**15 (1)** Subject to the transfer agreement and any applicable group agreement, no action, grievance or claim by a transferring member of a designated plan or the survivor of a transferring member lies against the transferring authority for any act or omission of the transferring authority in relation to the designated plan before the transfer date.

**(2)** No action, grievance or claim lies against a transferring authority, the trustee or administrator of a designated plan, a trade union or other employees' organization, the Trustee, the Administrator, Her Majesty in right of the Province or any other person for any act or omission that results in the breach of any other enactment or any contract, agreement, plan, order or representation respecting a designated plan, if the act or omission is authorized by this Act or the regulations. 2016, c. 19, s. 15.

**Regulations**

**16 (1)** The Governor in Council may make regulations

- (a) prescribing any public-sector employer as not being an authority;
- (b) prescribing any entity as an authority;
- (c) defining any word or expression used but not defined in this Act;
- (d) further defining any word or expression defined in this Act;
- (e) respecting any matter or thing the Governor in Council considers necessary or advisable to effectively carry out the intent and purpose of this Act.

**(2)** The exercise by the Governor in Council of the authority contained in subsection (1) is a regulation within the meaning of the *Regulations Act*. 2016, c. 19, s. 16.