

1992

CHAPTER P-6.001

An Act respecting Pension Benefits

(Assented to August 28, 1992)

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

PART I

Short Title and Interpretation

Short title

1 This Act may be cited as *The Pension Benefits Act, 1992*.

Interpretation

2(1) In this Act:

- (a) **"additional voluntary contributions"** means contributions made by a member to a plan that are additional to those required to be made to attain a pension, except contributions the payment of which, pursuant to the terms of the plan, require the employer to make concurrent additional contributions, and includes compounded interest on those additional voluntary contributions;
- (b) **"administrator"** means:
 - (i) in the case of a specified multi-employer plan, a board of individuals who are trustees of the plan, at least half of whom are representatives of the members, chosen directly or indirectly by the members in accordance with the provisions of the plan;
 - (ii) in the case of a plan that is not a specified multi-employer plan, either:
 - (A) the employer; or
 - (B) where it is specified in the plan that the employer is not to be the administrator, a board of trustees or a similar body constituted in accordance with the terms of the plan; or
 - (iii) a person who has been appointed administrator of a plan by the superintendent pursuant to section 58;
- (c) **"benefit"** means a pension or any other benefit pursuant to a pension plan, and includes a return of contributions;
- (d) **"collective bargaining agreement"** means a collective bargaining agreement as defined in *The Trade Union Act*;
- (e) **"commuted value"** means:
 - (i) the value of benefits as of a certain date, determined:
 - (A) on the basis of actuarial assumptions and methods that are adequate and appropriate and in accordance with generally accepted actuarial principles;
 - (B) in accordance with the conditions, if any, that are prescribed; and
 - (C) in a manner that is acceptable to the superintendent; or
 - (ii) the moneys that represent the value described in subclause (i);
- (f) **"continuous"** means, in relation to employment, membership or service, without regard to periods of temporary suspension of the employment, membership or service and without regard to periods of lay-off from employment;
- (g) **"court"** means Her Majesty's Court of Queen's Bench for Saskatchewan;
- (h) **"defined benefit plan"** means a plan that is not a defined contribution plan;
- (i) **"defined benefit provision"** means a provision of a plan pursuant to which benefits are determined in any way other than that described in clause (k);

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- (j) **“defined contribution plan”** means a plan that consists of defined contribution provisions and, except to the extent that it relates to benefits accrued with respect to employment before the effective date of the plan, does not contain any defined benefit provisions;
- (k) **“defined contribution provision”** means a provision of a plan pursuant to which benefits are determined solely by reference to what is provided by:
- (i) contributions made by or for the credit of a member; and
 - (ii) interest and any other amounts allocated with respect to a member or former member;
- (l) **“designated province”** means a province of Canada, other than Saskatchewan, that is prescribed to be a province in which there is in force legislation substantially similar to this Act;
- (m) **“employee”** means an individual employed to do work or to provide a service in Saskatchewan or in a designated province who is in receipt of or entitled to remuneration for the work or service;
- (n) **“employer”** means the person or the organization, whether incorporated or not, from whom an employee receives remuneration, and includes any or all of the employers that are required to contribute to a specified multi-employer plan in whose employment that employee has been;
- (o) **“former Act”** means *The Pension Benefits Act* repealed by section 72;
- (p) **“former member”** means a person whose membership in a plan has terminated and who retains a present or future entitlement to a benefit pursuant to the plan;
- (q) **“initial qualification date”** means:
- (i) with respect to employment in Saskatchewan, January 1, 1969; and
 - (ii) with respect to employment in a designated province, the prescribed date;
- (r) **“insurance company”** means a corporation that is licensed in any jurisdiction in Canada to carry on life insurance business;
- (s) **“interest”** means interest, gains and losses provided for pursuant to section 30;
- (t) **“member”** means, in relation to a plan that has not been terminated, an employee or, in the case of a specified multi-employer plan, an employee or a former employee, who:
- (i) has made contributions to the plan or on whose behalf an employer was required by the plan to make contributions to it; and
 - (ii) has not terminated his or her membership or commenced his or her pension;
- (u) **“minister”** means the member of the Executive Council to whom for the time being the administration of this Act is assigned;
- (v) **“normal retirement date”** means the date or the age mentioned in subsection 37(1);
- (w) **“pension”** means a periodic amount to which a person is or may become entitled pursuant to the terms of a plan;
- (x) **“pension commencement”** means the time by reference to which a person commences to receive a pension pursuant to a plan;
- (y) **“plan”**:
- (i) means a plan, scheme or arrangement:
 - (A) organized and administered to provide pensions for members and former members; and
 - (B) pursuant to which, except in the case of a supplemental plan, the employer is or, in the case of a terminated plan, was required to make contributions to the plan on behalf of the members;
 - (ii) includes the pension fund of a plan;
 - (iii) does not include a retirement compensation arrangement as defined in the *Income Tax Act* (Canada);
- (z) **“prescribed”** means prescribed or otherwise provided for in the regulations;
- (aa) **“records”** includes:
- (i) accounts, books, files, returns, statements, reports, financial documents and other memoranda of financial or non-financial information, whether in writing or in electronic form or reproduced or reproduced by any other means; and
 - (ii) the results of the recording of details of electronic data processing systems and programs to illustrate what the systems and programs do and how they operate;
- (bb) **“registration”** means registration pursuant to Part IV of a plan or of an amendment to a plan, and includes registration pursuant to the former Act;
- (cc) **“RRSP”** means a retirement savings plan within the meaning of the *Income Tax Act* (Canada) that is registered pursuant to that Act;
- (dd) **“solvency tests”** means the prescribed tests for the solvency of plans and other provisions of the regulations

mentioned in subsection 40(2);

- (ee) **"specified multi-employer plan"** means a plan that is administered for employees of two or more employers and specified by the superintendent as a specified multi-employer plan;
- (ff) **"spouse"** means:
 - (i) a person who is married to a member or former member; or
 - (ii) if a member or former member is not married, a person of the opposite sex with whom the member or former member is cohabiting as husband and wife at the relevant time and who has been cohabiting continuously with the member or former member as his or her spouse for at least one year prior to the relevant time;
- (gg) **"superintendent"** means the superintendent of pensions appointed pursuant to section 3;
- (hh) **"supplemental plan"** means a plan that is supplemental to another plan and in which membership is conditional on membership in that other plan;
- (ii) **"termination of membership"** means:
 - (i) in relation to a member of a specified multi-employer plan:
 - (A) the expiry of any period of two consecutive fiscal years of the plan in which the member has not completed at least 350 hours of employment with one or more of the employers that are required to contribute to the plan; or
 - (B) the cessation of membership in a class of employees that is covered by the plan;
 - (ii) in relation to a member of a supplemental plan, including a supplemental specified multi-employer plan, the termination of the member's membership in the plan to which it is supplemental; and
 - (iii) in relation to a member of any other plan, the cessation by the member of employment for which benefits accrue pursuant to the plan on the member's behalf;
- (jj) **"Year's Maximum Pensionable Earnings"** has the same meaning as in the *Canada Pension Plan*.
- (2) For the purposes of this Act:
 - (a) a person is employed in the province or territory in which the establishment of his or her employer to which the person reports for work is situated; and
 - (b) if a person is not required to report for work to an establishment of his or her employer or is required to report to more than one establishment in different provinces or territories, the person is deemed to be employed in the province or territory in which the employer's establishment from which the person's wages, salary or other remuneration is paid is situated.

- (3) A member of a specified multi-employer plan who has terminated membership is deemed to have terminated membership in the province or territory in which the member was last employed.
- (4) Except where otherwise specified, references in this Act to the termination of a plan include references to the termination of only part of a plan.
- (5) In the event of any conflict between any provision of this Act and any provision of any other Act, the provision of this Act prevails, except where there is a provision in the other Act that expressly provides that a provision of this Act shall not apply.

PART II

Administration of Act

Appointment of superintendent

- 3 The minister may appoint a superintendent of pensions who is charged with the administration and enforcement of this Act.

Extension of time limits

- 4 On receipt of a written request, the superintendent may extend any time limit imposed by a provision of this Act, the regulations or a direction of the superintendent made pursuant to this Act or the regulations, on any terms and conditions that the superintendent sees fit to impose.

Investigations

- 5(1) Subject to subsection (3), for the purposes of enforcing and administering this Act or the regulations, the superintendent or any person authorized by the superintendent may at any reasonable time enter into any premises or place where a plan is administered, any property is kept, anything is done in connection with a plan, or any records are or should be kept pursuant to this Act or the regulations, for the purpose of carrying out an audit or inspection, and may:
 - (a) require the production of the records and any account, voucher, letter, telegram or other document that relates or may relate to the information that is or should be in the records;
 - (b) require any administrator or employer or any representative, agent, officer or employee of an administrator or employer to give all reasonable assistance with the audit or inspection;
 - (c) make any inquiries, in writing or orally, of a person mentioned in clause (b) relating to the expeditious conduct of the audit or inspection;
 - (d) require a person mentioned in clause (b) to attend at the premises or place with the superintendent or the person authorized by the superintendent, as the case may be, for the purposes of assisting in the expeditious conduct of the audit or inspection;
 - (e) subject to subsection (2), on giving a receipt for the records, remove any records examined pursuant to this section for the purpose of making copies or extracts of those records.
- (2) The superintendent or any person authorized by the superintendent shall carry out the copying of records removed pursuant to clause (1)(e) with reasonable dispatch and shall promptly return the records after the copying to the person who produced or furnished them.
- (3) The superintendent or any person authorized by the superintendent shall not enter into any room or place actually being used as a dwelling without the consent of the occupant, except when authorized to do so by a warrant issued by a justice of the peace or a judge of the Provincial Court of Saskatchewan.

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- (4) Where the superintendent or any person authorized by the superintendent suspects, as a result of the conduct of an audit or examination or for any other reason, that a violation of this Act or the regulations has occurred, the superintendent or the person authorized by the superintendent shall immediately advise any person mentioned in clause (1)(b):
- (a) of the alleged violation of this Act or the regulations; and
 - (b) that the person is not obliged to make any written or oral statement and that any statements made may be used against the person in a subsequent proceeding for an offence including a proceeding for an offence pursuant to this Act or the regulations.
- (5) Where any person mentioned in clause (1)(b) refuses to produce records required pursuant to subsection (1) or refuses to allow the removal of any records required pursuant to subsection (1), the superintendent or any person authorized by the superintendent may make application to a justice of the peace or a judge of the Provincial Court of Saskatchewan for a warrant authorizing the superintendent or the person authorized by the superintendent, as the case may be, to:
- (a) enter into and search premises where any records that may constitute evidence of a violation of this Act or the regulations are or may be located;
 - (b) seize and take possession of any records that may constitute evidence of a violation of this Act or the regulations.
- (6) A justice of the peace or a judge of the Provincial Court of Saskatchewan, if satisfied by the oath of the superintendent or any person authorized by the superintendent that there are reasonable grounds for believing that a violation of this Act or the regulations has occurred and that there is evidence to be found at the place to be searched, may issue a warrant under his or her hand authorizing the person named in the warrant to enter the place named in the warrant and every part of that place and of the premises connected with that place to examine the place and connected premises and search for and seize and take possession of records that may constitute evidence of a violation of this Act or the regulations.

Production of documents

- 6(1) For the purposes of enforcing and administering this Act or the regulations, the superintendent may serve a written demand on any person, including the president, manager, secretary, director, agent or representative of a partnership, corporation or trustee, requiring from that person the production, including the production on oath, of any record that relates to a plan or to an administrator or an employer.
- (2) For the purposes of administering and enforcing this Act or the regulations, the superintendent may serve a demand on:
- (a) any person, syndicate, trustee or corporation; or
 - (b) any agent or official of any person, syndicate, trust or corporation;
- that is or may become a third party, requiring the production, including the production on oath, of any record.
- (3) The superintendent may specify a reasonable time within which a demand pursuant to this section is to be complied with, and every person to whom a demand is served shall comply with the demand within the specified time.

Copies of documents

- 7(1) Where any record has been seized, examined or produced pursuant to section 5 or 6, the superintendent or any person authorized by the superintendent may make, or cause to be made, copies of the record.
- (2) A record certified by the superintendent or any person authorized by the superintendent to be a copy made pursuant to this section is admissible in evidence without proof of the office or signature of the person appearing to have certified the document, and has the same probative force as the original record.

Notice of motion to enforce act

- 8 The superintendent may apply to the court by notice of motion for an order compelling a person to do anything required, or prohibiting a person from doing anything prohibited, by this Act, the regulations or a direction of the superintendent made pursuant to this Act or the regulations, or by a plan.

Superintendent may appoint trustee

- 9(1) The superintendent may place a plan under trusteeship and appoint one or more persons to act as trustee of

the plan where:

- (a) in the opinion of the superintendent:
 - (i) the plan is not being administered in accordance with this Act, the regulations or a decision of the superintendent; or
 - (ii) the interests of plan members are in jeopardy; and
- (b) the superintendent has given notice to the administrator of the superintendent's intention to do so.
- (2) A trustee appointed pursuant to subsection (1) may exercise all of the powers of the administrator of the plan.
- (3) The superintendent shall, by order, terminate the trusteeship of a plan authorized pursuant to this section when, in the superintendent's opinion, termination is advisable and in the interests of the plan members.
- (4) The cost of administering a plan by a trustee is to be paid:
 - (a) by the employer; or
 - (b) by the plan fund where, in the opinion of the superintendent, special circumstances exist.

Reciprocal agreements

10 The minister may enter into an agreement with the government of a designated province or of Canada:

- (a) to provide for the reciprocal registration and examination of pension plans and the reciprocal enforcement of specified laws affecting plans;
- (b) to authorize a person who is the authorized representative of that government to perform any of the superintendent's functions, authorities and duties pursuant to this Act;
- (c) to provide for the performance by the superintendent of any of the functions, authorities and duties of the person mentioned in clause (b) pursuant to the laws governing pension plans of that government's jurisdiction; and
- (d) to limit, in whole or in part, the application of this Act and the regulations and to authorize all or part of the laws of a designated province or of Canada to apply to a plan that would otherwise be required to be registered in Saskatchewan.

PART III

Administration of Plans

Duties of administrators

- 11(1) The administrator of a plan is responsible for administering and shall administer the plan in accordance with this Act, the regulations and the terms and conditions of the plan.
- (2) While acting in the capacity of administrator, the administrator of a plan:
 - (a) stands in a fiduciary relationship to members, former members and any other persons entitled to benefits pursuant to the plan;
 - (b) holds in trust for the benefit of members, former members and other persons entitled to benefits pursuant to the plan, any fund established or contract arising pursuant to the plan;
 - (c) shall act in good faith and in the best interests of members, former members and other persons entitled to benefits pursuant to the plan; and
 - (d) shall not prefer the interests of one person entitled to benefits pursuant to the plan over the interests of any other person so entitled.
- (3) The administrator of a plan shall notify the superintendent in writing of:
 - (a) the administrator's name and address within 30 days after becoming the administrator; and
 - (b) any change in the administrator's name or address within 60 days after that change.
- (4) The administrator shall file with the superintendent:
 - (a) at the times prescribed and in the form required by the superintendent, returns containing information respecting:
 - (i) the administration of the plan;
 - (ii) contributions to it;
 - (iii) membership in it; and
 - (iv) any other information that is necessary to enable the superintendent to carry out the duties of superintendent pursuant to this Act;
 - (b) in the case of a plan that contains a defined benefit provision, at the times prescribed or on the request of the superintendent:
 - (i) actuarial valuation reports that:

- (A) contain the prescribed information;
 - (B) are prepared by a Fellow of the Canadian Institute of Actuaries or any other prescribed person, on the basis prescribed and on the basis of actuarial assumptions and methods that are adequate and appropriate and that are in accordance with generally accepted actuarial principles; and
 - (C) provide for contributions that are sufficient to meet the solvency tests; and
- (ii) cost certificates that:
 - (A) are signed by a person mentioned in paragraph (i)(B);
 - (B) are in the form required by the superintendent; and
 - (C) contain the information required by the superintendent for the purpose of determining whether the plan will meet the solvency tests; and
 - (c) at the times prescribed, where contributions to or benefits from a plan are determined by the provisions of a collective bargaining agreement or arbitration award, a copy of those provisions and of any amendments to them.
- (5) Subject to subsections 22(5) and 23(3), where the superintendent considers that an actuarial valuation report or cost certificate required by subsection (4) does not comply with that subsection, the superintendent shall direct the administrator to have the report or cost certificate amended so as to comply with that subsection, and the administrator shall comply with the direction.
 - (6) An actuarial valuation report need not be filed if compliance with subclause (4)(b)(ii) is sufficient to enable the superintendent to determine whether the plan will meet the solvency tests.

Pension advisory committee

12(1) Where the employer is the administrator of a plan:

- (a) the employer may establish a pension advisory committee; and
 - (b) if the plan has 50 or more members and a majority of the members so requests, the employer shall establish a pension advisory committee.
- (2) A pension advisory committee established pursuant to subsection (1):
 - (a) must include representatives of the members, chosen directly or indirectly by the members in accordance with the provisions of the plan; and

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- (b) if the plan has 50 or more former members who have commenced receiving a pension and a majority of those former members so requests, must include a representative of those former members, chosen directly or indirectly by those former members in accordance with the provisions of the plan.
- (3) A pension advisory committee established pursuant to subsection (1) shall:
 - (a) promote awareness and understanding of the plan among members and potential members;
 - (b) advise the administrator with respect to matters of concern to the members and former members;
 - (c) review periodically the financial, actuarial and administrative aspects of the plan;
 - (d) carry out any other duties that are specified by the plan or the employer.
- (4) The employer shall provide the pension advisory committee with any information that is required by the committee for the purpose of enabling it to perform its duties.

Disclosure

- 13(1) An administrator shall, in writing and in the manner and at the times specified in this section or prescribed, provide:
- (a) to each member, and to a person who is or is about to be eligible or required to be a member of the plan:
 - (i) an explanation or summary of:
 - (A) the plan;
 - (B) any amendments to the plan that relate to that person's benefits; and
 - (C) that person's entitlements and obligations pursuant to the plan or amendments;
 - (ii) any other prescribed information;
 - (b) to each member, the prescribed information on an annual basis;
 - (c) to a former member:
 - (i) following the termination of his or her membership, the prescribed information; and
 - (ii) subsequently on a written request by the former member for it, the prescribed information updated;
 - (d) to a member or former member who is about to commence his or her pension, the prescribed information;
 - (e) to each surviving spouse or designated beneficiary or personal representative of the estate of a deceased member or former member who is entitled to a benefit, the prescribed information;
 - (f) subject to subsection (2), where a pension is to be divided pursuant to Part VI, to the member, former member or spouse or the solicitor of any of them, the prescribed information;
 - (g) to a person mentioned in clause (c), (d), (e) or (f) who has submitted a written request for it, the data used to calculate any benefits specified in the information mentioned in that clause;
 - (h) to each member and former member where it is intended to terminate the plan, notice of that intention and of the date of the proposed termination;
 - (i) to each member and former member on the termination of the plan, the prescribed information.
- (2) Where information is provided pursuant to clause (1)(f) to a spouse or a spouse's solicitor, the administrator shall notify the member or former member of the nature of the information provided.
- (3) The administrator shall provide all information pursuant to subsection (1) without charge unless the superintendent approves the charging of a fee.

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- (4) Within 30 days after a written request, the administrator shall, without charge, permit a person entitled to a benefit pursuant to the plan, or the agent of such a person, to examine:
- (a) any provision of the plan that affects the person's benefits;
 - (b) any trust deed or agreement, insurance contract, bylaw or resolution relating to the plan;
 - (c) any agreement relating to the investment of the pension fund of the plan;
 - (d) the most recent return filed pursuant to clause 11(4)(a);
 - (e) the most recent cost certificate filed pursuant to subclause 11(4)(b)(ii); and
 - (f) any other prescribed document.
- (5) The administrator shall permit the examination during regular working hours:
- (a) where the person requests that it take place at the establishment of the administrator that is nearest to the person's residence, at that establishment; or
 - (b) where no request is made pursuant to clause (a), at the place where the plan is administered.
- (6) Instead of permitting an examination pursuant to subsection (4), the administrator may, without charge and within the period mentioned in that subsection, provide the person with a copy of the document that the person has requested to examine.
- (7) The administrator is not obliged to comply with subsections (4) and (6) with respect to any person if the administrator has complied with an earlier request with respect to that person within the prescribed period immediately preceding the request.

Retention of records

- 14 An administrator or any other person who has possession or custody of any records respecting a plan shall retain those records for a period of at least three years after:
- (a) in the case of an agreement, the expiry of the agreement; and
 - (b) in the case of other records, the date of the last transaction to which the records relate.

Records held by persons other than administrator

- 15(1) On the written request of the administrator, a person who has possession or custody of any records respecting a plan shall provide the administrator with information or records that are required by the administrator in order to comply with the plan and to discharge the administrator's responsibilities pursuant to this Act.
- (2) A request pursuant to subsection (1) must specifically identify the information or records required and the date by which the information or records are required.
 - (3) If the person to whom a request is directed does not provide the information or records requested within the period specified in the request, the administrator may apply to the court by notice of motion for an order to compel provision of the information or records.
 - (4) The court may make an order pursuant to subsection (3) and impose any conditions that the court considers appropriate.
 - (5) If a person who provides records pursuant to subsection (1) requests that those records be returned, the administrator shall return them within a reasonable period and may make copies of or extracts from them.

PART IV

Registration and Amendment of Plans

Registration

- 16(1) The administrator of a plan shall apply for registration of the plan by filing with the superintendent, not later than 60 days after the establishment of the plan, an application accompanied by:
- (a) a certified copy of:
 - (i) the plan;
 - (ii) any document that creates the plan or pursuant to which the plan is constituted;
 - (iii) any trust deed or agreement, insurance contract, bylaw or resolution that relates to the plan;
 - (iv) any agreement that relates to the investment of the pension fund of the plan; and
 - (v) any other prescribed document; and
 - (b) a copy of:
 - (i) the valuation report and cost certificate mentioned in clause 11(4)(b); and

- (ii) the explanation or summary mentioned in subclause 13(1)(a)(i).
- (2) An application for registration of a plan must be in the form required by the superintendent and must contain the information mentioned in clause 11(4)(a).
- (3) The superintendent shall register and issue to the administrator a certificate of registration with respect to the plan if, in the opinion of the superintendent, the plan meets the requirements of this Act.

Amendments

- 17(1) Where an amendment is made to a plan that is registered or with respect to which an application for registration is pending or to any document mentioned in subclauses 16(1)(a)(ii) to (v), the administrator shall file a certified copy of the amendment with the superintendent within 60 days after the amendment is made.
- (2) Where a new document mentioned in subclauses 16(1)(a)(ii) to (v) is executed, the document is deemed to be an amendment to the plan for the purposes of this Act.
- (3) Where the superintendent is satisfied that the amendment complies with this Act, the superintendent may issue to the administrator a notice of registration with respect to the amendment.

Administration pending registration or amendment

- 18(1) An administrator shall not administer a plan unless:
 - (a) the plan is registered; or
 - (b) subject to subsections 22(5) and 23(3), the application for registration has been duly made and the superintendent has not notified the administrator in writing that the superintendent refuses to register the plan.
- (2) An administrator shall not administer a plan in a manner that reflects an amendment to it unless:
 - (a) the amendment is registered; or
 - (b) subject to subsections 22(5) and 23(3), the amendment has been duly filed for registration and the superintendent has not notified the administrator in writing that the superintendent refuses to register the amendment.

Retroactivity of plan or amendment

- 19(1) Subject to subsections (2) to (5), a plan or an amendment to a plan may be made effective from a date before its registration or the application for its registration.
- (2) No amendment to a plan that reduces pensions or benefits is effective until the amendment has been registered by the superintendent.
- (3) No amendment to a plan shall reduce a person's benefits that accrued before the effective date of the amendment.
- (4) Subject to the approval of the superintendent, subsection (3) does not apply where the amendment is required for the purpose of maintaining registration as a registered pension plan pursuant to the *Income Tax Act* (Canada).

- (5) Where an amendment that confers on an employer any ownership or entitlement to the benefit of any surplus assets of a plan is made to a plan, the amendment is not effective unless it has been approved in the prescribed manner by the persons entitled to benefits pursuant to the plan.

Transfer agreements

- 20(1) In this section, "**transfer agreement**" means an agreement between the administrators of two or more plans respecting the transfer between them of moneys or benefits with respect to individual members or former members.
- (2) No administrator shall enter into, or transfer moneys or benefits pursuant to, a transfer agreement that contains any provision relating to a benefit that a plan is prohibited by this Act from containing.

Cancellation of registration

- 21(1) The superintendent may cancel the registration of a plan:
- (a) that does not comply with this Act; or
- (b) with respect to which the administrator has not complied with this Act or the plan.
- (2) The cancellation of registration of a plan pursuant to subsection (1) takes effect from the day, not earlier than the day on which that non-compliance occurred or commenced, specified by the superintendent.
- (3) The superintendent may cancel the registration of a plan that has been terminated or wound up in accordance with this Act.

Objection to certain actions of superintendent

- 22(1) If the superintendent refuses to register a plan or a plan amendment, cancels a registration pursuant to subsection 21(1) or directs an administrator to amend an actuarial valuation report or cost certificate pursuant to subsection 11(5), the superintendent shall give the administrator notice in writing of that fact and set out the reasons for the decision in the notice.
- (2) In the case of a cancellation of registration, the superintendent shall specify the effective date of cancellation in the notice.
- (3) Within 60 days after receiving a notice pursuant to subsection (1), the administrator may deliver to the superintendent a notice of objection setting out the reasons for the objection and all relevant facts.
- (4) On receipt of a notice of objection, the superintendent shall:
- (a) reconsider the refusal, cancellation or direction to amend;
- (b) provide the administrator with an opportunity to make representations, if the administrator has requested the opportunity to do so;
- (c) rescind, vary or confirm the previous decision; and
- (d) give a notice in writing to the administrator that states the decision and the reasons for the decision.
- (5) Where an administrator delivers a notice of objection pursuant to subsection (3), the administrator may, notwithstanding the decision of the superintendent mentioned in subsection (1), administer the plan in a manner that reflects the amendment or report or cost certificate until the matter is dealt with pursuant to subsection (4).

Appeal to court

- 23(1) Where the superintendent has confirmed a decision pursuant to subsection 22(4), the administrator may appeal to the court by notice of motion for an order requiring the superintendent to register the plan or amendment, reinstate the registration or rescind the direction to amend, as the case may require.

- (2) A copy of the notice of motion must be filed with a local registrar of the court and served on the superintendent within 30 days after delivery of the notice pursuant to subsection 22(4) or any longer period that the court allows.
- (3) Where an administrator serves a notice of motion pursuant to subsection (2), the administrator may, notwithstanding the superintendent's decision, administer the plan in a manner that reflects the amendment, actuarial valuation report or cost certificate until the court disposes of the matter.

PART V

Standard Provisions

Contents of plans - minimum requirements

- 24(1) Subject to subsection (2), a plan must provide for the benefits, contributions, entitlements and obligations provided for by this Part, or for benefits, contributions, entitlements and obligations that are more favourable for members and former members and their spouses, beneficiaries and estates, than those provided for by this Part.
- (2) A plan is not required to include or incorporate a provision of this Part if:
 - (a) the inclusion of the provision in a plan is indicated as being optional; or
 - (b) in the opinion of the superintendent, the provision is not and will not be applicable to the particular plan in question, and the superintendent permits its exclusion from that plan.
- (3) To the extent that the plan does not in any respect effect a provision required by this Part, the plan is deemed to include the required provision.

Contents of plans - general requirements

- 25(1) Subject to this Part, a plan must provide for:
 - (a) the administration and maintenance of the plan;
 - (b) the means of paying the administration expenses;
 - (c) the conditions for membership in the plan;
 - (d) benefits and entitlements on:
 - (i) termination of membership;
 - (ii) the death of a member or former member;
 - (iii) the division of pensions or benefits between a member or former member and his or her spouse on marital breakdown;
 - (iv) pension commencement; and
 - (v) termination of the plan;
 - (e) the deadlines for choosing any options and the consequences of not meeting them;
 - (f) with respect to interest, the matters prescribed with reference to section 30;
 - (g) the ownership and entitlement to the benefit of surplus assets on termination and during the continuation of the plan; and
 - (h) formulas, complying with the prescribed criteria, for determining benefits, member and employer contributions and for allocating contributions.
- (2) Formulas for determining benefits pursuant to defined benefit provisions, for contributions relating to defined contribution provisions and for allocating contributions must be acceptable to the superintendent.

Membership

- 26(1) A plan must cover one or more prescribed classes of employees, and each employee who falls within a prescribed class covered by the plan is entitled to become a member of the plan on meeting the requirements of this section.
- (2) An employee who is entitled to become a member of the plan may apply to become a member at any time:
 - (a) after completing a minimum period that does not exceed 24 months of continuous full-time employment with the employer; or
 - (b) after completing a minimum period that does not exceed 24 months of less than full-time continuous employment with the employer and, in accordance with the plan, in each of two consecutive calendar years immediately prior to the year in which the application is made:
 - (i) earning not less than 35% of the Year's Maximum Pensionable Earnings with respect to that employment; or
 - (ii) completing 700 hours of employment with the employer.

- (3) Employment with any of the employers that are required to contribute to a specified multi-employer plan shall be counted, in the aggregate, as employment with an employer for the purposes of subsection (2).
- (4) A member of a plan who is employed on a basis that is less than full-time does not cease to be a member by reason only that he or she has earnings of less than 35% of the Year's Maximum Pensionable Earnings in a calendar year or is employed for fewer than 700 hours in a calendar year.
- (5) Where an employee who was a member of a plan covering one or more classes of employees transfers to a class of employees not covered by the plan but with respect to which a plan is registered, the employee may join that plan immediately.
- (6) Where a group of employees is in a prescribed class of employees that is covered by the plan but the employees in that group are employed on a basis other than a basis that the employer considers to be full-time, the employer may establish a separate plan for that group.
- (7) The separate plan mentioned in subsection (6) must be reasonably comparable, in terms of the value of the benefits made and taking into account the differences in the number of hours worked in the relevant period of the employment, to the plan covering employees in the prescribed class who are considered to be employed on a full-time basis.
- (8) A plan may provide that an employee:
 - (a) must be a member as part of the terms and conditions of his or her employment;
 - (b) may be entitled to become a member of the plan at an earlier day than provided pursuant to this section.
- (9) Where an employee is eligible to join two or more plans, the plans may limit the employee's eligibility for membership to only one of those plans.
- (10) A plan shall not require, as part of the terms and conditions of any employment or prospective employment, that a person transfer to that plan or any other plan any of the commuted value of any benefit pursuant to another plan.

Vesting

- 27(1) For the purposes of this Act, a benefit vests in a person when the person acquires an unconditional entitlement pursuant to the plan to receive the benefit, whether at the present or in the future.
- (2) Where a member terminates membership in a plan while employed in Saskatchewan, an entitlement to all benefits with respect to the member's membership in the plan after the initial qualification date but prior to January 1, 1994 immediately vests in the member if:
 - (a) the member has been in the service of the employer, or has been a member of the plan, for a continuous period of one year or more; and
 - (b) the member's age and number of years of service or membership in the plan, when added, equal at least 45.
 - (3) Where a member terminates membership in a plan while employed in Saskatchewan, an entitlement to all benefits with respect to the member's membership in the plan on and from January 1, 1994 immediately vests in the member if:
 - (a) in the case of a specified multi-employer plan, the member has completed 350 hours of employment in each of two consecutive fiscal years of the plan with one or more of the employers that are required to contribute to the plan; or
 - (b) in any other case, the member has completed two years of continuous employment.
 - (4) A plan may provide for vesting earlier than is provided in subsections (2) and (3).
 - (5) An entitlement to receive a pension with respect to membership in the plan immediately vests in a member:
 - (a) where a member has reached the normal retirement date and terminates membership while employed in Saskatchewan; or
 - (b) on the termination of the plan.

Calculation of average remuneration

- 28 Where the number of years of continuous employment or membership in a plan is insufficient to determine the average remuneration of a member in accordance with the benefit provision of a defined benefit plan, the average remuneration is to be determined by dividing the total of the member's remuneration by the number of completed months of continuous employment.

Locking in

- 29(1) Except as otherwise provided in this Act, no person entitled to a pension may withdraw or surrender during

his or her lifetime any pension, any interest in a pension or any commuted value of a pension, and any transaction that purports to effect such a withdrawal or surrender is void.

- (2) Subsection (1) applies to all commuted values that are locked in pursuant to the former Act.
- (3) Subsections (1) and (2) do not apply to any part of a pension that accrues from additional voluntary contributions.
- (4) A plan may permit a member, on termination of membership in the plan prior to retirement, to receive a refund not exceeding 50% of the contributions required to be made by the member as of December 31, 1993 together with interest accrued to that day, in partial discharge of the plan's obligation to the member.
- (5) The amount of a refund mentioned in subsection (4) shall, at the option of the member, be returned, transferred or used in accordance with the options available to a member pursuant to subsection 32(2).
- (6) All of a member's contributions shall be returned to the member with interest where:
 - (a) the member terminates membership in the plan while employed in Saskatchewan;
 - (b) the termination is not due to the member's becoming a member of another plan to which his or her employer was required to contribute on the member's behalf; and
 - (c) an entitlement to receive a pension is not vested in the member.
- (7) Member contributions together with interest may be paid to a member or former member where a plan provides for:
 - (a) the assumption by the employer of liability for the funding of accrued benefits that were previously funded by member contributions and interest; and
 - (b) the return of those member contributions, with interest, representing those accrued benefits.
- (8) Where a member terminates membership in one plan and becomes a member of any other plan that requires the same employer to make contributions on the member's behalf, the member's membership in the first plan is deemed not to be terminated until termination of membership in the other plan.

Interest on contributions

30 A plan that requires a member to make contributions must provide for interest, gains and losses to be applied to the following at the rate and times and in the manner prescribed in the regulations:

- (a) in the case of a plan containing a defined contribution provision, employer and member contributions;
- (b) in the case of a plan containing a defined benefit provision, member contributions; and
- (c) additional voluntary contributions.

Minimum employer contributions

- 31(1) Where a member is required to make contributions in order to attain a pension pursuant to a defined benefit plan, not more than one-half of the commuted value of the pension with respect to the member's membership in the plan may be provided by the member's contributions with interest.
- (2) On the termination of a member's membership in a defined benefit plan, on the termination of a defined benefit plan or on the commencement of a member's pension pursuant to a defined benefit plan, the value of the member's contributions with interest that exceeds one-half of the commuted value of the pension with respect to his or her membership shall, at the option of the member, be:
- (a) returned to the former member;
 - (b) transferred to an RRSP;
 - (c) transferred to another pension plan, if and to the extent that the plan permits the transfer;
 - (d) transferred to an insurance company to purchase a deferred pension; or
 - (e) used to increase the amount of the pension, if and to the extent that the plan permits the increase.
- (3) For the purposes of subsections (1) and (2), the following shall not be taken into account:
- (a) contributions made with respect to a defined contribution provision of a defined benefit plan and any part of the commuted value of the pension deriving from those contributions;
 - (b) the commuted values of any portions of a member's pension that are attributable to past service benefits voluntarily funded entirely by the member; and
 - (c) in the case of a specified multi-employer plan, contributions made at the option of the member with respect to which the employer was not required to make contributions and any part of the commuted value of the pension deriving from those contributions.

Portability options

- 32(1) A member may make a transfer, in the manner and to the extent prescribed, of the whole of the commuted value of the member's pension with respect to his or her membership in accordance with subsection (2) where:
- (a) the member terminates his or her membership in the plan, or the plan is terminated;
 - (i) on or after January 1, 1993 or any earlier day that the plan may provide;
 - (ii) while the member is employed in Saskatchewan; and
 - (iii) before the earliest day on which the member could receive a pension pursuant to the plan; and
 - (b) an entitlement to receive a pension has vested in the member.
- (2) The transfer mentioned in subsection (1) may be made to:
- (a) another plan that permits the transfer, if any payment from the other plan is a payment that would otherwise be required by this Act;
 - (b) a prescribed RRSP;
 - (c) an insurance company to purchase a deferred pension that is not commutable and that will not commence earlier than the earliest day on which the pension could have commenced pursuant to the plan; or
 - (d) any other prescribed retirement plan that is registered pursuant to the *Income Tax Act* (Canada).
- (3) Where the member does not elect to make a transfer pursuant to subsection (1), the administrator may make a transfer of the whole of the commuted value of the member's pension to an insurance company to purchase a deferred pension in accordance with clause (2)(c).
- (4) No transfer shall be made pursuant to subsection (3) until:
- (a) a period of 90 days after the member terminates membership in the plan expires; and
 - (b) the administrator provides the member with written notice of his or her intention to make the transfer.
- (5) On making a transfer pursuant to this section, a member is not entitled to any further benefits with respect to his or her membership before the transfer.

Pre-retirement survivor benefit

- 33(1) Subject to subsection 29(4), section 31 and subsection (3), where a member or a former member who has not commenced his or her pension dies prior to the earliest day on which the member or former member could

have elected to receive a pension, benefits are payable by way of a pension to the surviving spouse, the commuted value of which is the greater of:

- (a) the value of the contributions of the deceased member or former member with interest; and
 - (b) 100% of the commuted value of the pension of the deceased member or former member.
- (2) Subject to subsection (3), where a member or a former member who has not commenced his or her pension dies after the earliest day on which the member or former member could have elected to receive a pension, benefits are payable by way of a pension to the surviving spouse calculated in accordance with section 34, as if the member or former member had commenced his or her pension on the day of death.
 - (3) With respect to membership prior to January 1, 1994, where a member or a former member who has not commenced his or her pension dies, benefits are payable by way of a pension to the surviving spouse, the commuted value of which is to be not less than the value of the contributions of the deceased member or former member with interest.
 - (4) If there is no surviving spouse, a lump sum payment equal in value to the pension mentioned in this section is to be paid to the designated beneficiary of a deceased member or former member or, if there is no valid designation of a beneficiary, by payment to the estate of the deceased member or former member.
 - (5) A surviving spouse may transfer the whole of the commuted value of a pension payable pursuant to this section in accordance with the conditions specified in subsection 32(2), but a plan may provide that a surviving spouse must make the transfer.

Post-retirement survivor benefit

34(1) The pension payable to a former member who has a spouse at the day on which the former member commences the pension is to be a pension that:

- (a) is payable during the lives of the former member and the former member's spouse; and
 - (b) after the death of the former member, continues to be payable to the surviving spouse for life.
- (2) Subject to subsection (3), a plan shall provide for the pension payable to the surviving spouse of a former member to be not less than 60% of the amount to which the former member was entitled.

- (3) The actuarial present value of a pension payable pursuant to this section shall be not less than the actuarial present value of the pension that would have been payable to the former member if he or she had no spouse.
- (4) A former member may receive a pension that does not comply with this section if the administrator receives a statement in the prescribed form before pension commencement that has been signed by the spouse in the presence of a witness and outside the presence of the member or former member.
- (5) A statement pursuant to subsection (4) is not valid if the statement is made more than 90 days before pension commencement.

Remarriage of surviving spouse

35 A pension payable to the surviving spouse of a deceased member or former member does not cease if the spouse acquires a new spouse.

CPP/QPP/OAS offset

36(1) In this section:

- (a) **"CPP"** means the *Canada Pension Plan*;
- (b) **"OAS"** means the *Old Age Security Act (Canada)*;
- (c) **"QPP"** means the *Quebec Pension Plan*.
- (2) A plan may provide that a member or former member may, on or before pension commencement, elect to receive a pension the amount of which is adjusted by reference to benefits payable pursuant to CPP, QPP or OAS, if the pension payments payable to the member or former member after the adjustment are not less than the amount mentioned in subsection 39(1).
- (3) Where a plan provides for the reduction of a pension by reason of a member's or former member's entitlement to a pension under CPP or QPP, the reduction must not exceed the amount R calculated in accordance with the following formula:

$$R = P \times \frac{M}{420};$$

420

where:

P is the amount of the pension payable at normal retirement date pursuant to CPP or QPP, calculated at the date of:

- (a) termination of membership;
- (b) death;
- (c) pension commencement; or
- (d) termination of the plan; and

M is the number of completed months of employment since January 1, 1966, not exceeding 420, credited for the purposes of determining benefits under the pension plan.

- (4) A reduction pursuant to subsection (3) shall not be applied to benefits pursuant to the plan until the member reaches the normal retirement date pursuant to CPP or QPP.
- (5) The amount of pension being paid pursuant to a plan may not be reduced with respect to any change in the benefits being paid pursuant to CPP, QPP or OAS after the date of calculation of a reduction pursuant to subsection (3).

Retirement date

37(1) A pension plan must provide for a normal retirement date that is calculated with reference to the age at which members are normally eligible to commence receiving a pension pursuant to the plan without reduction or increase.

- (2) In addition to a normal retirement date, a plan may provide for a date that is calculated with regard to a combination of age and service on which a pension may commence without reduction.
- (3) Subject to subsections (4) and (5), a member who continues in employment after reaching the normal retirement date and is not receiving a pension pursuant to the plan, shall be entitled to:
 - (a) continue to be a member on the same basis that applied before the member reached the normal retirement date; or
 - (b) on the member's pension commencing, have the pension increased to take into account the period of time

during which the pension was not paid.

- (4) A plan may:
 - (a) fix a maximum number of years of employment that can be taken into account in determining a pension; or
 - (b) fix a maximum amount for a pension payment.
- (5) Where a member reaches either maximum mentioned in subsection (4), no further contributions are payable by the member.
- (6) A member whose plan is terminated, or who terminates his or her membership, and in whom an entitlement to receive a pension is vested, may commence to receive the pension at any time on or after the date that is 10 years prior to the member's normal retirement date.
- (7) The commuted value of a pension mentioned in subsection (6) must be not less than the commuted value of the member's benefits pursuant to the plan at the date of commencement of the pension.
- (8) A pension must commence before the end of the calendar year in which a member or former member who is to receive it attains the age of 71 years.

Lump sum payments

- 38 Where a lump sum payment is required to be made pursuant to this Act, the payment, with interest, is to be made within 60 days after the later of:
- (a) the event giving rise to the payment; and
 - (b) the completion and filing of all documents required to authorize the making of the payment.

Small benefits

- 39(1) A plan may provide for payment to a person entitled to a pension of an amount equal to the commuted value of the pension to which the person is entitled if:
- (a) the commuted value does not exceed 4% of the Year's Maximum Pensionable Earnings in effect in the year in which the entitlement occurs; or
 - (b) the annual pension does not exceed 2% of the Year's Maximum Pensionable Earnings in effect in the year in which the entitlement occurs.
- (2) A plan may provide that, if a person entitled to the benefit has a condition that is likely to shorten considerably the person's life expectancy, the person may, before payment of the pension commences, elect to convert, on the prescribed basis, the pension or part of the pension to a payment or series of payments for a fixed term to the person.
- (3) Where a benefit has been transferred to a prescribed RRSP, subsection (2) applies to the RRSP to which the benefit has been transferred.
- (4) The condition mentioned in subsection (2) must be certified by a duly qualified medical practitioner who has been approved by the administrator.

Solvency

- 40(1) This section applies only with respect to plans that contain defined benefit provisions.
- (2) A plan must provide for funding, in accordance with the prescribed tests for the solvency of plans and other provisions of the regulations, that is adequate to provide for payment of all benefits.

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- (3) A plan must be funded in accordance with the actuarial valuation reports and cost certificates mentioned in clause 11(4)(b), as amended pursuant to any direction of the superintendent pursuant to subsection 11(5).
 - (4) Subject to subsection (5), an employer shall make contributions, calculated in the prescribed manner, that are sufficient, in accordance with the prescribed tests for the solvency of the plan, to provide for payment for all benefits.
 - (5) An employer's liability with respect to the funding of a plan may be limited to the amount that is provided for in the plan:
 - (a) where the liability of the employer is limited pursuant to a collective bargaining agreement; or
 - (b) where the plan is a prescribed plan.
 - (6) A plan mentioned in subsection (5) must provide for the reduction of benefits for the purpose of meeting the prescribed tests for the solvency of the plan, subject to the approval of the reduction by the superintendent.

Fund holder

- 41(1) In this section, "**significant shareholder**" means, in relation to an employer that is a corporation, an individual who, alone or in combination with his or her parent, brother, sister, spouse or child, owns or has a beneficial interest, directly or indirectly, in shares that represent 10% or more of the shares of the employer.
- (2) The pension fund of a pension plan must be held by:
 - (a) an insurance company pursuant to a contract for insurance;
 - (b) a trust governed by a written trust agreement pursuant to which the trustees are:
 - (i) a trust corporation, as defined in *The Trust and Loan Corporations Act*, that is licensed to carry on business in Canada; or
 - (ii) three or more individuals at least three of whom reside in Canada and at least one of whom is not a significant shareholder, partner or employee of the employer or a proprietor of the business of the employer;
 - (c) a society established pursuant to the *Pension Fund Societies Act* (Canada);
 - (d) a body corporate that is permitted to act as a fund holder pursuant to the *Income Tax Act* (Canada); or
 - (e) a combination of the persons or entities mentioned in two or more of clauses (a) to (d).

Remittance of contributions

- 42(1) An employer shall, within the prescribed period, remit employer and member contributions due to the plan:
 - (a) in the case of a specified multi-employer plan, to the administrator; and
 - (b) in the case of any other plan, to the fund holder.
- (2) Where the administrator of a specified multi-employer plan is not the fund holder, the administrator shall, immediately on receipt of the contributions, remit them to the fund holder.
- (3) Where an employer has failed to remit any contributions required by subsection (1) before the expiration of 30 days after the end of the prescribed period mentioned in that subsection, the administrator or the fund holder who should have received them shall immediately notify the superintendent in writing of the failure.

Sums held in trust

- 43(1) Notwithstanding any other Act, any sum received by an employer from an employee pursuant to an arrangement for the payment of the sum by the employer into a plan as the employee's contribution to the plan is deemed to be held by the employer in trust to be paid into the plan as the employee's contribution, and the employer shall not appropriate or convert any part of it to the employer's own use or to any use not authorized by the terms of the plan.
- (2) For the purposes of subsection (1), any sum withheld by an employer, whether by payroll deduction or otherwise, from moneys payable to an employee is deemed to be received by the employer.
- (3) Notwithstanding any other Act, any sum required to be paid into a plan by an employer as the employer's contribution to the plan is, when due pursuant to the plan, deemed to be held by the employer in trust to be paid into the plan in accordance with the plan, this Act and the regulations as the employer's contribution, and the employer shall not appropriate or convert any part of it to the employer's own use or to any use not authorized by the terms of the plan.

Investments

- 44 Assets of a plan must be invested, and the investments must be made in accordance with the regulations.

Discrimination on the basis of sex

- 45 The sex of a person shall not be taken into account in determining:
- (a) the amount or rate of contributions required to be made by a member of a plan;
- (b) the amount of a pension or the commuted value of a pension to which a person is or may become entitled; or
- (c) the entitlement of a person to become a member of a plan.

PART VI

Division on Marriage Breakdown

Division on marriage breakdown

- 46(1) Notwithstanding any other provision of this Act, an administrator shall, on the breakdown of the marriage of a member or former member, divide a pension or other benefit to which the member or former member is entitled, in accordance with this section.
- (2) Subject to subsection (3), a pension or other benefit shall be divided:
- (a) where a court has made an order for the division of matrimonial property pursuant to *The Matrimonial Property Act*, in accordance with the order; or
- (b) where the member or former member and his or her spouse have entered into an agreement to divide their matrimonial property that is an interspousal agreement within the meaning of *The Matrimonial Property Act*, in accordance with the agreement.
- (3) A division of a pension or other benefit pursuant to subsection (2) must not reduce the member's commuted value to less than 50% of the member's commuted value prior to the division.

Value of pension to be divided

- 47(1) The value of the pension or other benefit to be divided shall be calculated by the administrator in accordance with this section.

- (2) In the case of a defined benefit plan pursuant to which a member or former member has not become eligible to receive a pension without reduction, the value of the pension or other benefit is to be calculated as the commuted value of the pension that accrued during the period beginning on the date of the marriage and ending on the date mentioned in the order or agreement, calculated as if the member or former member had terminated membership on the date mentioned in the order or agreement mentioned in subsection 46(2).
- (3) In the case of a defined benefit plan pursuant to which a member or former member is eligible to receive a pension without reduction, the value of the pension or benefit is to be calculated as either the commuted value of the pension calculated pursuant to subsection (2) or as a division of the unreduced pension when the pension becomes payable, as provided in the order or agreement mentioned in subsection 46(2).
- (4) In the case of a defined benefit plan pursuant to which a former member has commenced receiving a pension, the value of the pension or benefit is to be calculated as a division of the pension in accordance with the order or agreement mentioned in subsection 46(2).
- (5) In the case of a defined contribution plan pursuant to which a member or former member has not commenced receiving a pension, the value of the pension or benefit is to be the value of the benefit provided by the defined contribution provision that accrued during the period beginning on the date of the marriage and ending on the date mentioned in the order or agreement mentioned in subsection 46(2).
- (6) In the case of a defined contribution plan pursuant to which a former member has commenced receiving a pension, the value of the pension or benefit is to be calculated as a division of the pension in accordance with the order or agreement mentioned in subsection 46(2).

Spouse's portion of divided pension

- 48(1) Subject to section 39, where the spouse or former spouse of a member or former member is entitled to a division of the commuted value of a pension pursuant to a defined benefit plan, the portion of the commuted value to which that person is entitled:
- (a) may be transferred to a prescribed RRSP, where the person provides the administrator with written directions to do so, but the plan may provide that a spouse or former spouse must make the transfer; and
 - (b) where a transfer has not been made pursuant to clause (a), must be used to provide a pension to the person as if the person were a former member.
- (2) Subject to section 39, where the spouse or former spouse of a member or former member is entitled to a division of the amount standing to the credit of the member or former member in a defined contribution plan, the amount to which the person is entitled must be transferred to a prescribed RRSP.
- (3) Where an amount has been transferred to a prescribed RRSP or used to provide a pension to a person in accordance with an order or agreement mentioned in subsection 46(2):
- (a) the person has no further claim or entitlement to any pension or benefit pursuant to the plan;
 - (b) the entitlement of the member or former member is to be calculated on the basis of the commuted value of his or her pension after the transfer, or on the amount standing to his or her credit after the transfer, as the case may be; and
 - (c) neither the administrator nor the plan is liable to any person by reason of having complied with an order or agreement mentioned in subsection 46(2) in accordance with this Part.

Notice to member or former member

- 49(1) Except where an order or agreement mentioned in subsection 46(2) has been filed with the administrator by the member or former member and his or her spouse or former spouse jointly, the administrator shall give a notice in writing to the member or former member that an order or agreement has been filed.
- (2) Unless the administrator receives a notice in writing within 30 days of providing the notice mentioned in subsection (1) that the member or former member objects to the division of the pension or benefit on one of the grounds set out in subsection (3), the administrator shall comply with the order or agreement in accordance with sections 46 to 48.
- (3) The grounds for an objection pursuant to subsection (2) are:
- (a) that the order or agreement has been varied or is of no force or effect;
- (b) that the terms of the order or agreement have been or are being satisfied by other means;
- (c) that proceedings have been commenced in a court of competent jurisdiction in Canada to appeal or review the order or to challenge the terms of the agreement.
- (4) A member or former member who submits a notice of objection pursuant to subsection (2) shall include with the notice documentary evidence to establish the grounds for objection.
- (5) Where a notice of objection pursuant to subsection (2) is received by the administrator, the administrator shall apply to the court for directions and, subject to subsection (6), the court may make any order that it considers appropriate in the circumstances.
- (6) No order as to costs shall be made against the administrator or the plan.

Enforcement of maintenance orders

- 50 Notwithstanding any provision of this Act or any other Act, pension benefits that are payable to a member are subject to garnishment pursuant to *The Enforcement of Maintenance Orders Act* for the purposes of enforcing a maintenance order as defined in that Act.

PART VII

Termination of Plan

Termination by superintendent

- 51(1) Where the superintendent refuses to register a plan or cancels the registration of a plan, the plan is terminated.
- (2) Where an employer fails to make contributions to a plan with respect to a specific and identifiable class or group of members, the superintendent may terminate that part of the plan that is applicable to that class or group.
- (3) In any case other than that described in subsection (2), where an employer fails to make contributions to a plan, the superintendent may terminate the whole plan.
- (4) Subsections (2) and (3) do not apply to the extent that surplus assets are used to provide employer contributions, if:
- (a) the plan permits that use;
- (b) the intention of the employer to do so is disclosed to the members and former members in the prescribed manner; and
- (c) the superintendent has approved that use.
- (5) Subject to subsection (6), the failure of an employer to make contributions pursuant to a specified multi-employer plan does not terminate the plan unless the plan provides that it does so.
- (6) On the registration of a plan that includes an identifiable class or group of the members of another plan:
- (a) years of continuous employment pursuant to the other plan count as years of continuous employment pursuant to the plan; and
- (b) the other plan or the part of the other plan that affects the class or group is not to be terminated unless the superintendent determines that the plan should be terminated.
- (7) A termination pursuant to subsection (1), (2), (3) or (6) takes effect when the remedies pursuant to sections 22 and 23 have been exhausted.

Discontinuation of business

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

operations, the superintendent may terminate all or part of the plan.

- (2) Where the superintendent terminates all or part of a plan pursuant to subsection (1), the termination is deemed to be a cancellation of the registration for the purposes of sections 22 and 23.

Termination by administrator

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

Payments to and from employer on termination

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

- (a) shall pay into the plan all amounts whose payment is required by the terms of the plan or this Act; and
 - (b) without limiting the generality of clause (a), shall make all payments that, by the terms of the plan or this Act:
 - (i) are due from the employer to the plan but have not been made at the date of the termination; or
 - (ii) have accrued to that date but are not yet due.
- (2) Notwithstanding any provision of the plan, where a plan is terminated, no part of the assets of the plan shall revert to the benefit of the employer until provision has been made for the funding or purchase of all pensions and other benefits pursuant to the plan.

Partial termination

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

Requirement to file termination report

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

- (a) the nature of the benefits to be provided;
 - (b) the assets and liabilities of the plan;
 - (c) the allocation and distribution of the assets of the plan and the priorities for determining the benefits of persons entitled to them;
 - (d) the prescribed information; and
 - (e) any other information that the superintendent may require.
- (2) Subject to subsection (3), no assets of a plan that has been terminated may be used to provide any pensions or other benefits until the superintendent has approved in writing the report required by subsection (1).

- (3) Where the allocation and distribution does not commence within 60 days after the approval of the report by the superintendent, the administrator shall file an updated report.
- (4) Subsections (1) and (2) apply, with any necessary modification, to the updated report required by subsection (3).
- (5) The administrator may pay any benefits to persons entitled to them as those benefits become due.

Superintendent may direct distribution of assets

57 Where the superintendent considers that no action or insufficient action has been taken with respect to the allocation and distribution of the assets of a plan that has been terminated, the superintendent may direct the administrator to allocate and distribute the assets of the plan, and the administrator shall comply with that direction.

Superintendent may appoint administrator

- 58(1) Where an administrator fails to comply with section 56 or 57, the superintendent may appoint another administrator and may direct that administrator to allocate and distribute the assets of the plan.
- (2) The superintendent may act as the administrator for the purposes of subsection (1).
 - (3) The superintendent may direct that any expenses incurred in connection with the allocation and distribution of assets pursuant to subsection (1), including the expenses of the superintendent if the superintendent acts as administrator, be paid out of the plan.

Payment of expenses

59 Where a plan is terminated and the plan does not provide for payment of expenses incurred for the purposes of sections 56 and 57, the superintendent may, in writing, permit any expenses for those purposes that the superintendent considers reasonable to be paid out of the plan in priority to benefits.

Requirement to file termination return

60 On completion of the allocation and distribution of assets of a plan that has been terminated, the administrator shall file with the superintendent a return containing the prescribed information.

Sale of business

61(1) In this section:

- (a) **"predecessor employer"** means an employer who disposes of all or part of the employer's business, undertaking or assets;
 - (b) **"successor employer"** means an employer who acquires all or part of the business, undertaking or assets of a predecessor employer.
- (2) The superintendent may terminate a predecessor employer's plan, in whole or in part, where:
- (a) an employee of the predecessor employer becomes an employee of the successor employer; and
 - (b) the successor employer does not assume responsibility for the accrued benefits of the predecessor employer's plan.
- (3) An employee's employment with both a predecessor employer and a successor employer must be taken into account for the purposes of determining:
- (a) the length of employment with respect to any eligibility condition of the successor employer's plan;
 - (b) whether a pension vests in a member pursuant to a plan of either employer; or
 - (c) whether the commuted value of a pension pursuant to a plan of either employer is locked-in.
- (4) A change in employers from a predecessor employer to a successor employer is not a break in employment.

PART VIII

General

Surplus

62 An administrator or a fund holder shall not transfer any surplus assets of a plan to an employer unless:

- (a) the plan provides for the transfer;
- (b) the administrator has complied with the prescribed conditions; and
- (c) the administrator has received written notice from the superintendent stating that, following the payment or transfer of the surplus assets, the plan will, in the superintendent's opinion, continue to meet the

solvency tests.

Pension moneys not assignable

- 63(1) Subject to subsection (3), benefits, moneys that have been transferred to another plan, to a prescribed RRSP or to any other prescribed retirement plan that is registered pursuant to the *Income Tax Act* (Canada), including moneys transferred before January 1, 1993, and moneys earned by those transferred moneys:
- (a) may not be assigned, charged, alienated or anticipated; and
 - (b) are exempt from execution, seizure or attachment.
- (2) Any transaction that purports to assign, charge, alienate or anticipate benefits or moneys mentioned in subsection (1) is void.
- (3) Subsection (1) does not apply to additional voluntary contributions.

Proof of entitlement

- 64 A person who claims to be entitled to receive a benefit pursuant to a plan has the onus of proving to the satisfaction of the administrator that the person is so entitled, and the administrator may require the claimant to provide any evidence of that entitlement, including evidence by way of affidavit, declaration or certificate, that the administrator considers necessary.

No cause of action with respect to certain acts

- 65 No action lies against any person for withholding, deducting, paying or crediting any moneys in compliance or intended compliance with this Act or the regulations.

Certain agreements void

- 66 Where this Act requires an amount to be deducted, withheld, paid or credited, an agreement by the person on whom that obligation is imposed not to deduct, withhold, pay or credit the amount is void.

Payment of benefits to designated persons

- 67(1) Where, in accordance with the terms of a plan, a member or former member has designated a person or persons to receive a benefit payable pursuant to the plan in the event of the death of the member or former member:
- (a) the liability to provide the benefit is discharged on payment to the designated person or persons of the amount of the benefit; and
 - (b) the person or persons entitled to the benefit may enforce payment of the benefit, subject to any defence that could have been set up against the member or the personal representatives of the member or former member.
- (2) A member or former member may from time to time alter or revoke a designation made pursuant to a plan, but that alteration or revocation may be made only in the manner specified in the plan.
- (3) This section does not apply to a designation of a beneficiary to which *The Saskatchewan Insurance Act* applies.

Saskatchewan Insurance Act does not apply

- 68 *The Saskatchewan Insurance Act* does not apply to a pension that is paid by an administrator to a person who is entitled to a pension pursuant to the terms of the plan.

Regulations

- 69(1) For the purpose of carrying out this Act according to its intent, the Lieutenant Governor in Council may make regulations:
- (a) for the purposes of giving effect to an agreement entered into pursuant to clause 10(d):
 - (i) suspending the operation of this Act or any provision of this Act with respect to a plan;
 - (ii) adopting, as amended from time to time or otherwise, any relevant law of a designated province or of Canada, as the case may be, as the law applicable to a plan;
 - (b) respecting actuarial valuation reports pursuant to clause 11(4)(b);
 - (c) authorizing the superintendent to require administrators to provide certified and consolidated copies of plans or any other documents with all amendments incorporated to date;
 - (d) requiring fees to be paid for the filing of returns, applications for registration and any other purpose and

- prescribing the amounts of those fees;
- (e) prescribing and governing the conditions on which transfers of moneys to an RRSP, another plan or to a plan mentioned in clause 32(2)(d) and any subsequent transfers to an RRSP of moneys so transferred are to be made;
 - (f) prescribing time limits for the exercise of options relating to benefits;
 - (g) governing the manner of computing contributions and benefits and determining the commuted value of benefits;
 - (h) respecting the benefits and membership of a former member of a plan who has commenced to receive his or her pension and recommences work or service in an employment covered by that plan;
 - (i) respecting the funding of plans that contain defined benefit provisions;
 - (j) respecting the investment of assets of plans and requiring the auditing of investments and the submission of lists of investments, audited reports on investments and copies of investment policies and procedures in relation to pension plans;
 - (k) authorizing the superintendent to make an order requiring the repayment to a plan of moneys transferred in contravention of section 62, with interest, or in contravention of the terms and conditions mentioned in section 62, and providing for the enforcement of the order;
 - (l) exempting any employees or plans, or any class of employees or plans, or any particular plan from the application of the whole or any part of this Act or all or part of any regulation made pursuant to this Act;
 - (m) providing for and governing the disposition of the assets of a pension plan that is terminated;
 - (n) requiring the furnishing of information to the superintendent with respect to plans;
 - (o) prescribing forms and providing for their use;

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- (p) prescribing the conditions under which, on termination of employment of an employee, on termination of an employee's membership in a plan or on termination of a plan, pension benefits may be held by the administrator, insurer or trustee of the plan or transferred to the administrator, insurer or trustee of another plan or to a retirement savings plan within the meaning of the *Income Tax Act* (Canada) that is registered under that Act;
 - (q) prescribing the method of payment of pensions on retirement;
 - (r) prescribing any matter or thing required or authorized by this Act to be prescribed in the regulations;
 - (s) defining, enlarging or restricting the meaning of any word or expression used in this Act but not defined in this Act;
 - (t) respecting any other matter or thing that the Lieutenant Governor in Council considers necessary to carry out the intent of this Act.
- (2) Regulations made pursuant to subsection (1) may be specific or general in their application and may make different provision for different classes of persons, plans or benefits.
 - (3) A regulation made pursuant to subsection (1) may be made retroactive to a day that is not earlier than the day on which this Act comes into force.

Offences and penalties

70(1) A person who:

- (a) contravenes this Act or the regulations or a direction of the superintendent given pursuant to this Act or the regulations;
 - (b) to avoid compliance with this Act:
 - (i) destroys, alters, mutilates, secretes or otherwise disposes of any record;
 - (ii) makes a false or misleading statement or entry in any record; or
 - (iii) fails to state anything in any record;
 - (c) prevents or obstructs, or attempts to prevent or obstruct, the superintendent or the superintendent's authorized representative doing anything that the superintendent or representative is authorized to do pursuant to this Act; or
 - (d) being an employer, fails to remit to a fund all amounts that the employer is liable to remit;
- is guilty of an offence and liable on summary conviction to a fine not exceeding \$100,000.
- (2) Where a corporation is guilty of an offence against this Act, an officer, director or agent of the corporation who directed, authorized, assented to, acquiesced in or participated in the commission of the offence is a party to and guilty of the offence and is liable on summary conviction to the penalty provided for the offence, whether or not the corporation has been prosecuted or convicted for it.
 - (3) Where an employer is convicted of an offence pursuant to clause (1)(d), the convicting judge shall, in addition to imposing any fine, order the employer to pay to the insurer, trustee or administrator, as the case may require, all amounts that the employer is found liable to remit to the plan.

Limitation on prosecutions

- 71(1) No prosecution with respect to an alleged offence pursuant to this Act or the regulations is to be commenced after two years from the time when the subject-matter of the prosecution first came to the knowledge of the superintendent.
- (2) A statement by the superintendent as to the time when the subject-matter of the prosecution first came to the knowledge of the superintendent is admissible in evidence with respect to the prosecution as prima facie proof of the facts stated in it without proof of the appointment or signature of the superintendent.

PART IX

Repeal, Transitional and Consequential Amendments

R.S.S. 1978, c.P-6 repealed

72 *The Pension Benefits Act* is repealed.

Transitional - reciprocal agreements

73 Notwithstanding section 10, subsisting reciprocal agreements entered into pursuant to the former Act between the superintendent and other governments are valid according to their terms until rescinded, to the extent that they are not varied by an agreement pursuant to section 10.

Transitional - plans governed by collective bargaining agreements

74(1) This section applies to plans that:

- (a) are registered pursuant to the former Act immediately before January 1, 1993; and
 - (b) are governed by one or more collective bargaining agreements entered into on or before December 31, 1992.
- (2) Where the terms of a plan described in subsection (1) conflict with the provisions of this Act, the terms of the plan prevail until the expiry date of the collective bargaining agreement or December 31, 1995, whichever occurs first, after which date the provisions of this Act prevail.

Consequential amendments

75(1) **The Acts listed in column 1 of the Schedule are amended in the provisions listed in column 2 by striking out "*The Pension Benefits Act*" wherever it occurs and in each case substituting "*The Pension Benefits Act, 1992*".**

(2) **Subclause 14(1)(a)(i) of *The Small Business Investment Incentives Regulations*, being chapter S-50.01 Reg 2 of *The Revised Regulations of Saskatchewan*, is amended by striking out "*The Pension Benefits Act*" and substituting "*The Pension Benefits Act, 1992*".**

Coming into force

76 This Act comes into force on January 1, 1993.

Schedule

[Section 75]

Column 1 (Act) Column 2 (Provision amended)

The Crop Insurance Act, S.S. 1983-84, c.C-47.2 10(b)

The Liquor Board Superannuation Act, R.S.S. 1978, c.L-1942(1)

The Members of the Legislative Assembly Superannuation Act, 1979,
S.S. 1979, c.M-12.13(4)

The Municipal Board Act, S.S. 1988-89, c.M-23.210(3)(a)

The Municipal Employees' Superannuation Act, R.S.S. 1978, c.M-2613(1)

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59.1(a)

The Police Pension (Saskatoon) Funding Act, S.S. 1979-80, c.P-15.16(1)

The Power Corporation Superannuation Act, R.S.S. 1978, c.P-2037(1)

The Provincial Court Act, R.S.S. 1978 (Supp.), c.P-30.128(1)

The Public Service Superannuation Act, R.S.S. 1978, c.P-4360.1(9.1)(a)

60.1(12.1)

60.1(13)

60.2(11.1)(a)

The Public Trustee Act, S.S. 1983, c.P-43.147.1

The Saskatchewan Government Insurance Act, 1980, S.S. 1979-80,

c.S-19.117(b)

The Saskatchewan Grain Car Corporation Act, S.S. 1979-80, c.S-19.211(b)

The Saskatchewan Telecommunications Superannuation Act,

R.S.S. 1978, c.S-3534(1)

The Superannuation (Supplementary Provisions) Act, R.S.S. 1978, c.S-6417(6)

17.1(8)

18(6)

45(1)

The Teachers' Federation Act, R.S.S. 1978, c.T-757(1)

57(2)

57(2)57(2)(e)

57(2)(g)

57(4)

57(4)(b)

57(5)(a)

57(5)(b)

The Teachers' Superannuation Act, R.S.S. 1978, c.T-913(1.1)

The Venture Capital Tax Credit Act, S.S. 1983-84, c.V-4.117(4)(a)(i)

The Workers' Compensation Act, 1979, S.S. 1979, c.W-17.1151(1)

The Workmen's Compensation Board Superannuation Act,

R.S.S. 1978, c.W-1942(1)