

**TAB 20**

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**[Table of Public Statutes](#)**

**[Main Site](#)**

**[How current is this statute?](#)**

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**[Responsible Department](#)**

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SNL1996 CHAPTER P-4.01

**PENSION BENEFITS ACT, 1997**

Amended:

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

**CHAPTER P-4.01**

**AN ACT RESPECTING PENSION BENEFITS**

*(Assented to December 19, 1996)*

*Analysis*

PART I  
SHORT TITLE AND DEFINITIONS

[1. Short title](#)

[2. Definitions](#)

PART II  
ADMINISTRATION OF THE ACT

[3. Minimum standards](#)

[4. Act prevails](#)

[5. Application of Act](#)

[6. Powers and duties of superintendent](#)

[7. Inspection of documents](#)

[8. Agreements](#)

[8.1 Existing agreement](#)

[8.2 Multilateral agreement](#)

[8.3 Status of agreement](#)

[8.4 Administrator](#)

[8.5 Employer](#)

[8.6 Application](#)

[8.7 Publication](#)

[9. Certain agreements void](#)

[10. Fees](#)

[11. Annual audit](#)

PART III  
ADMINISTRATION OF PENSION PLANS

[12. Administrators of pension plans](#)

[13. Administrator of multi-employer pension plan](#)

[14. Duties of administrator](#)

[15. Fundholder](#)

[16. Filing requirements](#)

[17. Conflict of interest](#)

PART IV  
REGISTRATION AND AMENDMENT OF PENSION PLANS

[18. Registration requirements](#)

[19. Eligibility for registration](#)

[20. Void amendments](#)

[21. Revocation of registration](#)

PART V  
STANDARDS FOR REGISTRATION

[22. Contents of pension plan documents](#)

[23. Eligibility for full-time employees](#)

[24. Eligibility for part-time employees](#)

- [25. Disclosure of information](#)
- [26. Termination of membership](#)
- [27. Considered retirement](#)
- [28. Retirement date](#)
- [29. Early retirement](#)
- [30. Remittance](#)
- [31. Failure to remit](#)
- [32. Amounts to be held in trust](#)
- [33. Money not assignable](#)
- [34. Refund of contributions](#)
- [35. Funding](#)
- [36. Interest on contributions](#)
- [37. Investments](#)
- [38. Surplus](#)
- [39. Fifty percent rule](#)
- [40. Portability](#)
- [41. Pre-retirement death benefit](#)
- [42. CPP, QPP and OAS reduction](#)
- [43. Vesting](#)
- [44. Required terms](#)
- [45. Joint and survivor pensions](#)
- [46. Remarriage](#)
- PART VI**
- MARRIAGE BREAKDOWN**
- [47. Pension entitlement on marriage breakdown](#)
- [48. Types of pension plans](#)
- [49. Limited membership](#)
- [50. Adjustment of member's pension benefit](#)
- [51. Considered election](#)
- [52. Revocation of election](#)

[53. Clarification or objection](#)

[54. Regulations prescribe procedure to divide pension](#)

[55. Application](#)

[56. Family Law Act prevails](#)

PART VII  
SURPLUS AND TRANSFER OF PLAN ASSETS

[57. Surplus payment](#)

[58. Transfer of plan assets](#)

PART VIII  
TERMINATION, WIND-UP AND DISPOSAL OF BUSINESS

[59. Plan termination](#)

[60. Plan termination requirements](#)

[61. Termination payments](#)

[62. Distribution of plan assets](#)

[63. Appointment of administrator](#)

[64. Notice of entitlement](#)

[65. Failure to elect](#)

[66. Reduction of pension benefits](#)

[67. Successor employer](#)

PART IX  
RECONSIDERATION AND APPEALS

[68. Reconsideration](#)

[69. Application to court](#)

[70. Service of documents](#)

[71. Appeal](#)

PART X  
OFFENCES AND PUNISHMENT

[72. Failure to comply](#)

[73. No action lies](#)

[74. Staff liability](#)

[75. Corporate liability](#)

[76. Contravention of the Act](#)

[77. Limitation](#)

PART XI  
REGULATIONS, REPEAL AND  
COMMENCEMENT

[78. Regulations](#)

[79. Transition](#)

[80. RSN1990 cP-4 Rep.](#)

[81. Commencement](#)

*Be it enacted by the Lieutenant-Governor and House of Assembly in Legislative Session convened, as follows:*

## **PART I SHORT TITLE AND DEFINITIONS**

### **Short title**

1. This Act may be cited as the *Pension Benefits Act, 1997* .

[1996 cP-4.01 s1](#)

[Back to Top](#)

### **Definitions**

2. In this Act
  - (a) "additional voluntary contribution" means an optional contribution by an employee under a pension plan that does not impose an obligation on the employer to make additional contributions or to provide additional benefits under the plan;
  - (b) "administrator" means
    - (i) the employer, or
    - (ii) a board of trustees, a pension committee or other body constituted in accordance with the terms of a pension plan or a collective agreement to manage the affairs of the plan;
  - (c) "bridging benefit" means a periodic payment provided under a pension plan to a former member for the purpose of supplementing the former member's pension benefit for a temporary period following early retirement and ceases not later than the date on which the member attains age 65;
  - (c.1) "cohabiting partner",
    - (i) in relation to a member or former member who has a spouse, means a person who is not the spouse of the member or former member who has cohabited continuously

with the member or former member in a conjugal relationship for not less than 3 years, or

(ii) in relation to a member or former member who does not have a spouse, means a person who has cohabited continuously with the member or former member in a conjugal relationship for not less than one year,

and is cohabiting or has cohabited with the member or former member within the preceding year;

- (d) "commuted value" means the present value, calculated in the manner prescribed by the regulations and as of a fixed date, of a pension benefit;
- (e) "continuous employment" means service for a period of time without regard to periods of temporary suspension of employment;
- (f) "defined benefit plan" means a pension plan that is not a defined contribution plan;
- (g) "defined benefit provision" means a provision of a pension plan under which a pension benefit for a member is determined in any way other than that described in the definition "defined contribution provision";
- (h) "defined contribution plan" means a pension plan that consists of defined contribution provisions and does not contain defined benefit provisions other than
- (i) a defined benefit provision relating to pension benefits accrued in respect of employment before the effective date of a pension plan, and
  - (ii) a defined benefit provision that provides for a minimum pension benefit the additional value of which, in the superintendent's opinion, is not significant;
- (i) "defined contribution provision" means a provision of a pension plan under which a pension benefit of a member or former member is determined solely as a function of contributions, interest earned and other gains and losses allocated to that member or former member's account;
- (j) "designated province" means a province that is a province as prescribed by the regulations in which there is in force legislation substantially similar to this Act;
- (k) "early retirement" means the date or age specified in a pension plan in accordance with section 29;
- (l) "employee" means a person who performs service for an employer in the province or in a designated province and is in receipt of or entitled to remuneration for the service;
- (m) "employer" in relation to an employee, means the person or organization whether incorporated or unincorporated, carrying on business or established in the province, from whom the employee receives remuneration, and includes the successors or assigns of the person or organization;
- (n) "former Act" means the *Pension Benefits Act* ;
- (o) "former member", in relation to a pension plan, means a person who has either ceased membership in the plan or has retired from the plan, and who retains a present or future entitlement to receive a benefit under the plan;
- (p) "fundholder" means a person or institution who maintains a pension fund for the purpose of investment and payment of benefits as they become due;

to participate in the plan on the same basis that applied before the member reached normal retirement age.

(3) A pension plan may provide that where a member continues in employment after reaching normal retirement age, one or more of the following options may be available to the member:

- (a) the member may cease to contribute to the plan and no additional benefits shall be accrued but on the member's pension commencing, the pension shall be increased, taking into account the period of time during which the pension was not paid, to at least the actuarial equivalent of the pension accrued at normal retirement age;
- (b) the member may commence receipt of a pension while continuing in employment and no further contributions to the plan are payable and no additional benefits may be accrued; or
- (c) another arrangement, with the approval of the superintendent.

(4) Notwithstanding subsection (2), a member's or former member's pension benefit shall commence before the end of the calendar year in which the member or former member attains the age at which a pension benefit is required to begin under the *Income Tax Act* (Canada).

[2007 c6 s1](#)

[Back to Top](#)

## **Early retirement**

**29.** (1) A pension plan shall provide for early retirement beginning any time on or after the date on which the member attains age 55.

(2) A former member of a pension plan is entitled to elect early retirement under the plan where the former member

- (a) terminated employment with the employer before January 1, 1997;
- (b) is entitled to a deferred pension benefit under this Act; and
- (c) has attained age 55 or an earlier age permitted by the plan.

(3) An election under subsection (2) shall be made in writing by the former member and delivered to the administrator of the plan.

(4) A pension benefit on early retirement may be reduced provided the commuted value of the reduced pension benefit is not less than the commuted value of the pension benefit that would have been payable at normal retirement of the member or former member.

[1996 cP-4.01 s29](#)

[Back to Top](#)

## **Remittance**

**30.** (1) An employer shall, within the period prescribed by the regulations, remit employer and member contributions due under a pension plan, and other payments required under this Act,

- (a) in the case of a multi-employer pension plan, to the administrator of the plan; and



(b) in the case of another pension plan, to the fundholder.

(2) Where the administrator of a multi-employer pension plan is not the trustee, the administrator shall, immediately on receipt of contributions, remit them to the trustee, and where the trustee is not the fundholder, the trustee shall immediately remit them to the fundholder.

(3) Where an employer fails to remit contributions in accordance with subsection (1), subsequent payment of contributions shall include interest on the contributions as prescribed by the regulations.

[1996 cP-4.01 s30](#)

[Back to Top](#)

### **Failure to remit**

**31.** Where an employer or trustee fails to remit contributions required under section 30 within 30 days after the end of the period prescribed by the regulations, the administrator of the plan or, where the employer or trustee is the administrator of the plan, the fundholder, who should have received them shall immediately notify the superintendent in writing of the failure.

[1996 cP-4.01 s31](#)

[Back to Top](#)

### **Amounts to be held in trust**

**32.** (1) An employer or a participating employer in a multi-employer plan shall ensure, with respect to a pension plan, that

- (a) the money in the pension fund;
- (b) an amount equal to the aggregate of
  - (i) the normal actuarial cost, and
  - (ii) any special payments prescribed by the regulations, that have accrued to date; and
- (c) all
  - (i) amounts deducted by the employer from the member's remuneration, and
  - (ii) other amounts due under the plan from the employer that have not been remitted to the pension fund

are kept separate and apart from the employer's own money, and shall be considered to hold the amounts referred to in paragraphs (a) to (c) in trust for members, former members, and other persons with an entitlement under the plan.

(2) In the event of a liquidation, assignment or bankruptcy of an employer, an amount equal to the amount that under subsection (1) is considered to be held in trust shall be considered to be separate from and form no part of the estate in liquidation, assignment or bankruptcy, whether or not that amount has in fact been kept separate and apart from the employer's own money or from the assets of the estate.

(3) Where a pension plan is terminated in whole or in part, an employer who is required to pay contributions to the pension fund shall hold in trust for the member or former member or other

person with an entitlement under the plan an amount of money equal to employer contributions due under the plan to the date of termination.

(4) An administrator of a pension plan has a lien and charge on the assets of the employer in an amount equal to the amount required to be held in trust under subsections (1) and (3).

[1996 cP-4.01 s32](#)

[Back to Top](#)

### **Money not assignable**

**33.** Money payable under a pension plan shall not be assigned, charged, attached, anticipated or given as security and is exempt from execution, seizure or attachment, and a transaction purporting to assign, charge, attach, anticipate or give as security such money is void, except where this section is overridden by another Act, or in circumstances prescribed by the regulations.

[1996 cP-4.01 s33](#)

[Back to Top](#)

### **Refund of contributions**

**34.** On cessation of membership in a pension plan, a member is entitled to withdraw from the plan an amount equal to the aggregate of the member's own contributions, together with interest as prescribed by the regulations, in respect of a period of membership for which the member is not entitled to a pension benefit under section 28, 29, or 43.

[1996 cP-4.01 s34](#)

[Back to Top](#)

### **Funding**

**35.** (1) A pension plan shall provide for funding, in accordance with the requirements for solvency as prescribed by the regulations, which is adequate to provide for payment of all pension benefits required to be paid under the plan.

(2) In the case of an actuarial report required under section 16, where the superintendent is of the opinion that the report has not been prepared

- (a) on the basis of actuarial assumptions or methods that are adequate and appropriate; and
- (b) in accordance with accepted actuarial practice,

the superintendent shall notify the administrator of the plan in writing of this opinion and shall direct the administrator to have the appropriate changes made to the report, and the administrator shall immediately comply with that direction.

(3) A pension plan shall be funded in accordance with the report referred to in subsection (2) as amended in accordance with the direction of the superintendent.

[1996 cP-4.01 s35](#)

[Back to Top](#)

## **Interest on contributions**

**36.** (1) In the case of a defined contribution plan, the members' accounts shall be credited with interest, gains and losses that can reasonably be attributed to the operation of the pension fund.

(2) In the case of a defined benefit plan,

(a) interest shall be credited on members' contributions at a rate equal to or greater than the rate required by the superintendent; or

(b) members' contributions shall be credited with interest, gains and losses that can reasonably be attributed to the operation of the pension fund,

and the plan shall specify which of paragraph (a) or (b) operates, but the plan may specify that one of those paragraphs applies to required contributions and the other paragraph applies to additional voluntary contributions, in which case the reference in paragraph (b) to "the operation of the pension fund" shall be read as either "the operation of that portion of the pension fund that relates to required contributions" or "the operation of that portion of the pension fund that relates to additional voluntary contributions", whichever is appropriate.

(3) The rate required by the superintendent under subsection (2) shall be determined to reflect current interest rates.

(4) Interest, gains and losses referred to in subsections (1) and (2) shall be calculated and applied to contributions as prescribed by the regulations.

[1996 cP-4.01 s36](#)

[Back to Top](#)

## **Investments**

**37.** Assets of a pension plan shall be invested as prescribed by the regulations.

[1996 cP-4.01 s37](#)

[Back to Top](#)

## **Surplus**

**38.** (1) Except in circumstances prescribed by the regulations, a pension plan shall provide, with respect to surplus accrued after December 31, 1996, for

(a) the treatment of surplus during continuation of the plan; and

(b) the allocation of surplus on termination of the plan.

(2) A pension plan shall provide, with respect to surplus accrued after December 31, 1996, for the allocation of surplus on termination of the plan to

(a) the members, former members or their surviving principal beneficiaries or estates;

(b) the employer; or

(c) a combination of the persons referred to in paragraph (a) or paragraphs (a) and (b).

[1996 cP-4.01 s38; 2001 c22 s23](#)

## Surplus payment

57. (1) No part of surplus may be paid to the employer unless
- (a) the payment is permitted by the regulations; and
  - (b) the superintendent consents in writing to the payment.
- (2) Where an employer requests payment of the surplus, the superintendent shall consider criteria prescribed by the regulations and provide written reasons for his or her decision to the employer.
- (3) The superintendent may attach conditions to the consent required under subsection (1).

[1996 cP-4.01 s57](#)

[Back to Top](#)

## Transfer of plan assets

58. A transfer of assets of a pension plan shall not be made from the pension fund of the plan to the pension fund of another pension plan unless
- (a) the contract or trust agreement of the receiving fundholder is filed with the superintendent and the receiving plan is registered under this Act; and
  - (b) the superintendent has approved the transfer in writing.

[1996 cP-4.01 s58](#)

## PART VIII TERMINATION, WIND-UP AND DISPOSAL OF BUSINESS

[Back to Top](#)

## Plan termination

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

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

[1996 cP-4.01 s59](#)

[Back to Top](#)

## **Plan termination requirements**

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

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

(a) a report required by the superintendent, within 6 months after the effective date of termination; and

(b) all outstanding annual information returns up to the effective date of the termination, within 3 months after that date.

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

[1996 cP-4.01 s60](#)

[Back to Top](#)

## **Termination payments**

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

(a) an amount equal to the aggregate of

(i) the normal actuarial cost, and

(ii) special payments prescribed by the regulations,

that have accrued to the date of termination; and

(b) all

(i) amounts deducted by the employer from members' remuneration, and

(ii) other amounts due to the pension fund from the employer

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

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

[Back to Top](#)

## **Distribution of plan assets**

**62.** (1) On termination or wind-up of a pension plan, no part of the assets of the plan shall revert to the benefit of the employer until the superintendent's consent has been obtained and provision has been made for the payment to members or former members, the principal beneficiary, beneficiary or estate of a member or former member of a pension benefit, accrued or payable, in respect of membership to the date of termination or wind-up and, for that purpose, those pension benefits shall be treated as if the members or former members were entitled to a deferred pension benefit.

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

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

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

[1996 cP-4.01 s62; 2001 c22 s29](#)

[Back to Top](#)

## **Appointment of administrator**

**63.** Where the whole of a pension plan has been terminated and the superintendent is of the opinion that no action or insufficient action has been taken to wind up the plan, the superintendent may appoint an administrator of the plan and direct the administrator to distribute the assets of the plan as prescribed by the regulations and may direct that expenses incurred in connection with that distribution be paid out of the pension fund, and the administrator shall immediately comply with that direction.

[1996 cP-4.01 s63](#)

[Back to Top](#)

## **Notice of entitlement**

**64.** On termination of a pension plan, in whole or in part, the administrator shall provide a notice of entitlement required by the superintendent.

[1996 cP-4.01 s64](#)

[Back to Top](#)

## **Failure to elect**

**65.** Each person in receipt of a notice of entitlement under section 64 shall elect from the options given, within the time required by the superintendent, or shall be considered to have elected, to

transfer the money to a class or type of retirement savings arrangement approved by the superintendent in accordance with subparagraph 40(1)(a)(ii) or (2)(a)(ii).

[1996 cP-4.01 s65; 2004 c47 s29](#)

[Back to Top](#)

## **Reduction of pension benefits**

66. Where a pension plan is terminated in whole or in part and the assets of the pension fund are not sufficient to pay all pension and other benefits on the wind-up of the plan, the pension and other benefits shall be reduced as prescribed by the regulations.

[1996 cP-4.01 s66](#)

[Back to Top](#)

## **Successor employer**

67. (1) Where

- (a) employees of a predecessor employer become employees of a successor employer; and
- (b) the successor employer does not assume responsibility for accrued pension benefits of the predecessor employer's pension plan,

the employees continue to be entitled to the pension benefits provided under the predecessor employer's plan in respect of the period of membership in that plan, without further accrual.

(2) The superintendent may terminate the pension plan of a predecessor employer, in whole or in part, where

- (a) employees of the predecessor employer become employees of the successor employer; and
- (b) the successor employer does not assume responsibility for accrued pension benefits of the predecessor employer's plan.

(3) An employee's employment with both a predecessor employer and a successor employer shall be taken into account for the purposes of determining

- (a) the length of employment with respect to an eligibility condition of the successor employer's plan;
- (b) whether a member is entitled to a deferred pension benefit under a pension plan of either employer; or
- (c) whether the benefits under a pension plan of either employer meets the requirements of section 43.

(4) A change in employment from a predecessor employer to a successor employer does not constitute a break in employment for the purpose of this Act.

(5) No transfer of assets shall be made from the pension fund of a predecessor employer's pension plan to the pension fund of a successor employer's pension plan without the prior written consent of the superintendent.

[1996 cP-4.01 s67](#)