

Canadian  
Association of  
Pension  
Supervisory  
Authorities

**CAPSA**

## **PROPOSED REGULATORY PRINCIPLES**

**for a**

## **MODEL PENSION LAW**

A Report by the  
Canadian Association of Pension Supervisory Authorities  
(CAPSA)

January 2004



January 19, 2004

Dear Pension Industry Stakeholder:

**RE: CAPSA Proposed Regulatory Principles for a Model Pension Law**

On behalf of the Canadian Association of Pension Supervisory Authorities (CAPSA), I am pleased to announce the release of a consultation paper entitled *Proposed Regulatory Principles for a Model Pension Law* (the "proposed principles") for review and comment by pension stakeholders. The paper is available in electronic form on the CAPSA website ([www.capsa-acor.org](http://www.capsa-acor.org)) under "What's New". Paper copies are available upon request from the CAPSA Secretariat.

CAPSA is an inter-jurisdictional association of pension regulators whose mission is to facilitate an efficient and effective pension regulatory system in Canada. The call for harmonized pension standards by many of our stakeholders strikes a responsive chord among Canadian regulators.

The proposed principles that have been identified by CAPSA are intended to form the basis for a harmonized and simplified model pension statute. The proposed principles should not be construed as the official position of any provincial or federal government or agency. CAPSA is very interested in receiving the views of stakeholders prior to finalizing the principles that would be included in the model law. Once drafted, the model law would serve as a model for federal and provincial governments to consider when they are making amendments to their pension legislation.

The proposed principles seek to balance the protection of pension plan members' rights and benefits with the need to simplify the administrative requirements for multi-jurisdictional pension plans in Canada. The proposed principles, in CAPSA's view, represent current "best practices". In the process of identifying the proposed principles, CAPSA has met with and received input from an external advisory group representing key pension stakeholder groups.

*Part One* of the consultation package is the *Rationale for a Model Pension Law in Canada*, which outlines the deficiencies in the existing system and the manner through which a model law could address these shortcomings. *Part Two* of the package is the *Key Proposed Regulatory Principles for Discussion*. This section highlights proposed principles that diverge from the existing standards in a number of Canadian jurisdictions. *Part Three* includes the detailed proposed principles and a glossary of terms.

CAPSA welcomes the comments, suggestions and ideas of pension stakeholders regarding the proposed regulatory principles for a model pension law. The Régie des rentes du Québec is conducting a parallel consultation on the *Proposed Regulatory Principles for a Model Pension Law* in Québec. Written submissions as well as any questions arising from this consultation paper should be forwarded to:

Davin Hall  
Policy Manager  
CAPSA Secretariat  
5160 Yonge Street  
17th Floor, Box 85  
North York ON M2N 6L9

Tel: 416-226-7773  
Fax: 416-590-7070  
Email: capsa-acor@fsco.gov.on.ca

Submissions made to the CAPSA Secretariat and the Régie des rentes du Québec will be shared between the two organizations.

Electronic copies of submissions and questions would be preferred. We look forward to receiving your submissions by June 30, 2004. As it is the intention of CAPSA to publicly release the submissions received in this consultation process, please indicate if you do not wish your submission to be made public.

Sincerely,

Nancy MacNeill Smith  
Chair, CAPSA

# TABLE OF CONTENTS

## PART ONE:

<b>Rationale for a Model Pension Law in Canada .....</b>	<b>1</b>
Recommended Solution .....	2
Support for a Model Pension Law .....	3

## PART TWO:

<b>Key Proposed Regulatory Principles for Discussion.....</b>	<b>4</b>
---	----------

## PART THREE:

<b>Proposed Regulatory Principles for a Model Pension Law.....</b>	<b>9</b>
1. Minimum Standards .....	9
2. Application of the Act.....	9
3. Registration of Pension Plans .....	10
4. Plan Amendments.....	10
5. Plan Administrators .....	11
6. Plan Administrators=Duties .....	11
7. Plan Records .....	13
8. Funding of Pension Plans .....	13
9. Investments .....	14
10. Interest .....	14
11. Pension Fund Assets .....	14
12. Provision of Information .....	15
13. Eligibility for Membership .....	16
14. Benefits.....	17
15. Vesting of Benefits .....	17
16. Entitlement to Pension Benefit.....	17
17. Phased Retirement .....	18
18. 50 Per Cent Rule.....	18
19. Joint and Survivor Pension Benefit .....	19
20. Pre-Retirement Death Benefit .....	19
21. Portability of Pension Benefits.....	20
22. Pension Splitting on Breakdown of Spousal Relationship .....	21
23. Locking-In .....	21
24. Pension Funds Exempt from Execution, Seizure .....	21
25. Sale of Business.....	22
26. Successor Pension Plans .....	22
27. Consolidation and Division of Pension Plans .....	22
28. Conversion of Pension Plans .....	22
29. Members= Benefits - Sale of Business, Plan Termination or Conversion.....	23
30. Simplified Pension Plans .....	23

31.	Flexible Pension Plans .....	23
32.	Plan Termination .....	23
33.	Surplus .....	25
34.	Appointment of Plan Administrator.....	27
35.	Powers of the Regulatory Authority .....	28
36.	Inspections .....	28
37.	Rules.....	29
38.	Policies .....	30
39.	Agreements with Other Jurisdictions .....	30
40.	Reporting by Advisors .....	30
41.	Directions of Compliance.....	31
42.	Objections and Appeals .....	31
43.	Appeals by Regulatory Authority .....	32
44.	Offences and Punishment .....	32
45.	Regulations .....	33
46.	Review of the Act.....	33
	<b>APPENDIX A – Glossary of Terms.....</b>	<b>34</b>

# PART ONE

## RATIONALE FOR A MODEL PENSION LAW IN CANADA

The Canadian Association of Pension Supervisory Authorities (CAPSA) recognizes that the efficient administration and effective regulation of multi-jurisdictional pension plans has become a pressing issue. The regulatory framework for these plans has become burdensome and costly and the application of the inter-jurisdictional Memorandum of Reciprocal Agreement (the “Reciprocal Agreement”) has been called into question.

The Reciprocal Agreement is an inter-jurisdictional convention initiated in 1968 to facilitate the administration and streamline the regulation of plans with members in more than one jurisdiction. It provides for the delegation of the responsibility for enforcing the rules prescribed by pension legislation in each jurisdiction to the regulatory authority in the jurisdiction of plan registration.

In the *Leco* decision released on July 26, 2000, the Ontario Divisional Court found that the Reciprocal Agreement does not expressly provide for procedural and administrative matters to be determined according to the law of the province of registration and member entitlements to be determined according to the law in each member’s province of employment, as has been the current practice. This ruling will increase the administrative and regulatory complexity of multi-jurisdictional pension plans, and it underlines the need for harmonized pension legislation.

Multi-jurisdictional pension plans are an important feature of the Canadian pension environment. Figures provided by Statistics Canada indicate that 2,784 private sector pension plans (23 per cent of all private sector plans other than those registered with the federal Office of the Superintendent of Financial Institutions) had members in more than one province on January 1, 2002. In fact, 1,006 of these plans (covering more than 1,000,000 members) had members in five or more provinces. These plans must comply with different legislative requirements in each jurisdiction, resulting in administrative complexity, member uncertainty and regulatory issues. It has even been suggested that the lack of harmonized pension legislation across Canada discourages the creation and expansion of pension plans by making them unnecessarily costly and difficult to administer.

Different legislative requirements for pension plans in different jurisdictions may also directly affect plan members and their beneficiaries. For example, the minimum requirements for benefits payable when a member dies before the commencement of his or her pension are inconsistent across jurisdictions. In Ontario, the pre-retirement death benefit is equal to the full commuted value of all vested benefits accrued after 1986. Similar, but not identical, provisions are found in Manitoba, Newfoundland, Quebec and Saskatchewan. In other jurisdictions, however, the minimum standard is different. In British Columbia, the pre-retirement survivor benefit must not be less than the value of the deceased’s pre-1993 contributions with interest, plus the greater of 60 per cent of the commuted value of the benefits accrued by the member after 1992 (plus any excess contributions) and the member’s post 1992 contributions with interest. Similar, but not identical, provisions are found in New Brunswick, Nova Scotia, and the federal jurisdiction;

Alberta's requirements were recently amended. Clearly, a plan with members in different jurisdictions might find itself calculating benefits differently – and, possibly, very differently – for members in each jurisdiction. Not only does this complicate plan administration, it may also result in the inconsistent treatment of plan members in different jurisdictions and cause some uncertainty for members (and their families) if they move between jurisdictions.

## Recommended Solution

CAPSA members propose a two-step approach to address these outstanding issues:

### *1. Revise and Update the Reciprocal Agreement*

The current Reciprocal Agreement is dated, far from satisfactory and must be revised. To clearly establish the responsibilities of administrators of multi-jurisdictional plans and pension regulators, CAPSA members are currently working to draft an updated Reciprocal Agreement for consideration by their governments. A revised Reciprocal Agreement will provide needed clarity and enable the effective regulation of multi-jurisdictional pension plans until a model law can be implemented, but it is a short-term strategy only. It will not address the larger issue of how best to streamline the administration of multi-jurisdictional pension plans for the longer term.

### *2. Develop a Proposal for a Model Pension Law*

To affect a long-term solution, CAPSA members have identified regulatory principles that could form the basis for a model pension law. Understanding that a model pension law should protect the benefits and rights of plan members, CAPSA has based these regulatory principles for a model pension law on the following objectives:

- ▶ set minimum pension standards;
- ▶ provide maximum flexibility, simplicity and clarity;
- ▶ streamline requirements and avoid over-regulation;
- ▶ ensure effective harmonization;
- ▶ recognize that the establishment of pension plans should not be discouraged by regulation;
- ▶ provide an appropriate system of checks and balances;
- ▶ ensure effective enforcement powers; and,
- ▶ delineate principles in a model Act, with details in the regulations.

A model law, of course, is aspirational only. It can provide no guarantee of complete or ongoing harmony. To be successful in the long-term, the model pension law will require the support of stakeholders and governments. Even when successfully implemented, the model law cannot be seen as a static achievement. A process for ongoing review and amendment of the model law will also have to be developed and implemented to reflect the evolving pension environment.

## Support for a Model Pension Law

CAPSA members anticipate that pension stakeholders across the country will appreciate that harmonized pension legislation in each jurisdiction will provide a more cost-effective and streamlined regulatory environment that will benefit all registered pension plans.

Pension plan members and their representatives will recognize the advantages of a harmonized pension law that:

- ▶ supports labour mobility by providing consistent pension rights for mobile workers, and benefits members whose careers take them to employers and organizations across the country;
- ▶ simplifies disclosure, enhancing members' understanding of their rights and entitlements; and,
- ▶ promotes pension plan coverage by reducing the cost of administration and regulatory compliance for all plans.

Pension sponsors and plan administrators can also expect to benefit if a model law is successfully implemented. Sponsors and administrators of multi-jurisdictional plans will, over time, benefit from the anticipated administrative efficiencies and cost reductions. Although there may be transitional costs as plans are amended to comply with the model law, even plans operating in only one jurisdiction will appreciate reductions in administrative complexity and improved regulatory efficiency.

Ultimately, of course, CAPSA's model law proposals will be presented to governments for consideration. Governments in all jurisdictions will recognize that harmonized legislation will:

- ▶ streamline pension regulation;
- ▶ provide a more favourable environment for the creation and maintenance of employer-sponsored pension plans;
- ▶ alleviate the administrative complexity of multi-jurisdictional plans; and,
- ▶ facilitate the effective regulation of all pension plans.

At the same time, governments will appreciate that there may be transitional and retroactivity issues that will have to be addressed. They may also need assurance that the regulatory principles for a model law can be implemented in a manner that acknowledges regional priorities, interests, attitudes and stakeholders, and does not compromise political autonomy.

CAPSA believes that the model law principles protect member entitlements, promote administrative effectiveness and streamline regulatory requirements. They have been prepared for discussion, however, and do not reflect the official position of any provincial or federal government or agency.



## PART TWO

### KEY PROPOSED REGULATORY PRINCIPLES FOR DISCUSSION

The proposed principles that have been identified by CAPSA are intended to form the basis for a harmonized and simplified model pension statute. The proposed principles should not be construed as the official position of any provincial or federal government or agency. CAPSA is very interested in receiving the views of stakeholders prior to finalizing the principles that would be included in the model law. Once drafted, the model law would serve as a model for federal and provincial governments to consider when they are making amendments to their pension legislation.

A review of current pension legislation in jurisdictions across Canada reveals that many aspects of the legislation are fundamentally similar in principle. However, the legislative requirements of the various jurisdictions, while similar, often differ slightly in their wording and application. These slight differences, in what are otherwise fairly consistent minimum standards, impose unnecessarily costly and complex administrative requirements on multi-jurisdictional pension plans that do not enhance the protection of plan members' rights and benefits.

Where current legislative requirements are largely consistent, CAPSA has developed principles that will harmonize the existing standards without requiring significant changes to current practices. There are, however, aspects of current pension legislation where CAPSA has identified opportunities to simplify and enhance existing standards. The *Key Proposed Regulatory Principles for Discussion* outlines the areas where CAPSA is proposing principles that will diverge from the existing standards in a number of jurisdictions. These principles represent best practices, which could simplify the administration of pension plans and enhance the protection of the rights and benefits of plan members.

#### **Final Location (Principle 2)**

The principles clarify the entitlements of plan members who have accrued benefits in two or more jurisdictions by adopting a "final location" approach to the calculation of benefits upon termination of employment, retirement or death. Under this approach benefits would be calculated in accordance with the laws of the jurisdiction in which a member last accrued benefits.

#### **Prior Notice of Amendments (Principle 4)**

The principles propose that administrators must provide notice of an amendment to the pension plan to all members and any collective bargaining agent representing members prior to the effective date of the amendment.

**Plan Administrator (Principle 5)**

The principles propose that the administrator of a pension plan that is not a multi-employer pension plan or a prescribed plan (a small pension plan, a plan whose administrator is appointed by the regulatory authority or a plan exempted by the regulatory authority) must be a pension committee. *Note: An explanation of the pension committee concept can be found on page 7.*

**Contribution Holidays (Principle 8)**

The principles clarify that an employer may take a contribution holiday in accordance with the terms of the pension plan and the requirements prescribed under the Act.

**Vesting (Principle 15)**

The principles propose that all pension benefits be vested immediately for all plan members=service.

**Phased Retirement (Principle 17)**

The principles provide the option for plan members to opt to take an early reduced pension benefit where an active member and the employer have agreed on a reduction of the active member=s hours of employment.

**Pension Splitting (Principle 22)**

The principles allow benefits of a member of a pension plan to be paid to the spouse or former spouse of the member in the event of a divorce or separation, including an amount in excess of 50 per cent of the pension if so ordered by a court.

**Commuted values on involuntary termination (Principle 29)**

The principles state that where a member terminates from a plan as a result of events not initiated by the member, the member=s benefits should be calculated as prescribed. CAPSA welcomes comments and suggestions regarding the calculation of members=commuted values on sale of business, plan termination and plan conversion.

**Simplified Pension Plans (Principle 30)**

To streamline the administration and regulation of qualifying pension plans, the principles allow for simplified pension plans.

**Flexible Pension Plans (Principle 31)**

The principles permit flexible pension plans in accordance with the principles set out by the Joint CAPSA/Canadian Institute of Actuaries Task Force on Flexible Pension Plans (CAPSA Communiqué, April 30, 1999).

**Unlocatable beneficiaries on plan wind up (Principle 32)**

The principles provide that, where assets remain in a terminated plan which the administrator is unable to distribute to the appropriate beneficiary after making reasonable efforts to do so, the outstanding amount will be referred to a public agency.

**Partial Wind Up (Principle 32)**

Since the principles propose immediate vesting of all benefits, the concept of a partial wind up is unnecessary.

**Surplus Withdrawal (Principle 33)**

The principles propose that any proposal for a surplus withdrawal by an employer from an ongoing or terminated pension plan must have the agreement of at least two-thirds of the active and non-active members of the pension plan, or the consent of their collective bargaining agents.

**Surplus in Mergers and Sales (Principle 33)**

Surplus is an issue in many mergers and sale of business transactions. There is a need to balance the protection of members' rights with making plans workable for employers. CAPSA welcomes comments regarding the treatment of surplus in these situations.

**Time Period for Resolving Surplus Issues (Principle 33)**

The principles propose that if no action is taken regarding surplus within a prescribed time following a plan's termination, the employer, plan members, collective bargaining agent(s) representing plan members or other plan beneficiaries may refer the issue to arbitration under a dispute resolution system. If the issue is not referred to arbitration within a prescribed time, the surplus will revert to the members and other beneficiaries.

**Surplus Provisions are Paramount (Principle 33)**

The principles envision that legislative provisions regarding the distribution of surplus will supersede the terms of a pension plan, trust, another Act, or any equitable, common or civil law principles applicable to trusts.

**Power of Regulatory Authority (Principle 35)**

The principles grant the regulatory authority the power to require the administrator to hold a meeting of plan members or other beneficiaries and to assess regulated persons for regulatory activities on a user-pay basis.

**Rule-making (Principle 37)**

To streamline the regulation making process, the principles grant the regulatory authority the ability to make rules governing matters of a technical or administrative nature, which have the force and effect of a regulation, subject to Ministerial oversight. The principles also envision a role for CAPSA in the rule-making process to encourage harmonization.

**Reporting by Advisors (Principle 40)**

To clarify the duties of advisors the principles propose that persons retained or employed by the administrator must report to the regulatory authority any material contravention of the Act or regulation that is not corrected by the administrator.

**Review of the Act (Principle 46)**

To ensure the continuing effectiveness and harmonization of pension legislation across Canada, the principles propose that every five years, the regulatory authority shall undertake a review of the Act and regulation.

### **The Pension Committee - an Explanation**

CAPSA is proposing that the administrator of a pension plan be a pension committee, except in the case of simplified pension plans and small plans. CAPSA believes the pension committee model achieves the dual objectives of enhancing the protection of members' rights and benefits, and increasing the transparency of pension plan administration.

The pension committee proposal is based on the current provisions under the Supplemental Pension Plans Act (Québec). Under the proposal, the pension plan must provide for a pension committee with at least two members designated by the plan members: one by the active members and the other by the non-active members. The pension plan may also provide for other members to be designated, usually by the employer. Based on the experience in Québec, the majority of pension committees would have three or more members designated by the employer.

It is important to note that the role of the pension committee would be to administer the pension plan. In most pension plans, the employer has and would continue to retain the authority to determine the provisions of the plan.

CAPSA views the primary advantages of the pension committee model to be:

- ▶ a clearer distinction between the role of the employer and that of the pension plan administrator;
- ▶ increased member access to decision making processes and information; and,
- ▶ enhanced supervision of pension plan operations and administration.

A clearer distinction between the role of the employer and the role of the plan administrator is a significant advantage of the pension committee model. When the employer wears both hats, acting both as employer and pension plan administrator, confusion may result that can undermine the credibility of the plan in the minds of members. For example, if an employer who fails to pay the required contributions to the pension plan is also the plan's administrator, it is unlikely appropriate action will be taken without the intervention of the regulatory authority.

The right of plan members to designate two members to the pension committee allows them to have the best possible information on plan administration. By playing an active role in the decisions made by the pension committee, the two committee members designated by the plan members can make the views of plan members heard and ensure that committee decisions are communicated to plan members. The plan members will thus be more likely to understand and assess the committee's decisions. This approach has a definite advantage over the advisory committee model now provided for in some pension laws.

The presence on the pension committee of members designated by plan members also has the effect of enhancing the supervision of the operation and administration of the pension plan. The supervision carried out by a government agency cannot, by itself, ensure the protection of pension plan members and beneficiaries. That is why the *Proposed Regulatory Principles for a Model Pension Law* recommends specific roles for the employers, administrators, advisors and members in the supervision of the operations of pension plans. The pension committee is thus a fundamental element of the supervisory system under the proposed principles.

In general, a pension committee increases the transparency of pension plan administration and bolsters the credibility of plans from the standpoint of plan members and beneficiaries. In the context of rapid population aging, it is critical that pension plans live up to their important role in our retirement income security system. We are convinced that pension committees support that objective.

CAPSA believes the pension committee model would contribute to the achievement of the objectives set out above. However, if pension stakeholders wish to propose other models for achieving these objectives, CAPSA would be very interested in receiving submissions on the alternative models.

# PART THREE

## PROPOSED REGULATORY PRINCIPLES FOR A MODEL PENSION LAW

*Note: References in this document to the “Act” or “Regulation” mean the legislation that may be adopted based on these proposed regulatory principles. References to “prescribed” mean as prescribed in a model regulation, to be developed following CAPSA’s final approval of the regulatory principles for a model pension law.*

### 1. Minimum Standards

- ▶ A pension standard in the Act is a minimum requirement only. A pension plan may contain provisions that are more advantageous to plan members or other plan beneficiaries than those provided under the Act.
- ▶ No person shall contract out of or waive a pension standard under the Act except as provided for under the Act.

### 2. Application of the Act

- ▶ The Act applies to every *pension plan* \* that is provided for persons employed in the jurisdiction of enactment.
- ▶ A person is deemed to be employed in the province in which the establishment of the employer is located, and to which the person is required to report to work. A person who is not required to report to work at an establishment of the employer is deemed to be employed in the province in which the establishment of the employer is located from which the person’s remuneration is paid.
- ▶ A person employed in a territory of Canada or a federally regulated industry is deemed to be employed in the federal jurisdiction.
- ▶ A pension plan shall be registered with the regulatory authority of the jurisdiction in which the plurality of plan members is employed.
- ▶ The *regulatory authority* of the jurisdiction where a pension plan is registered is authorized to administer the Act in respect of plan members to whom the Act applies, and that regulatory authority shall assume the powers and functions of the regulatory authority under the Act.

---

\* Please note that defined terms are italicized when first used. Definitions are in the Glossary of Terms on page 34.

- ▶ Plan members who have accrued benefits while employed in two or more jurisdictions in Canada shall, upon their termination of employment, retirement or death, have their benefits calculated in accordance with the laws of the jurisdiction in which they last accrued benefits.

### 3. Registration of Pension Plans

- ▶ The administrator is responsible for ensuring the pension plan complies with all applicable pension legislation.
- ▶ A pension plan must be registered with the regulatory authority. Registration of a plan by the regulatory authority is not proof of compliance with all applicable pension legislation.
- ▶ The administrator of a pension plan must file an application for registration of the plan with the regulatory authority within the prescribed period of time.
- ▶ The documents that create and support a pension plan shall contain the prescribed provisions. Where the documents that create and support a pension plan do not contain a pension standard required under the Act, the pension plan is deemed to provide for the pension standard.
- ▶ The regulatory authority may refuse to register a plan, revoke the registration of a plan or terminate a plan, for non-compliance with the Act or regulation.

### 4. Plan Amendments

- ▶ The administrator must file an amendment to the plan, along with any other required information, with the regulatory authority within the prescribed period of time after making an amendment.
- ▶ The administrator of a pension plan may administer an amended plan unless the plan, as amended, does not comply with the legislation.
- ▶ The filing of an amendment with the regulatory authority is not proof of compliance with all applicable pension legislation.
- ▶ Except where an amendment reduces a benefit, an amendment may be made effective from a date before it is filed.
- ▶ An amendment is void if it would reduce the amount or commuted value of:
  - a deferred or immediate pension;
  - pension benefits accrued with respect to employment before the effective date of the amendment; or,
  - ancillary benefits for which a member has met all eligibility requirements.
- ▶ However, such an amendment is not void if it:
  - is necessary under the *Income Tax Act* (Canada);

- is necessary in order to ensure that a *negotiated cost plan* meets the prescribed funding requirements, the plan permits such an amendment, the prescribed requirements are satisfied and the regulatory authority provides written approval; or,
  - has been consented to by all affected plan members, the prescribed requirements are satisfied, and the regulatory authority provides written approval.
- ▶ The administrator must provide notice of an amendment, in a form acceptable to the regulatory authority, to all members and any collective bargaining agent representing members within the prescribed period of time.

## 5. Plan Administrators

- ▶ Every pension plan must have an administrator.
- ▶ The administrator must be a pension committee composed of at least two members designated by plan members in the prescribed manner. This requirement does not apply to a *prescribed plan* or a *multi-employer pension plan*.
- ▶ The administrator of a multi-employer pension plan must be a board of trustees appointed pursuant to the pension plan or a trust agreement establishing the pension plan, of whom at least one-half are representatives of members of the multi-employer pension plan.

## 6. Plan Administrators- Duties

- ▶ The administrator shall administer the plan and the pension fund in accordance with the Act, regulation and the terms of the pension plan.
- ▶ An employer shall provide the administrator with any information that is required by the administrator to comply with the Act, regulation or the terms of the plan.
- ▶ The administrator of a pension plan:
- stands in a fiduciary relationship to plan members and *other plan beneficiaries*;
  - holds in trust for the benefit of plan members and other plan beneficiaries any pension fund established for the pension plan;
  - shall act honestly, in good faith, and in the best interests of the plan members and other plan beneficiaries; and,
  - shall exercise the degree of care, diligence and skill that a person of ordinary prudence would exercise in dealing with the property of another person.
- ▶ Any person involved in the administration of a pension plan or fund shall employ all relevant knowledge and skill that the person possesses or ought to possess by reason of the person's business or profession.
- ▶ Individuals who act as administrator are required to acquaint themselves with all aspects of their fiduciary duties and obligations.



- ▶ The individual(s) who act(s) as administrator shall (collectively) possess the skills, capability and dedication necessary to fulfill their governing responsibilities. Where appropriate, the administrator shall seek information and advice from qualified external advisors.
- ▶ The administrator of a pension plan shall invest the assets of the pension fund of the plan:
  - in accordance with the Act, regulation and the statement of investment policies and procedures (SIP&P);
  - in the best interests of the plan members and other plan beneficiaries;
  - in the manner that a reasonable and prudent person would invest a portfolio of investments made on behalf of another person to whom a fiduciary duty is owed; and,
  - in such a manner to satisfy the pension promise by balancing the dual goals of maximizing the rate of return while minimizing the risk of potential loss.
- ▶ A person shall not accept an appointment as an administrator, or continue to act as an administrator, if there would be a material conflict of interest between the person's role as an administrator and that person's role in any other capacity.
- ▶ Merely being entitled to a pension benefit or having an interest in a pension benefit does not constitute a material conflict of interest.
- ▶ The administrator shall establish rules and procedures for avoiding and resolving conflicts of interest.
- ▶ Any conflict of interest shall be declared to the administrator, and shall be resolved in accordance with the administrator's rules and procedures.
- ▶ The administrator may employ or retain a person to carry out aspects of the administration of the plan where it is reasonable and prudent to do so, including any professional or other adviser retained by the administrator to prepare filings or provide advice in respect of the pension plan or fund.
- ▶ The administrator shall be accountable for the proper selection and supervision of any such person employed or retained to carry out aspects of the administration of the plan.
- ▶ A person employed or retained by the administrator to carry out aspects of the administration of the plan shall, in the performance of his or her duties respecting the plan or fund, be held to the same standard of care as is the administrator.
- ▶ A person employed or retained by the administrator to carry out aspects of the administration of the plan, may not delegate their duties, or responsibility for their duties respecting the plan or fund to another person without the prior authorization of the administrator.

## 7. Plan Records

- ▶ Records respecting a pension plan which are in the possession or custody of the administrator, employer or any other person shall be retained for the period of time deemed necessary by the administrator, and in any event, shall be retained for the *prescribed period of time*.
- ▶ On written request of the administrator, a person with possession or custody of any information relating to the plan shall provide the information to the administrator. If the person to whom the request is directed does not provide the information requested within the specified time, the administrator may apply to the [appellate body in the jurisdiction] for an order compelling the provision of the information.

## 8. Funding of Pension Plans

- ▶ The employer must make contributions to the pension fund of a pension plan sufficient to pay for all of the benefits payable under the plan, in the prescribed manner and within the prescribed period of time, and in accordance with the prescribed funding and solvency requirements.
- ▶ The employer must make contributions to the pension fund of a pension plan with a defined benefit provision in accordance with the most recent actuarial valuation report respecting the plan filed by the plan administrator with the regulatory authority.
- ▶ If the regulatory authority is of the opinion that an actuarial valuation report does not meet the prescribed requirements, the regulatory authority shall notify the administrator of the plan and direct the administrator to amend the report in order to comply with the prescribed requirements.
- ▶ The employer may take a contribution holiday in accordance with the terms of the pension plan and the prescribed requirements.
- ▶ The administrator of a pension plan shall ensure that all required contributions are paid into the pension fund within the prescribed time. Except where the administrator is a pension committee or a board of trustees of a multi-employer pension plan, the administrator will provide the *fundholder* with an annual summary of contributions within the prescribed time, which sets out the estimated amounts to be remitted, and the expected date of the remittance. Where actual contributions remitted to the fund do not match the amounts in the summary of contributions and no satisfactory explanation is provided for the variation, the fundholder is required to notify the regulatory authority of the funding deficiency within the prescribed time.

## 9. Investments

- ▶ The administrator must prepare, within the prescribed period of time, a statement of investment policies and procedures (SIP&P) for the plan that contains the prescribed information.
- ▶ The investments of the pension fund of a pension plan shall be held in the name of the plan, or in the name of a fundholder under a trust agreement.
- ▶ A pension plan may provide that investment decisions may be made by a plan member with respect to the following plan assets:
  - contributions under a defined contribution provision made by a plan member or an employer;
  - *optional ancillary contributions* made by a plan member under a flexible pension plan provision; and,
  - *additional voluntary contributions* made by a plan member, if the pension plan complies with the prescribed requirements.

## 10. Interest

- Contributions to, contributions owing to or amounts payable from a pension fund shall be credited with interest as prescribed.

## 11. Pension Fund Assets

- Contributions which have been deducted from members=remuneration or contributions received by the administrator from participating employers in a multi-employer pension plan, must be remitted forthwith to the pension fund.
- Employer contributions due or owing to a pension fund must be held separate and apart from the assets of the employer. Such contributions are deemed to be held in trust for plan members and other plan beneficiaries.
- The administrator has a lien and charge on the assets of the employer in an amount equal to the amounts deemed to be held in trust.
- The above principles apply in respect of money to be paid to an insurance company that guarantees benefits under a pension plan.
- Where contributions are not paid when due, the administrator shall take immediate action to obtain payment of such contributions, and may commence proceedings in a court of competent jurisdiction to obtain payment of contributions due under the pension plan, the Act or the regulation.

## 12. Provision of Information

- ▶ The administrator of a pension plan shall file the following with the regulatory authority in the form required by the regulatory authority:
  - an information return;
  - if the pension plan provides defined benefits, actuarial information;
  - financial information; and,
  - any other information required under this Act or regulation.
- ▶ Unless authorized by the regulatory authority in writing, any information required to be filed with the regulatory authority shall be filed within the prescribed period of time. However, the regulatory authority will not authorize the extension of the time limit for filing an information return, and a penalty will be applied if an information return is filed after the prescribed time except for the first fiscal year of the plan.
- ▶ Actuarial information required under the Act or regulation shall be prepared by a Fellow of the Canadian Institute of Actuaries (FCIA) in accordance with the Act, regulation and accepted actuarial practices.
- ▶ Audited financial statements required under the Act or regulation shall be prepared in accordance with the Act, regulation and generally accepted accounting principles.
- ▶ The administrator of a pension plan shall provide within the prescribed times:
  - a summary of the pension plan to each active member of the plan and any other person who is entitled to join the plan;
  - an annual statement containing the prescribed information to each active member of the plan;
  - an individual statement containing the prescribed information to any plan member or other plan beneficiary where there is a change in plan provisions which affects an individual's benefit entitlement, any plan member who terminates employment or retires, or the member's legal representative if the member dies; and,
  - any other prescribed information to the plan members and other plan beneficiaries.
- ▶ The following individuals are entitled to inspect prescribed plan information:
  - a plan member;
  - the spouse of a plan member;
  - any other plan beneficiary;
  - an employer;
  - an agent of a plan member, the spouse of a plan member, any other plan beneficiary or an employer;
  - a representative of a collective bargaining agent that represents members of the plan; or,
  - a prescribed person.

- ▶ Upon written request, individuals who are entitled to inspect prescribed plan information may (i) inspect the prescribed plan information held by the administrator once per calendar year without charge at a place agreed upon by the individual and the administrator; or, (ii) request copies of prescribed plan information held by the administrator once per calendar year without charge.

### 13. Eligibility for Membership

- ▶ A pension plan must identify one or more prescribed classes of employees eligible to be members of the pension plan.
- ▶ If an employee who belongs to a class of employees eligible to be members of the pension plan satisfies the *prescribed eligibility criteria*, the employee is entitled to become a plan member at the *prescribed times*.
- ▶ An active member of a pension plan who is employed continuously on a less than full-time basis does not cease to be an active member by reason only of failing to satisfy the prescribed eligibility criteria in any year.
- ▶ A pension plan may provide for mandatory membership in the plan as a condition of employment. Membership may be mandatory for full-time employees and voluntary for part-time employees.
- ▶ Separate pension plans may be established for full-time and part-time employees of a prescribed class, if the plans are comparable, taking into account differences in number of hours worked by members:
  - respecting a defined benefit provision, in terms of the value of the benefits provided; and,
  - respecting a defined contribution provision, in terms of the rate or amount of contributions.
- ▶ For the purposes of the Act or regulation, a member of a pension plan is deemed to be an active member of the plan:
  - until he or she ceases to be a member in accordance with membership withdrawal requirements of the plan, or no longer meets the eligibility requirements for membership;
  - until his or her period of *continuous* employment is terminated; or,
  - until he or she dies.
- ▶ For purposes of the Act and regulation, a member of a pension plan is an employee or former employee who is entitled to benefits under the plan, and includes an employee or former employee for whom the administrator purchased an annuity without the employee or former employee requesting this purchase. However, if such an annuity is purchased at the request of a member in respect of the member's entitlement on termination of membership, the member ceases to be a member of the pension plan.

## 14. Benefits

- ▶ A pension plan may provide for the following ancillary benefits:
  - disability benefits;
  - bridging benefits;
  - supplementary benefits, other than bridging benefits, payable for a temporary period of time;
  - death benefits in excess of those required by the Act or regulation;
  - early retirement benefits in excess of those required by the Act or regulation; and,
  - any prescribed ancillary benefit.
- ▶ The terms of a pension plan must allow a person to determine a member's pension benefit under the plan at any time (e.g., consent/discretionary benefits are not permitted).
- ▶ An ancillary benefit to which a member has become fully entitled by meeting all the eligibility requirements under the plan shall be included in the calculation of the member's benefit.
- ▶ The administrator may purchase an annuity for a plan member in respect of the immediate or deferred pension to which the member is entitled under the pension plan.

## 15. Vesting of Benefits

- ▶ Immediate vesting of *pension benefits* shall be applied retroactively for all plan members' service.

## 16. Entitlement to Pension Benefit

- ▶ All plans must specify a normal retirement age.
- ▶ At normal retirement age all members must be eligible to commence a pension under the plan without reduction or increase.
- ▶ The maximum normal retirement age shall be no later than the first day of the month following the month in which the member is entitled to unreduced benefits under the *Canada Pension Plan* or *Québec Pension Plan*.
- ▶ A plan member is eligible to retire on any date within 10 years prior to the normal retirement age.
- ▶ A pension paid before a plan member attains normal retirement age may be reduced, but may not be less than the actuarial equivalent of the pension payable at normal retirement age.

- ▶ A member of a pension plan that provides defined benefits who continues to be employed after attaining normal retirement age is entitled to receive a pension on retirement that is equal to either:
  - the pension payable as a result of the continued accrual of the member's pension benefits after attaining normal retirement age; or,
  - the pension that would have been payable upon the member attaining normal retirement age, actuarially increased to account for the member's continued employment after attaining normal retirement age.
- ▶ A pension may be reduced by the portion of the benefits payable to the plan member under the *Canada Pension Plan* or *Québec Pension Plan* that coincides with the member's service under the pension plan. If such a reduction is made, no further reduction may be made to reflect subsequent changes in the benefits payable to the member under the *Canada Pension Plan* or *Québec Pension Plan*.
- ▶ If a plan permits and a member so elects, a member's pension may be reduced to account for the benefits payable to the member under the *Old Age Security Act*.

## 17. Phased Retirement

- ▶ An active member of a pension plan whose hours of employment are reduced pursuant to an agreement with the employer, and who has attained normal retirement age or who is within 10 years of attaining the maximum normal retirement age, is entitled to elect to be paid a partial pension from the plan calculated as prescribed, for each year set out in the agreement.
- ▶ The partial pension paid to a member in any year must be calculated as prescribed.
- ▶ An active member of a pension plan that elects to be paid a partial pension continues to accrue benefits under the pension plan.
- ▶ The remuneration paid to an active member of a pension plan during the period in which the member has elected to be paid a partial pension shall not be taken into account in determining the benefits payable to the member under the plan related to service outside of that period, unless it would be advantageous to the member to do so.
- ▶ The pension payable on retirement to a member of a pension plan who has elected to be paid a partial pension may be reduced in the prescribed manner.

## 18. 50 per cent Rule

- ▶ A member will not fund more than 50 per cent of the commuted value of defined benefits accrued by the member respecting periods of contributory service, as determined at the retirement or death of the member, the termination of the member's employment or the conversion of the member's defined benefits to defined contribution benefits.

- ▶ The 50 per cent rule does not apply with respect to a member's:
  - additional voluntary contributions;
  - optional ancillary contributions; and,
  - contributions made to purchase past-service benefits and any benefits resulting from such contributions.
- ▶ Where the application of the 50 per cent rule results in excess contributions by a member of a pension plan, the member may elect to have the excess contributions paid to the member as a lump sum, directly transferred to the member's RRSP or RRIF if permitted under the *Income Tax Act* (Canada), or where the plan permits, purchase additional pension from the plan.

## 19. Joint and Survivor Pension Benefit

- ▶ The pension benefit paid to a retired member of a pension plan who has a *spouse* at the time payment of the pension benefit commences shall be paid as a joint and survivor pension benefit.
- ▶ The joint and survivor pension benefit payable to the spouse of a plan member shall not be less than 60 per cent of the pension benefit that was payable to the member before the member's death.
- ▶ In order to provide a joint and survivor pension benefit, the pension benefit that would be otherwise payable to the plan member may be reduced, provided that the commuted value of the pension benefit is not less than the commuted value of the pension benefit that would be otherwise payable to the member.
- ▶ The spouse of a plan member may waive their entitlement to a joint and survivor pension benefit by providing a waiver in a form acceptable to the regulatory authority to the plan administrator within the prescribed period of the time before payment of the member's pension benefit commences.
- ▶ The pension benefit paid to a retired member of a pension plan who has a spouse at the time payment of the pension benefit commences need not be paid as a joint and survivor pension benefit if:
  - the spouse of the member has waived their entitlement to a joint and survivor pension benefit; or,
  - the retired member and his or her spouse have legally separated in accordance with applicable family law legislation, or there has been a division of the pension benefits payable to the member in accordance with the applicable family law legislation.

## 20. Pre-Retirement Death Benefit

- ▶ If a member of a pension plan dies before payment of the member's pension benefit commences and the member has a spouse on the date of death, the spouse will receive no less than the commuted value of the member's pension benefit determined on the date of the member's death as if the member had terminated employment.



- ▶ The spouse is entitled to elect, within the prescribed period of time, to:
  - transfer the amount to a RRSP or RRIF;
  - receive an immediate or a deferred pension benefit, or a life annuity; or,
  - receive a lump sum payment.
- ▶ If the spouse does not provide his or her election within the prescribed time, the spouse will be deemed to have elected a lump sum payment.
- ▶ If a member of a pension plan who is receiving a phased retirement benefit dies, the member's spouse is entitled to receive a pension in respect of the pension that was postponed, the value of which must be equal to or greater than the value prescribed.
- ▶ A pension benefit payable to the surviving spouse of a deceased member shall not terminate by reason only of the remarriage of the surviving spouse.
- ▶ If a member of a pension plan dies before payment of the member's pension benefit commences and, on the date of death, the member does not have a spouse or a beneficiary designated in the manner required under the pension plan, the member's estate is entitled to receive a lump sum payment equal to the commuted value of the member's pension benefit, determined as if the member had terminated employment on the date of the member's death.
- ▶ The spouse, designated beneficiary or the member's estate has the same entitlement as the member with respect to the application of the 50 per cent rule.
- ▶ A spouse may, before or after the death of a member, waive entitlement in a form acceptable to the regulatory authority.
- ▶ A spouse may, before the payment of a benefit under this principle, revoke such waiver in a form acceptable to the regulatory authority.

## **21. Portability of Pension Benefits**

- ▶ A defined contribution provision member who ceases to be an active member has the right to transfer money from the plan within the prescribed time.
- ▶ A defined benefit provision member who ceases to be an active member earlier than within 10 years prior to pensionable age has the right to transfer money from the plan within the prescribed time.
- ▶ A member may transfer monies from a pension plan:
  - to the pension fund of another pension plan if the other plan permits;
  - to a prescribed retirement savings arrangement; or,
  - for the purchase of an immediate or deferred annuity.
- ▶ A member of a pension plan who ceases to be an active member and does not elect to transfer benefits out of the plan within the prescribed period of time is entitled to receive an immediate or deferred pension.

- ▶ On the termination of a pension plan, a member who is in receipt of a pension has the right to receive an annuity, and an active member has the right to transfer their commuted value from the plan.
- ▶ The amount that may be transferred from the pension plan is subject to a limit based on the solvency of the plan and determined in the prescribed manner.

## 22. Pension Splitting on Breakdown of Spousal Relationship

- ▶ The benefits of a member of a pension plan may be paid to the spouse or former spouse of the member in the event of a divorce or separation, subject to the applicable family law legislation.
- ▶ The administrator shall comply with a domestic agreement or court order made in accordance with the applicable family law legislation that affects a member's benefits under a plan. Unless a court order specifies otherwise, the spouse or former spouse of the member shall not be entitled to more than 50 per cent of the benefits accrued by the member during the period of the spousal relationship.
- ▶ The spouse or former spouse may elect to transfer his or her pension benefit:
  - to another pension plan if the other plan permits;
  - to a prescribed retirement savings arrangement; or,
  - for the purchase of an immediate or deferred annuity.

## 23. Locking-In

- ▶ Any amounts transferred from the plan on plan termination or termination of active membership must be locked-in to provide a lifetime pension on retirement.
- ▶ The requirement that amounts transferred from the plan on plan termination or termination of active membership must be locked-in to provide a lifetime pension on retirement does not apply to *prescribed amounts*.
- ▶ Any transfer of funds from a plan, which does not comply with the requirement that amounts transferred from the plan on plan termination or termination of active membership must be locked-in to provide a lifetime pension on retirement or that is not a prescribed amount, is void.

## 24. Pension Funds Exempt from Execution, Seizure

- ▶ Monies in a pension plan or a prescribed retirement savings arrangement cannot be assigned, charged, alienated or anticipated, and are exempt from execution, seizure or attachment.

## 25. Sale of Business

- ▶ Where an employer sells or otherwise disposes of all or part of the employer's business, or all or part of the assets of the employer's business, and the successor employer does not provide a pension plan for the transferring members and does not assume responsibility for the benefits accrued by the members of the employer's pension plan associated with the sale or disposition, the members are deemed to have terminated active membership in that pension plan.
- ▶ If an employer sells or otherwise disposes of all or part of the employer's business, or all or part of the assets of the employer's business, and the successor employer provides a pension plan for the transferring employees, years of service with both employers must be taken into account in determining eligibility for membership and entitlement to benefits under the successor employer's plan. This provision applies regardless of whether the successor employer assumes responsibility for the benefits accrued by the members under the employer's pension plan.

## 26. Successor Pension Plans

- ▶ Where a pension plan is established by an employer to be a successor to an existing pension plan and there are no active members in the original pension plan, the original pension plan is deemed not to be wound up and the new plan is deemed to be a continuation of the original pension plan unless the regulatory authority orders otherwise.

## 27. Consolidation and Division of Pension Plans

- ▶ Any division of the assets and liabilities of a pension plan between two or more pension plans, or any merger of all or part of the assets and liabilities of two or more pension plans into a single plan, is subject to the prescribed conditions and the authorization of the regulatory authority.
- ▶ Where there is a division of a pension plan, the assets of the pension plan shall be divided in proportion to their solvency liabilities until the plans have attained full solvency. Any additional assets shall then be divided such that each plan has a similar funding level determined on a going concern basis.

## 28. Conversion of Pension Plans

- ▶ A pension plan shall not be amended to convert a plan provision of one type into a plan provision of another type unless:
  - the amendment satisfies the requirements of Principle 4;
  - the amendment satisfies the *prescribed conditions*; and,
  - the amendment is approved by the regulatory authority.

## 29. Members- Benefits - Sale of Business, Plan Termination or Conversion

- ▶ Where a member terminates from a plan as a result of events not initiated by the member (i.e., sale of business, plan termination, plan conversion), the member's benefits should be calculated as prescribed.

## 30. Simplified Pension Plans

- ▶ *Simplified pension plans* that satisfy the prescribed requirements are permitted.

## 31. Flexible Pension Plans

- ▶ A pension plan may provide for a separate class of contributions with its own characteristics (i.e., optional ancillary contributions).
- ▶ Forfeitures of such contributions may occur provided appropriate disclosure is given to members.
- ▶ Optional ancillary contributions (OACs) are exempt from the 50 per cent rule and the locking-in provisions.
- ▶ The plan must state how OACs will be invested. If the plan offers investment options for OACs, the investment rates may vary. If the plan does not offer investment options for OACs, the OACs shall be credited with interest at the pension fund's rate of return.
- ▶ OACs shall be converted to benefits payable under a pension plan in accordance with accepted actuarial practices, or in the absence of such practices, on a reasonable basis.
- ▶ On termination from the pension plan, the amount payable to a member in respect of their OACs shall be equal to the amount accumulated in the member's optional ancillary contribution account or such lesser amount as may be permitted under the *Income Tax Act* (Canada).

## 32. Plan Termination

- ▶ An employer or, in the case of a negotiated cost plan or a multi-employer pension plan, the administrator, may terminate a pension plan.
- ▶ The regulatory authority may order that a pension plan be terminated where:
  - the employer fails to make or remit the required contributions to the pension fund;
  - control of all or substantially all of the employer's business is taken over by a receiver, liquidator or trustee in bankruptcy;
  - the employer has discontinued all or substantially all of its business operations in Canada to which the pension plan relates;

- 
- all or substantially all of the employer's business or assets are sold, assigned or disposed of and the person who acquires the business or assets does not provide a pension plan for the employer's former employees;
  - the pension plan ceases to have any active members or a significant majority of active members have terminated employment; or,
  - the pension plan or the administrator or the employer does not comply with the Act, regulation, or a decision, order or direction of compliance of the regulatory authority.
- ▶ A plan is terminated by the regulatory authority as of the date specified by the regulatory authority.
  - ▶ The regulatory authority shall give notice of an order to terminate a plan to the administrator and the employer within the prescribed period of time.
  - ▶ If the regulatory authority is of the opinion that delaying the termination of the plan would prejudice the interests of the plan members or other plan beneficiaries, the regulatory authority may order that the pension plan be terminated forthwith, notwithstanding the administrator's and employer's right to file an objection.
  - ▶ If an employer or, in the case of a negotiated cost plan or a multi-employer pension plan, the administrator, proposes to terminate a pension plan:
    - the employer, or administrator of the multi-employer pension plan or negotiated cost plan, shall give notice in the prescribed manner and within the prescribed period of time to:
      - the regulatory authority;
      - each member of the pension plan;
      - each collective bargaining agent that represents members of the plan; and,
      - any other plan beneficiary.
    - if the employer, or administrator of the multi-employer pension plan or negotiated cost plan, cannot locate a plan member for the purpose of giving notice of the plan's termination, the employer or administrator shall issue a public notice in the manner specified by the regulatory authority; and,
    - the effective date of the termination of the plan shall not be earlier than the date member contributions cease to be deducted for contributory plans, or in any other case, the date notice is given to plan members, unless the regulatory authority consents to a different effective date.
  - ▶ On the termination of the pension plan, the employer shall pay into the plan, in the prescribed manner and at the prescribed times:
    - all amounts deducted by the employer from the remuneration of active members and any other amounts due to be remitted to the plan from the employer which have not been remitted at the date of termination; and,
    - any prescribed payments necessary to fully fund the plan, with the exception of multi-employer pension plans and negotiated cost plans, as at the date of termination.

- ▶ Assets of the plan may be used to pay termination expenses if the plan so provides or if the consent of the regulatory authority is obtained.
- ▶ The administrator of the pension plan shall file a termination report as prescribed with the regulatory authority within the prescribed period of time, which disposes of all the plan assets except for any surplus to be paid to the employer.
- ▶ No payment may be made from the pension plan until the termination report is approved by the regulatory authority other than payments respecting pensions in pay, refunds of member contributions or any other payments consented to by the regulatory authority.
- ▶ Where the employer, or multi-employer pension plan or negotiated cost plan, is insolvent and the assets of the terminated plan are insufficient to pay all the benefits provided under the plan, the benefits shall be reduced in the prescribed manner.
- ▶ Following the termination of a plan, all assets of the pension fund must be distributed within the prescribed time.
- ▶ When all of the assets of a terminated plan have been distributed, including any surplus payment to the employer, the administrator shall file with the regulatory authority a wind-up report containing the prescribed information. On receipt of the wind-up report by the regulatory authority, the registration of the pension plan shall be deemed to be revoked unless the regulatory authority directs otherwise.
- ▶ Any assets remaining in a terminated plan which the administrator is unable to distribute, after making reasonable efforts to do so (e.g., unlocatable beneficiaries), will be referred to a public agency.

### 33. Surplus

- ▶ *Surplus* may arise in an ongoing pension plan or on the termination of the plan.
- ▶ Surplus may be distributed to the plan members and other plan beneficiaries as prescribed.
- ▶ No payment of surplus may be made to an employer unless a surplus application is filed with the regulatory authority and the written consent of the regulatory authority is obtained.
- ▶ The regulatory authority shall not consent to a payment of surplus from a terminated pension plan to an employer unless:
  - the regulatory authority is satisfied, based on reports provided with the application, that the pension plan has a surplus;

- 
- notice of the proposal, in a form acceptable to the regulatory authority, has been provided by the administrator to:
    - each member of the pension plan;
    - each collective bargaining agent that represents members of the plan; and,
    - any other plan beneficiary.
  - the employer develops a proposal for the distribution of surplus and files with the application, the written agreement of:
    - the collective bargaining agent of the active members of the plan or, if there is no collective bargaining agent, at least two-thirds of the active members of the plan; and,
    - the collective bargaining agent of the non-active members of the plan or, if there is no collective bargaining agent, at least two-thirds of the non-active members of the plan or such other number of non-active members as the regulatory authority considers appropriate in the circumstances; and,
    - such number of other plan beneficiaries who are entitled to payments under the pension plan as at the date of termination as the regulatory authority considers appropriate in the circumstances.
  - the administrator certifies that the application complies with the requirements of the Act and regulation; and,
  - the employer, administrator and the pension plan comply with all other prescribed requirements for the payment of surplus from a pension plan.
- ▶ The regulatory authority shall not consent to a payment of surplus from an ongoing plan to an employer unless the requirements for consent to a payment of surplus from a terminated pension plan to an employer are satisfied, and the plan meets the prescribed funding requirements.
  - ▶ If no surplus application has been received or there has been no distribution of surplus to members and other plan beneficiaries within the prescribed time following a plan's termination, the employer, members of the pension plan, collective bargaining agent(s) that represent members of the plan or other plan beneficiaries may refer the issue of surplus to arbitration under a prescribed dispute resolution system within the prescribed time, and the administrator must notify them of their right to do so within the prescribed time.
  - ▶ If no surplus application has been received or there has been no distribution of surplus to members and other plan beneficiaries within the prescribed time following a plan's termination, and the issue of surplus has not been referred to arbitration under the dispute resolution system within the prescribed time, the members and other plan beneficiaries are deemed to own the surplus, and the administrator must refer the issue to arbitration within the prescribed time for determination of the allocation of the surplus among the members and other plan beneficiaries.

- ▶ A decision of the regulatory authority or a decision of the dispute resolution board regarding the payment of surplus following a plan's termination is binding on the employer, administrator, plan members, other plan beneficiaries and any other person with an interest in the pension plan or the pension fund, including the fundholder.
- ▶ The provisions of the Act regarding the distribution of surplus apply despite the terms of a pension plan, trust, another Act, or any equitable, common or civil law principles applicable to trusts.

### **34. Appointment of Plan Administrator**

- ▶ The regulatory authority may appoint itself or any other person to be the administrator of a pension plan if, in the opinion of the regulatory authority, it is in the best interests of the plan members and other plan beneficiaries and:
  - the pension plan or the administration of the plan, in the opinion of the regulatory authority, does not comply with the Act or regulation;
  - the administrator is unable to act or fails to act;
  - the pension plan does not have an administrator; or,
  - the employer is insolvent.
- ▶ If the regulatory authority appoints an administrator for a pension plan, the regulatory authority shall give notice of the appointment, within the prescribed time, to:
  - the administrator, if any;
  - the employer;
  - each collective bargaining agent that represents members of the plan; and,
  - any other persons specified by the regulatory authority.
- ▶ The administrator or employer may make representations about the appointment to the regulatory authority within the prescribed period of time.
- ▶ Subject to any terms or conditions imposed on the administrator's appointment by the regulatory authority, an administrator appointed by the regulatory authority has all of the powers and duties conferred upon an administrator under the Act, regulation or the pension plan, and the appointed administrator shall also have the power to amend the terms of the plan.
- ▶ The regulatory authority may rescind the appointment of the administrator of a pension plan at any time.



### 35. Powers of the Regulatory Authority

- ▶ The regulatory authority is charged with the administration and enforcement of the Act and regulation, and has the powers conferred by the Act and regulation.
- ▶ The regulatory authority may:
  - collect any information necessary to determine compliance with the Act, regulation and terms of the pension plan;
  - conduct studies, surveys and research programs and compile statistical and other information relating to pension plans and their operation; and,
  - disclose any information gathered by the regulatory authority or filed with the regulatory authority under the Act to any government agency or regulatory body, subject to the applicable freedom of information legislation and confidentiality provisions applicable to individual pension information.
- ▶ The regulatory authority may delegate, in writing, any of its powers or duties under the Act or regulation to any person, subject to any limitation or condition set out in the delegation.
- ▶ The regulatory authority has the power to:
  - remove an administrator;
  - appoint and rescind the appointment of an administrator;
  - make rules;
  - make policies;
  - require the administrator to hold a meeting as specified by the regulatory authority (e.g., within the specified time, inviting the attendance of plan members or other plan beneficiaries, or requiring the attendance of agents of the plan administrator);
  - require the payment of fees in relation to any matter under the Act or regulation, and may set the amount of those fees; and,
  - assess all regulated persons with respect to all expenditures incurred or to be incurred in a specified period by the regulatory authority in connection with regulatory activities in respect of the regulated persons that are authorized or undertaken under the Act or regulation.

### 36. Inspections

- ▶ The regulatory authority or any person authorized in writing by the regulatory authority has certain enumerated inspection powers. Such inspection powers may be exercised for any purpose relating to the administration or enforcement of the Act or regulation.
- ▶ Any information, regardless of its physical form, characteristics or location, that relates to a pension plan, pension fund or to any securities, obligations or other investments in which a pension fund are invested, may be inspected.

- ▶ During an inspection:
  - the regulatory authority or any person authorized in writing by the regulatory authority shall provide identification;
  - the administrator, employer, or any representative, agent, officer or employee of the administrator or employer, shall provide reasonable assistance during the inspection;
  - the regulatory authority or person authorized by the regulatory authority may take copies of the information or remove the information for the purpose of copying, provided that the original information is returned within a reasonable period of time;
  - the regulatory authority or person authorized by the regulatory authority may enter any business premises and, with the consent of the occupier, any private dwelling for the purpose of accessing information to be inspected; and,
  - if the regulatory authority or person authorized by the regulatory authority is refused entry to business premises, is hindered or obstructed in inspecting information or a person refuses to produce the information to be inspected, the regulatory authority may apply to the appropriate court for an inspection order or warrant.
- ▶ Information copied by the regulatory authority or a person authorized by the regulatory authority during an inspection is admissible as evidence in any proceeding in which the original information would be admissible.
- ▶ The regulatory authority or any person authorized by the regulatory authority may require the production of any information the regulatory authority deems necessary to ensure compliance with the Act, regulation, or a decision, order or direction or compliance made under the Act. If the regulatory authority requires the production of such information, the regulatory authority shall give written notice which identifies the information required to be produced and the period of time in which to comply with the request.
- ▶ The regulatory authority may order any person or the pension fund to pay all or part of the cost of an inspection, or all or part of the cost of any opinion, report or professional attestation in respect of the inspection, if the regulatory authority considers it to be reasonable and fair in the circumstances to do so.

### **37. Rules**

- ▶ The regulatory authority may make rules governing matters under the Act or regulation, which are of a technical or administrative nature. A rule shall have the force and effect of a regulation made under the Act.
- ▶ The regulatory authority shall publish notice of every rule that it proposes to make, and interested persons may make representations about the proposed rule within the prescribed period of time.
- ▶ Once the consultation phase is complete and the regulatory authority is prepared to proceed with the proposed rule, a copy of the proposed rule will be provided to the Minister responsible for the Act. The Minister may approve or reject the rule, or return it to the regulatory authority for further consideration.

- ▶ There will be a role for the Canadian Association of Pension Supervisory Authorities (CAPSA) in the rule-making process to encourage harmonization of rules.

### **38. Policies**

- ▶ The regulatory authority may adopt any policy regarding interpretations of the Act or regulation.

### **39. Agreements with Other Jurisdictions**

- ▶ The regulatory authority may, subject to the approval of the Lieutenant Governor in Council/Governor in Council:
  - enter into agreements with the authorized representatives of another jurisdiction to provide for the reciprocal application and enforcement of pension benefits legislation, the reciprocal registration, audit and inspection of pension plans and for the establishment of the Canadian Association of Pension Supervisory Authorities;
  - enter into agreements with the authorized representatives of another jurisdiction to provide for the application of this Act or the pension benefits legislation of another jurisdiction to pension plans with members employed in more than one jurisdiction;
  - authorize the Canadian Association of Pension Supervisory Authorities to carry out such duties on behalf of the regulatory authority as the regulatory authority may require; and,
  - delegate to the regulatory authority or government of another jurisdiction such functions and powers under the Act as the regulatory authority may determine, and the regulatory authority may accept similar delegations of functions and powers from the regulatory authority or government of another jurisdiction.

### **40. Reporting by Advisors**

- ▶ A person retained or employed by the administrator to carry out aspects of the administration of the plan shall report to the administrator immediately when, in the course of their duties respecting the plan, they become aware of circumstances that indicate there has been or may have been a material contravention of the Act or regulation.
- ▶ A person retained or employed by the administrator to carry out aspects of the administration of the plan shall report to the regulatory authority any matter reported to the administrator where there has been or may be a contravention of the Act or regulation that in the opinion of the person is material and has not been corrected within thirty days after the date the matter was first reported to the administrator. In so doing, a person acting in good faith incurs no civil liability.

## 41. Directions of Compliance

- ▶ If, in the opinion of the regulatory authority, a pension plan does not comply with the requirements of the Act or regulation, is not being administered in accordance with the Act, regulation or the terms of a pension plan, or is being administered contrary to safe and sound financial or business practices, the regulatory authority may direct the plan administrator, employer or any other person to:
  - cease or refrain from committing the act or pursuing the course of conduct; and,
  - perform such acts as in the opinion of the regulatory authority are necessary to remedy the situation.
- ▶ If a person fails to comply with a decision, order or direction of compliance of the regulatory authority, the regulatory authority may order the wind up of the pension plan to which the decision, order or direction of compliance relates after the prescribed period of time after the decision, order or direction of compliance is made. If the regulatory authority orders the wind up of the plan, the regulatory authority must give notice of the order to the administrator of the plan.
- ▶ Any decision, order or direction of compliance issued by the regulatory authority shall:
  - include written reasons;
  - be served on the administrator of the pension plan to which the decision, order or direction of compliance relates;
  - specify the period of time within which the decision, order or direction of compliance must be complied with; and,
  - state that the person on whom the decision, order or direction of compliance is served may make written representations to the regulatory authority regarding the decision, order or direction of compliance within the prescribed time.
- ▶ If the regulatory authority is of the opinion that delaying the implementation of a decision, order or direction of compliance would prejudice the interests of the members of a pension plan or other plan beneficiaries, the regulatory authority may specify that the decision, order or direction of compliance must be complied with forthwith, notwithstanding a person's right to make representations about the order.

## 42. Objections and Appeals

- ▶ Where the regulatory authority has issued a decision, order or direction of compliance, the person who received the decision, order or direction of compliance may make written representations, including the grounds for the objection and the related facts, to the regulatory authority within the prescribed period of time.

- ▶ The regulatory authority shall, within the prescribed period of time after receiving such representations, respond to the person making the representations, and confirm, vary or revoke the original decision, order or direction of compliance.
- ▶ A person who has received a response from the regulatory authority confirming, varying or revoking a decision, order or direction of compliance of the regulatory authority may, within the prescribed period of time and in the prescribed manner, appeal the confirmation, variation or revocation of the decision, order or direction of compliance to the [appellate body in the jurisdiction].

### **43. Appeals by Regulatory Authority**

- ▶ The regulatory authority may apply to the [appellate body in the jurisdiction] for an order requiring a person to comply with the Act, regulation or the terms of the pension plan, or for an order enforcing a decision, order or direction of compliance of the regulatory authority.

### **44. Offences and Punishment**

- ▶ Any person who contravenes the Act, regulation, or a decision, order or direction of compliance made under the Act or regulation is guilty of an offence.
- ▶ Any person who commits an offence is liable on summary conviction to the fines and other penalties as prescribed.
- ▶ If a corporation or unincorporated body commits an offence under the Act, every officer, director, official or agent of the corporation and every person acting in a similar capacity or performing similar functions in the unincorporated body who:
  - caused, directed, authorized, assented to, acquiesced in, participated in or permitted the commission of the offence by the corporation or unincorporated body; or,
  - failed to take all reasonable care in the circumstances to prevent the commission of the offence by the corporation or unincorporated body,is guilty of an offence and is liable on summary conviction to the fines and other penalties as prescribed, whether or not the corporation or unincorporated body has been prosecuted for or convicted of the offence arising from the same facts or circumstances.
- ▶ If an employer, administrator of a pension plan or an agent of either is convicted of an offence, the court may, in addition to imposing the fines and other penalties as prescribed, order the employer, or a director, officer or agent of the employer, to remit to the pension fund all amounts found not to have been remitted, with interest, or the amounts found to have been improperly withdrawn from the pension fund, with interest. The rate of interest shall be equal to the rate of return for the pension fund.

- ▶ The regulatory authority and its staff shall not be personally liable for any action done in good faith in the execution or intended execution of a duty or authority under the Act or regulation, or for any alleged neglect or default in the execution in good faith of a duty or authority under the Act or regulation.
- ▶ A prosecution for an offence may be commenced at any time within, but not later than, two years after the date the regulatory authority first became aware of the subject matter of the offence.
- ▶ In any prosecution for an offence, a certificate signed by the regulatory authority certifying that any document has been filed with the regulatory authority, certifying that any document has not been filed with the regulatory authority as required under the Act or regulation, or certifying the registration status of a pension plan or an amendment to a plan, is admissible as evidence and is proof, in the absence of evidence to the contrary, of the matters so certified.

#### **45. Regulations**

- ▶ The Lieutenant Governor in Council/Governor in Council may make regulations relating to specified areas, including any exemption from the Act or regulation.

#### **46. Review of the Act**

- ▶ Within five years after the Act comes into force, and within each five-year period following that date, the regulatory authority shall undertake a review of the Act and regulation.

---

## APPENDIX A – GLOSSARY OF TERMS

---

<i>additional voluntary contributions</i>	voluntary contributions made by a member with no obligation on the employer to contribute, and that are different from optional ancillary contributions.
<i>continuous</i>	in relation to employment, membership or service, means without regard to periods of temporary suspension of employment, membership or service, and without regard to periods of lay-off from employment.
<i>fundholder</i>	<p>a person or combination of persons, as prescribed, who hold the pension fund of a pension plan, including:</p> <ul style="list-style-type: none"><li>▶ an insurance company under a contract for insurance;</li><li>▶ a trust in Canada governed by a written trust agreement under which the trustees are:<ul style="list-style-type: none"><li>• a trust company as defined in relevant legislation;</li><li>• three or more individuals (A) at least three of whom reside in Canada; and (B) at least one of whom is independent of any employer contributing to the pension fund, to the extent the individual is neither a significant shareholder, partner, proprietor, director, officer, nor an employee of an employer contributing to the fund or an affiliate of the employer;</li></ul></li><li>▶ a corporate pension society (established under the Pension Fund Societies Act (Canada));</li><li>▶ under the Government Annuities Act (Canada); or,</li><li>▶ a board, agency, commission or corporation made responsible by an Act of the Legislature for the administration of the pension fund.</li></ul>
<i>multi-employer pension plan</i>	<p>a pension plan organized and administered for employees of two or more employers who contribute to the plan pursuant to an agreement, by-law or statute, where the plan provides pension benefits that are determined by periods of employment with any or all of the participating employers, but does not include a pension plan where 95 per cent of the plan members are employed by participating employers:</p> <ul style="list-style-type: none"><li>▶ who are affiliates within the meaning of the Business Corporations Act; or,</li><li>▶ if one or more of such participating employers are not business corporations, are directly or indirectly controlled by the same person.</li></ul>
<i>negotiated cost plan</i>	a pension plan, including a multi-employer pension plan, where an employer's financial contribution to the plan is limited to the amount the employer is contractually required to contribute to the plan.
<i>optional ancillary contributions</i>	contributions made by a member to a pension plan, for conversion to optional ancillary benefits, that are in addition to those contributions required to obtain a pension and includes compound interest on those contributions.

---

---

<i>other plan beneficiaries</i>	persons other than members or active members of the plan who are entitled to payments under the pension plan, and excludes an employer which has made or is making contributions to the plan.
<i>pension benefit</i>	a periodic amount to which, under the terms of a pension plan, a member or active member, or the spouse, beneficiary or estate of a member or active member, is or may become entitled.
<i>pension plan</i>	a plan organized and administered to provide pension benefits to or in respect of employees and former employees, and to which the employer is required under or in accordance with the terms of the pension plan to contribute, and does not include a prescribed arrangement. [Examples of prescribed arrangements include an employees profit sharing plan and deferred profit sharing plan as defined in the Income Tax Act (Canada), registered retirement savings plan, supplementary pension plan, “retiring allowance” and a plan which is not registrable under the Income Tax Act (Canada).]
<i>prescribed amounts</i>	additional voluntary contributions, optional ancillary contributions, small commutation amounts, excess contributions, shortened life expectancy amounts, and transfers to members who are non-residents of Canada.
<i>prescribed conditions</i>	include: <ul style="list-style-type: none"><li>▶ requirements for conversion valuation;</li><li>▶ prescribed method for calculating the value of members’ benefit entitlement;</li><li>▶ each member affected by the conversion must be given a statement containing prescribed information;</li><li>▶ each active member affected by the conversion must be given the option of preserving their benefits in the original form;</li><li>▶ if no election is received, a member is deemed to have elected to preserve their benefits in the original form;</li><li>▶ if annuities are purchased to pay out benefits, such annuities must be in the prescribed form; and,</li><li>▶ provisions regarding the treatment of contributions in excess of the 50 per cent rule.</li></ul>
<i>prescribed eligibility criteria</i>	as referred to in Principle 13 means the employee has, in the calendar year preceding their application for membership, (a) earned 35 per cent of the YMPE; or (b) 700 hours or more of service. A plan may choose to apply both criteria, in which case the person is eligible to join the plan as soon as one of the criteria is met.

---



---

<i>prescribed period of time</i>	as referred to in Principle 7 means for a period of at least six years after: <ul style="list-style-type: none"><li>▶ in the case of a record relating to a person entitled to benefits under the pension plan, the date all rights or entitlements of the person under the pension plan are paid, settled or extinguished;</li><li>▶ in the case of any document that creates or supports the pension plan or any predecessor pension plan, the later of the date upon which the last assets of the pension fund are distributed and the date upon which the wind up of the pension plan is approved by the regulatory authority; and,</li><li>▶ in the case of any other record, the later of the date of the last transaction to which the record relates or the date when the record ceases to be operative.</li></ul>
<i>prescribed plan</i>	a simplified pension plan, a small pension plan, a plan with an administrator appointed by the regulatory authority, and a plan exempt from Principle 5 by the regulatory authority.
<i>prescribed times</i>	as referred to in Principle 13 means the first day of the month after the employee has 24 months of continuous service with one or more participating employers, and on the first day of the plan fiscal year thereafter.
<i>regulatory authority</i>	the individual or body having the control and supervision of the administration of the pension legislation of that jurisdiction.
<i>simplified pension plan</i>	a pension plan that meets the prescribed conditions for a simplified pension plan.
<i>spouse</i>	in relation to another person, (a) a person who, at the relevant time, was married to that other person and had not been living separate and apart from that other person; or (b) if there is no person to whom clause (a) applies, a person who has lived with that other person in a conjugal relationship for at least one year. Because the definition of “spouse” is dependent on other legislation, this definition may vary across jurisdictions.
<i>surplus</i>	the amount by which the value of the assets of a pension fund related to a pension plan exceeds the value of the liabilities under the pension plan, both calculated in the prescribed manner.

---