

1980

c 373 Pension Benefits Act

Ontario

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CHAPTER 373

Pension Benefits Act

1.—(1) In this Act,

Interpre-
tation

- (a) "Commission" means the Pension Commission of Ontario;
- (b) "designated province" means a province or territory of Canada that is designated by regulation as a province or territory in which there is in force legislation substantially similar to this Act;
- (c) "employee" means an individual who performs service in Ontario or in a designated province for a continuous period of not less than six months under a contract of service or of apprenticeship, and includes an officer or director of a corporation or of an unincorporated organization and an agent acting for his principal on a substantially full-time basis;
- (d) "employer" means, in relation to an employee, any person or association from whom the employee receives his remuneration, and includes Her Majesty in right of Ontario, an agent of Her Majesty, a municipality as defined in the *Municipal Affairs Act*, and a metropolitan municipality and the local boards thereof;
- (e) "Fund" means the Pension Benefits Guarantee Fund established by section 30;
- (f) "life annuity" means an annuity that continues for the duration of the life of the annuitant, whether or not it is thereafter continued to some other person, and "deferred life annuity" means a life annuity that commences at retirement age under a pension plan, but in any event not later than age seventy years;
- (g) "Minister" means the Minister of Consumer and Commercial Relations or such other member of the Executive Council as is designated by the Lieutenant Governor in Council to administer this Act;

R.S.O. 1980,
c. 303

- (h) "pension benefit" means the aggregate annual, monthly or other periodic amounts to which an employee will become entitled upon retirement or to which any other person is entitled by virtue of his death after retirement under a pension plan, and "pension benefit credit" means the value at a particular time of the pension benefits and any other benefits provided under the pension plan to which an employee has become entitled;
- (i) "pension plan" means a superannuation or pension fund or plan organized and administered to provide a pension benefit for employees, and includes,
- (i) a unit benefit plan under which pension benefits are determined with reference to remuneration of an employee for each year of service, or for a selected number of years of service,
 - (ii) a money purchase plan under which pension benefits are determined at the retirement of an employee with reference to the accumulated amount of the aggregate contributions paid by or for the credit of the employee,
 - (iii) a flat benefit plan under which the pension benefits are expressed either as a fixed amount in respect of each year of employment or as a fixed periodic amount, and
 - (iv) a deferred profit sharing pension plan other than an employee's profit sharing plan or a deferred profit sharing plan as defined in sections 144 and 147 of the *Income Tax Act* (Canada);
- (j) "qualification date" means, in respect of employment in Ontario, the 1st day of January, 1965, and, in respect of employment in a designated province, the date upon which, under the law of such province, a pension plan is required to maintain its qualification for registration;
- (k) "registered pension plan" means a pension plan that is registered with and certified by the Commission as a plan organized and administered in accordance with this Act;
- (l) "regulations" means the regulations made under this Act;

- (m) "service for a continuous period" means service for a period of time without regard to periods of temporary suspension of employment;
- (n) "Superintendent" means the Superintendent of Pensions;
- (o) "supplemental pension plan" includes a pension plan established for employees whose membership in another pension plan is a condition precedent to membership in the supplemental pension plan;
- (p) "voluntary additional contribution" means an additional contribution by an employee to or under a pension plan except a contribution the payment of which, under the terms of the plan, imposes upon the employer an obligation to make a concurrent additional contribution to or under the plan. R.S.O. 1970, c. 342, s. 1 (1); 1973, c. 113, s. 1; 1980, c. 80, s. 1; O. Reg. 171/72.

(2) For the purposes of this Act, a person shall be deemed to be employed in the province in which the establishment of his employer to which he reports for work is situated, and, where the employee is not required to report for work at any establishment of his employer, he shall be deemed to be employed in the province in which the establishment of his employer from which his remuneration is paid is situated. ^{Province in which person deemed employed}

(3) In the event of conflict between any provision of this Act and any provision of any other Act, the provision of this Act prevails. R.S.O. 1970, c. 342, s. 1 (2, 3). ^{Conflict}

2.—(1) The Pension Commission of Ontario is continued and shall be composed of not fewer than five and not more than nine members as the Lieutenant Governor in Council from time to time may determine. ^{Pension Commission continued}

(2) The Lieutenant Governor in Council shall appoint the chairman, the vice-chairman and the other members of the Commission, each of whom shall hold office for a term of three years, except that, of those first appointed, one-third, or as nearly as may be, shall be appointed for a term of one year, one-third, or as nearly as may be, for a term of two years, and the remainder for a term of three years. ^{Appointments}

(3) Every member of the Commission is eligible for reappointment upon the completion of his term of office. R.S.O. 1970, c. 342, s. 2. ^{Reappointment}

Acting
chairman

3. In the event of the absence of the chairman and the vice-chairman, such member of the Commission as the members of the Commission designate for the purpose shall act as and have the powers of the chairman. R.S.O. 1970, c. 342, s. 3.

Vacancies

4. The Lieutenant Governor in Council may fill any vacancy that occurs from time to time in the membership of the Commission. R.S.O. 1970, c. 342, s. 4.

Quorum

5. One-half or more of the members of the Commission constitute a quorum, whether or not a vacancy exists in the membership of the Commission. R.S.O. 1970, c. 342, s. 5.

Adminis-
trative
divisions

6. The Commission may establish such administrative divisions as appear to be appropriate from time to time. R.S.O. 1970, c. 342, s. 6.

Superin-
tendent of
Pensions

7.—(1) The Commission shall appoint the Superintendent of Pensions who shall be the chief administrative officer of the Commission.

Inspection

(2) The Superintendent or his duly authorized representative may, at any reasonable time,

(a) inspect the books, files, documents and other records respecting a pension plan kept by an employer, an insurer, a trustee of the pension plan or any other person; and

(b) require any employer, insurer, trustee of a pension plan or other person to furnish, in a form acceptable to the Commission, such information as the Commission considers necessary for the purpose of ascertaining whether this Act and the regulations have been or are being complied with. R.S.O. 1970, c. 342, s. 7.

Staff

8.—(1) The Commission may appoint such officers, clerks, servants and other members of its staff as it considers appropriate.

Terms of
employment

(2) The Commission may, subject to the approval of the Lieutenant Governor in Council, establish job classifications, salary ranges and the terms and conditions of employment of the members of its staff.

R.S.O. 1980,
c. 419,
applicable

(3) The *Public Service Superannuation Act* applies to the permanent members of the staff of the Commission and to those members of the Commission designated by the Lieutenant Governor in Council.

(4) Every person who is entrusted by the Commission with the custody or control of money in the course of his employment shall give security in the manner and form provided by the *Public Officers Act*. R.S.O. 1970, c. 342, s. 8. Security
R.S.O. 1980,
c. 415

9. No member of the Commission and no employee thereof is personally liable for anything done by it or him in good faith under the authority of this Act or the regulations. R.S.O. 1970, c. 342, s. 9. Liability of
members and
employees of
Commission

10.—(1) It is the function of the Commission and it has power, Functions
and powers
of Com-
mission

- (a) to promote the establishment, extension and improvement of pension plans throughout Ontario;
- (b) to accept for registration all pension plans required to be registered or filed for registration with the Commission under this Act, and to reject any pension plan that does not qualify for registration;
- (c) to administer and enforce this Act, and to cancel pension plan certificates of registration issued in respect of any pension plans,
 - (i) that fail to meet the tests for solvency prescribed by the regulations, or
 - (ii) in respect of which the employer or the plan administrator has failed to comply with this Act or the regulations, or
 - (iii) that are not being administered according to a contractual provision required by this Act or the regulations;
- (d) to conduct surveys and research programs and to obtain statistics for the purposes of the Commission;
- (e) to assess and collect fees for the registration and annual supervision of pension plans; and
- (f) to perform such other functions and discharge such other duties as are assigned to it from time to time by the Lieutenant Governor in Council. R.S.O. 1970, c. 342, s. 10 (1); 1973, c. 113, s. 2.

(2) The Commission may, subject to the approval of the Lieutenant Governor in Council, Reciprocal
agreements

- (a) enter into agreements with the authorized representatives of a designated province or the Government of Canada to provide for the reciprocal registration, audit and inspection of pension plans and for the establishment of a Canadian association of pension commissions;
- (b) authorize a Canadian association of pension commissions to carry out such duties on behalf of the Commission as the Commission may require; and
- (c) delegate to the pension commission or to the government of a designated province such functions and powers under this Act as the Commission may determine. R.S.O. 1970, c. 342, s. 10 (2).

Appropriations

11. The moneys required for the purposes of the Commission shall be paid out of the moneys appropriated therefor by the Legislature. R.S.O. 1970, c. 342, s. 11; 1973, c. 113, s. 3.

Audit

12. The accounts and financial transactions of the Commission shall be examined annually by the Provincial Auditor. R.S.O. 1970, c. 342, s. 12.

Annual report

13.—(1) The Commission shall make an annual report of the affairs of the Commission to the Minister.

Tabling

(2) The Minister shall submit the annual report to the Lieutenant Governor in Council and shall then lay the report before the Assembly if it is in session or, if not, at the next ensuing session. R.S.O. 1970, c. 342, s. 13.

Actions for deducting sums

14. No action lies against any person for withholding, deducting, paying or crediting any sum of money in compliance or intended compliance with this Act. R.S.O. 1970, c. 342, s. 14.

Agreements void

15. Where this Act requires an amount to be deducted, withheld, paid or credited, an agreement by the person on whom that obligation is imposed not to deduct, withhold, pay or credit such amount is void. R.S.O. 1970, c. 342, s. 15.

Pension agency

16. The Lieutenant Governor in Council may establish or designate an agency for the purposes, among others, of receiving, holding and disbursing pension benefit credits under this Act. R.S.O. 1970, c. 342, s. 16.

17.—(1) Every employer of employees in Ontario covered by a pension plan established before the 1st day of January, 1965, shall, unless under the terms of the plan the employer is not required to make contributions to or under the plan,

Registration of pension plans established before Jan. 1, 1965

- (a) file a copy of such pension plan with the Commission for registration on or before the 1st day of January, 1965, or as soon thereafter as the Commission may require; and
- (b) while such plan remains in force, maintain its qualification for registration as required by this Act.

(2) Every employer who establishes a pension plan for employees in Ontario on or after the 1st day of January, 1965, shall, unless under the terms of the plan the employer is not required to make contributions to or under the plan,

Pension plans established on or after Jan. 1, 1965

- (a) file a copy of the pension plan with the Commission for registration within sixty days after the establishment of the plan; and
- (b) while the plan is in force, maintain its qualification for registration as required by this Act.

(3) Notwithstanding subsections (1) and (2), a pension plan required to be registered shall be deemed to include a supplemental pension plan established by the employer under the terms of which the employer is not required to make contributions.

Supplemental plan included

(4) Every employer of employees in Ontario covered by a pension plan shall file with the Commission annually an information return as prescribed by the regulations in respect of every pension plan administered by or on behalf of the employer or the employees. R.S.O. 1970, c. 342, s. 18.

Annual returns

18. The Commission shall accept for registration and issue its certificate in respect of each pension plan filed for registration under section 17 that in the opinion of the Commission is a pension plan organized and administered in accordance with this Act. R.S.O. 1970, c. 342, s. 19.

Acceptance of plans for registration

19. After a pension plan is filed with the Commission for registration, the Superintendent shall advise the Com-

Procedure upon refusal to register

mission in writing of his opinion as to whether or not the plan is organized and administered in accordance with this Act, and no penalty shall be imposed upon an employer under this Act for failure to register a pension plan until the written opinion of the Superintendent has been received by the Commission and the Commission has notified the employer of its decision concerning registration of the plan by registered mail and sixty days have elapsed thereafter. R.S.O. 1970, c. 342, s. 20.

Vesting and
locking-in
requirement

20.—(1) A pension plan filed for registration in accordance with section 17 shall contractually provide that,

- (a) a member of the plan who has been in the service of the employer for a continuous period of ten years, or has been a member of the plan for such period, whichever first occurs, and who has attained the age of forty-five years, is entitled, upon termination of his employment prior to his attaining retirement age, or upon termination of his membership in the plan prior to his attaining retirement age, to a deferred life annuity commencing at his normal retirement age equal to the pension benefits (except pension benefits provided by voluntary additional contributions) provided in respect of service as an employee in Ontario or in a designated province,
 - (i) under the terms of the plan in respect of service on or after the qualification date,
 - (ii) by an amendment to the terms of the plan made on or after the qualification date, or
 - (iii) by the creation of a new pension plan on or after the qualification date;
- (b) both the pension benefits provided under the terms of the plan and the deferred life annuity prescribed by this section are not capable of assignment or alienation and do not confer upon any employee, personal representative or dependant, or any other person, any right or interest in the pension benefits or the deferred life annuity capable of being assigned or otherwise alienated; and
- (c) upon termination of his employment or upon termination of his membership in the plan, a member

of the plan who is entitled to a deferred life annuity under clause (a) is not entitled to withdraw any part of his contributions to or under the plan, except voluntary additional contributions, in respect of service in Ontario or in a designated province on or after the qualification date, and such contributions shall be applied under the terms of the plan toward the provision of the deferred life annuity required to be provided to the employee under clause (a).

(2) Notwithstanding any provision of a pension plan,

No surrender or commutation

(a) the deferred life annuity prescribed by subsection (1) is not capable of surrender or commutation during the lifetime of the employee and does not confer upon any employee, personal representative or dependant, or any other person, any right or interest in the deferred annuity capable of being surrendered or commuted during the lifetime of the employee;

(b) the pension benefits provided under the terms of the plan in respect of service after the qualification date are not, on or after the date of retirement of an employee, capable of surrender or commutation during his lifetime and do not confer upon any employee, personal representative or dependant, or any other person, any right or interest in such pension benefits capable of being surrendered or commuted during the lifetime of the employee; and

(c) an employee shall not withdraw any part of his contributions, not including voluntary additional contributions, paid under the plan in respect of service in Ontario or in a designated province on or after the qualification date, other than after,

(i) the termination of his employment, or

(ii) the termination or winding up of the plan,

prior to his attaining retirement age and in circumstances where he is not entitled to a deferred life annuity under subsection (1). R.S.O. 1970, c. 342, s. 21 (1, 2).

(3) Notwithstanding subsections (1) and (2), a pension plan may provide for,

Exception, small annuities

- (a) vesting or locking in at an earlier age than forty-five years or upon service or membership in the plan for less than ten years, or for both; and
- (b) payment to an employee of an amount equal to the commuted value of the deferred life annuity or pension benefit to which the employee is entitled if the amount thereof payable to the employee at normal retirement age is less than \$25 a month payable during his lifetime. R.S.O. 1970, c. 342, s. 21 (3); 1980, c. 80, s. 2.

partial
commuta-
tion

(4) Notwithstanding subsections (1) and (2), where a pension plan so provides, an employee may receive in partial discharge of his rights under the plan as a lump sum, upon or after termination of employment or membership in the plan prior to his attaining normal retirement age as defined by the plan, an amount that in total does not exceed 25 per cent of the commuted value of the deferred life annuity prescribed by subsection (1).

alternative
settlements

(5) If a pension plan so provides, a person who is entitled to a deferred life annuity under subsection (1) may, before the commencement of payment of such life annuity, elect to receive,

- (a) a deferred life annuity the amount of which is reduced or increased by reason of early or deferred retirement, by provision for the payment of an optional annuity to a survivor or to the estate of the employee, or by variation of the terms of payment of such annuity to any person after the employee's death; and
- (b) a payment or series of payments by reason of a mental or physical disability as prescribed by the regulations,

partly or wholly in lieu of the deferred life annuity described by subsection (1).

Integration
with
government
pension

(6) If a pension plan so provides, an employee may, on or before attaining normal retirement age as defined by the plan, elect to receive an annuity the amount of which is varied by reference to benefits payable under the *Old Age Security Act* (Canada) or under any other pension plan administered by the Government of Canada or by the government of a province of Canada.

R.S.C. 1970,
c. O-6

(7) Notwithstanding any provision of a pension plan, ^{winding up of plan} upon termination or winding up of the pension plan all contributions made after the qualification date in respect of the deferred life annuity prescribed in subsection (1) to which any person is entitled shall be applied, subject to subsection (9) and to the extent not already applied, towards the provision of the pension benefits prescribed in subsection (1).

(8) For the purpose of determining the pension benefits ^{Determination of benefits on winding up of plan} to which a person may be entitled under subsection (1) at the date of termination or winding up of the pension plan,

- (a) each employee shall be deemed to have terminated his employment prior to attaining retirement age on the date of the termination or winding up of the plan; and
- (b) each former employee who retired on pension from the service of the employer shall be deemed to have terminated his employment prior to attaining retirement age but on the date of his retirement.

(9) Notwithstanding subsections (1) and (2) and notwithstanding any provision of a pension plan, upon the termination or winding up of a pension plan where, ^{Reduction of additional benefits}

- (a) the benefits arising from the deferred life annuities prescribed in subsection (1) include additional pension benefits provided by an amendment to the terms of the plan made after the qualification date or by the creation of a plan after the qualification date, in respect of service prior to such amendment or creation; and
- (b) the funding of such additional pension benefits, as required by the regulations, has not been completed,

the amount of such additional pension benefits may be reduced in accordance with the regulations.

(10) A pension plan filed for registration in accordance with section 17 shall provide for contributions and benefits ^{Contribution and benefit formula} calculated in accordance with a formula prescribed by the regulations. R.S.O. 1970, c. 342, s. 21 (4-10).

(11) Notwithstanding any provision of this section and any provision of a pension plan, where, ^{Benefit not to be less than contributions}

- (a) any employee is entitled upon termination of his employment or upon termination of his membership in a pension plan to a deferred or immediate pension benefit; and
- (b) on the date of termination of his employment or termination of his membership in a pension plan, his pension benefit credit is less than the value of his contributions made to the plan towards such pension benefit,

his pension benefit credit shall be increased to an amount not less than the said value of his contributions. 1973, c. 113, s. 4.

Funding and solvency requirement of plans

21.—(1) A pension plan filed for registration in accordance with section 17 shall contractually provide for,

- (a) funding, in accordance with the tests for solvency prescribed by the regulations, that is adequate to provide for payment of all pension benefits, deferred life annuities and other benefits required to be paid under the terms of the plan; and
- (b) investment of pension fund moneys in the securities and loans prescribed by the regulations. R.S.O. 1970, c. 342, s. 22 (1); 1973, c. 113, s. 5.

Winding up of plan

(2) Upon the termination or winding up of a pension plan filed for registration as required by section 17, the employer is liable to pay all amounts that would otherwise have been required to be paid to meet the tests for solvency prescribed by the regulations, up to the date of such termination or winding up, to the insurer, administrator or trustee of the pension plan.

No reduction of present benefits because of C.F.P. 1964-65, c. 51 (Can.)

(3) No amendment of a pension plan consequent upon the coming into force of the *Canada Pension Plan* shall adversely affect the pension benefit credits of any member in respect of remuneration and service or membership in the plan prior to the 1st day of January, 1966. R.S.O. 1970, c. 342, s. 22 (2, 3).

Contents of plans

22. In any pension plan filed for registration in accordance with section 17,

- (a) the age and service conditions for membership shall not, in the opinion of the Commission,

prevent the gradual accrual of benefits or the spreading of the employer's contributions over an employee's years of service in the class covered by the plan, and

- (b) provision for computation of the employer's contributions and of the pension benefit and, in the case of a deferred profit-sharing pension plan, the formula governing allocation of contributions and surplus amongst the members of the plan shall not be variable at the discretion of the employer,

unless in the opinion of the Commission the circumstances of the plan warrant otherwise. R.S.O. 1970, c. 342, s. 23.

23.—(1) Where a sum is received by an employer from an employee under an arrangement for the payment of the sum by the employer into a pension plan as the employee's contribution thereto, the employer shall be deemed to hold the sum in trust for the employee until the sum is paid into the pension plan whether or not the sum has in fact been kept separate and apart by the employer and the employee has a lien upon the assets of the employer for such amount that in the ordinary course of business would be entered in books of account whether so entered or not.

Employee contribution to pension fund is trust fund in hands of employer

(2) For the purposes of subsection (1), any sum withheld by an employer, whether by payroll deduction or otherwise, from moneys payable to an employee, shall be deemed to be a sum received by the employer from the employee.

Idem: payroll deductions

(3) Where an employer is required to make contributions to a pension plan, he shall be deemed to hold in trust for the members of the plan an amount calculated in accordance with subsection (4), whether or not,

Employer's contributions held in trust

- (a) the employer contributions are payable into the plan under the terms of the plan or this Act; or
- (b) the amount has been kept separate and apart by the employer,

and the members have a lien upon the assets of the employer in such amount that in the ordinary course of business would be entered into the books of account whether so entered or not.

(4) For the purpose of determining the amount deemed to be held in trust under subsection (3) on a specific date, the calculation shall be made as if the plan had been wound up on that date. 1980, c. 80, s. 3.

Determining amount of trust funds

Distribution
of informa-
tion to
employees

24.—(1) Every employer shall provide to each employee who is eligible or required to become a member of a registered pension plan, with reference to the benefits available to him under the terms of the plan,

- (a) a written explanation of the terms and conditions of the plan applicable to him;
- (b) a written explanation of the rights and duties of the employee; and
- (c) such other information as may be prescribed by the regulations,

on or before the date such employee is eligible or required to become a member.

Idem

(2) Within six months after a pension plan is established, every employer shall provide the explanation and information referred to in subsection (1) respecting the plan to each member of the plan and to each eligible employee.

Idem

(3) Within six months after a pension plan is amended, the employer shall provide the explanation and information referred to in subsection (1) respecting the plan as amended to each member affected by the amendment and to each eligible employee.

Idem

(4) Every employer shall provide an employee who, upon termination of employment or termination of membership in a pension plan, becomes entitled to an immediate or deferred pension benefit with a written statement showing the benefits to which he is entitled or to which he may become entitled. 1973, c. 113, s. 6, *part*.

Idem

(5) Every employer shall provide to each member of his registered pension plan such information respecting the member's entitlements under the plan as is prescribed by regulations at least once in every three years or within such shorter time period as is prescribed.

Idem

(6) Upon the written request by a member of a registered pension plan, an employer shall make available to the member such documents and statistical, actuarial and financial information respecting the plan as is prescribed by the regulations in the form and within the time period prescribed. 1980, c. 80, s. 4.

Inspection of
plan by
members

25. A member of a registered pension plan or his agent authorized in writing may inspect and make extracts from the plan at the offices of the Commission at any time during business hours. 1973, c. 113, s. 6, *part*.

26.—(1) Where a pension plan is wound up, in whole or in part, an employee in Ontario whose membership in the plan is terminated and who at the date of termination has been in the service of his employer for a continuous period of ten years or has been a member of the plan for a period of ten years and who has attained the age of forty-five years has the right to elect, ^{Employee option on termination or wind up}

- (a) where the employee is eligible under the terms of the plan for an immediate pension, to receive an immediate pension benefit in accordance with the benefit formula of the plan and the terms set out in the plan;
- (b) to receive a pension benefit starting payment at,
 - (i) his normal retirement age under the plan, or
 - (ii) where the pension plan provided for early retirement with an unreduced pension benefit, the age prior to his normal retirement age at which the employee would have been eligible to receive his pension benefit without reduction, if the plan and his participation in it had continued,

whichever comes first;

- (c) where the pension plan provides for early retirement with a reduced pension benefit, to receive a reduced pension benefit starting payment at any age he would have been entitled to such benefit if the plan and his participation in it had continued;
- (d) to transfer his pension benefit credit to a pension plan of his new employer provided the transfer is accepted by the pension plan of his new employer; or
- (e) to transfer the amount of his pension benefit credit to a registered retirement savings plan.

(2) Where a pension plan is wound up, in whole or in part, all bridging supplements that are excluded from the requirements of clause 20 (1) (a) shall be included for the purpose of calculating the pension benefit of all employees who meet the requirements set out in subsection (1). ^{Bridging supplements included in computation}

(3) Where the employee is entitled to a pension benefit under clause (1) (a), (b) or (c), and the pension plan does not provide an automatic or optional survivor benefit, the employee shall have the right to elect to receive his pension benefit, the amount of which may be reduced or increased by provision for the ^{Survivor option}

payment of an optional annuity to a survivor or to the estate of the employee or by variation of the terms of payment of such annuity to any person after the employee's death.

Where employee does not elect

(4) An employee to whom subsection (1) applies shall make his election within three months after the termination or wind up or within three months after the date of a declaration of wind up under section 28, whichever is later, and if no election is made, the employer shall make the election for the employee.

Application of subs. (1-3)

(5) Subsections (1), (2) and (3) apply notwithstanding any provision to the contrary contained in the pension plan.

Notice period included in calculating pension benefits
R.S.O. 1980, c. 137

(6) For the purposes of calculating pension benefits on the wind up of a pension plan, the period of notice required to be given to a terminated employee under Part XII of the *Employment Standards Act* shall be included in computing the employee's length of service with his employer or his time in the plan, as the case may be. 1980, c. 80, s. 5.

Pension benefits not assignable or attachable

27.—(1) Moneys payable under a pension plan shall not be assigned, charged, anticipated or given as security and are exempt from execution, seizure or attachment, and any transaction purporting to assign, charge, anticipate or give as security such moneys is void. R.S.O. 1970, c. 342, s. 24.

Application of subs. (1)

(2) Subsection (1) does not apply to the execution, seizure or attachment of moneys payable under a pension plan in satisfaction of an order for support under the *Family Law Reform Act*. 1978, c. 2, s. 85.

R.S.O. 1980, c. 152

Declaration of Commission that a plan is wound up

28.—(1) The Commission, when it is of the opinion that an employer has discontinued or is in the process of discontinuing a part or all of his business operations in which a substantial number of his employees who are members of a pension plan are employed, may declare the pension plan wound up in whole or in part for the purposes of this Act on such date as the Commission in its discretion considers such business operations are discontinued. R.S.O. 1970, c. 342, s. 25 (1).

Idem

(2) The Commission may declare that a defined benefit pension plan is wound up in whole or in part for the purposes of this Act on such date as the Commission in its discretion considers appropriate, where,

(a) the employer providing the plan is bankrupt within the meaning of the *Bankruptcy Act* (Canada);

R.S.C. 1970, c. B-3

- (b) the plan has been terminated in whole or in part and the employer has failed to meet the funding requirements prescribed;
 - (c) the plan has been terminated in whole or in part and the Commission is of the opinion that because of his insolvency the employer will not be able to meet the funding obligations prescribed by regulation;
 - (d) the Commission has reason to believe that the amount of payments that the Fund may be required to guarantee may be expected to increase unreasonably if the plan is not wound up; or
 - (e) such other event as is prescribed by regulation occurs.
- 1980, c. 80, s. 6 (1), *part.*

(3) The Commission shall notify the employer by registered^{Notification} mail that the pension plan is wound up in whole or in part under subsection (1) or (2). R.S.O. 1970, c. 342, s. 25 (2); 1980, c. 80, s. 6 (2).

(4) Where the employer objects to the declaration made^{Notice of objection} by the Commission under subsection (1) or (2), he may within sixty days from the day of mailing of the notification of the Commission under subsection (3), serve on the Commission a notice of objection in duplicate in the prescribed form setting out the reasons for the objection and all relevant facts. R.S.O. 1970, c. 342, s. 25 (3); 1980, c. 80, s. 6 (3).

(5) Where a defined benefit pension plan is declared to be^{Commission as administrator} wound up in whole or in part by the Commission, the Commission, where it has reason to believe that the assets of the plan are not sufficient to provide full payment of the contributions and pension benefits set out in section 31, may take control of the assets of the pension plan and act as administrator of the plan for the purpose of the wind up. 1980, c. 80, s. 6 (1), *part.*

29.—(1) Where an employer who is bound by or is a^{Continuation of benefits under successor employer} party to a pension plan sells, assigns or otherwise disposes of all or part of his business or undertaking or all or part of the assets of his business or undertaking, and,

- (a) in conjunction therewith, an employee of the employer becomes an employee of the person acquiring such business, undertaking or assets, in this section called the successor employer; and
- (b) the successor employer does not assume responsibility for the accrued pension benefits of the employer's pension plan,

the employee referred to in clause (a) continues to be entitled to the benefits provided under the terms of the plan in respect of his service in Ontario or a designated province without further accrual.

Re-employment deemed not a termination

(2) Where a transaction described in subsection (1) has taken place, irrespective of whether the successor employer has or has not assumed responsibility for the accrued pension benefits of the employer's pension plan, for the purposes of the employer's plan, the employment or membership in the employer's plan of an employee referred to in clause (1) (a) shall be deemed not to have been terminated by reason of the transaction.

Service deemed continuous

(3) Where a transaction described in subsection (1) has taken place, irrespective of whether the successor employer has or has not assumed responsibility for the accrued pension benefits of the employer's pension plan, for the purpose of,

- (a) determining whether an employee is entitled to a deferred life annuity under a pension plan of the employer or successor employer; or
- (b) determining completed service with respect to any eligibility condition of a successor employer's pension plan,

the service of the employee shall be deemed to include his service with both the employer and the successor employer without any break in service notwithstanding the change of employers referred to in clause (1) (a). 1973, c. 113, s. 7.

Fund established

30.—(1) There is established a fund to be known as the Pension Benefits Guarantee Fund which shall be administered by the Commission.

Purpose

(2) The purpose of the Fund is to guarantee payment of the pension benefits set out in subsection 31 (1) where a defined benefit pension plan is wound up under subsection 28 (2) subject to such limits and qualifications as are set out in the regulations.

Advances or loans to Fund

(3) If, at any time, the amount standing to the credit of the Fund is insufficient for the purpose of making payments for claims under this Act, the Lieutenant Governor in Council may authorize the Treasurer of Ontario to make loans out of the Consolidated Revenue Fund to the Fund on such terms and conditions as the Lieutenant Governor in Council directs. 1980, c. 80, s. 7, *part.*

Benefits guaranteed

31.—(1) The pension benefits of a defined benefit pension plan that is wound up under subsection 28 (2) that are guaranteed by the Fund are,

- (a) all pension benefits that must be contractually provided under clause 20 (1) (a) provided in respect of service in Ontario of an employee who, at the date of wind up of the plan, has been in the service of his employer for a continuous period of ten years or has been a member of the plan for a period of ten years and who has attained the age of forty-five years;
- (b) all pension benefits in the course of payment to a retired member of the plan or his survivor or estate or to any person designated by the employee provided in respect of his service in Ontario and any such pension benefits the employee's survivor or estate or any person designated by him may become entitled to;
- (c) all pension benefits that must be contractually provided under clause 20 (1) (a) provided in respect of service in Ontario of a former member of the plan who, at the date of termination of his employment, had been in the service of his employer for a continuous period of ten years or was a member of the plan for a period of ten years and who had attained the age of forty-five years; and
- (d) the value of all employee contributions made to the plan in respect of service in Ontario to the extent that such value exceeds the value of pension benefits provided to an employee under clause (a), (b) or (c).

(2) For the purpose of subsection (1), "pension benefits" includes bridging supplements, whether or not the bridging supplements have been excluded from the requirements of clause 20 (1) (a) and any pension benefit that the employee has elected to receive under section 26. Inclusion of bridging supplements and elections

(3) The payment of,

- (a) a pension benefit provided by a plan that has been in effect for less than three years at the date of termination or wind up; or
- (b) any increase to a pension benefit that became effective within three years before the date of termination or wind up,

Payments not guaranteed

is not guaranteed by the Fund. 1980, c. 80, s. 7, *part.*

32. In addition to any amounts the employer is liable to pay under subsection 21 (2), where a defined benefit pension plan is terminated or wound up or the plan is amended so that it is no longer a defined benefit pension plan, the employer is liable to the plan for the difference between, Where a defined benefit pension plan discontinued

- (a) the value of the assets of the plan; and
- (b) the value of pension benefits guaranteed under subsection 31 (1) and any other pension benefit vested under the terms of the plan,

and the employer shall make payments to the insurer, trustee or administrator of the pension plan to fund the amount owing in such manner as is prescribed by regulation. 1980, c. 80, s. 7, *part.*

Lien on
assets

33. Where the Commission pays into a pension plan because the assets of the plan are not sufficient to finance the pension benefits guaranteed under subsection 31 (1), the Commission has a lien and charge on the assets of the employer for the amount of the payment and interest thereon and the Commission may enter into an agreement with the employer providing for repayment of the amount advanced together with interest thereon upon such terms and conditions as the Commission considers appropriate. 1980, c. 80, s. 7, *part.*

Amendments
reducing
benefits
prohibited

34. No amendment to a pension plan shall reduce the pension benefit credits accrued to the date of the amendment. 1980, c. 80, s. 7, *part.*

Notice of
objection

35.—(1) Where the Commission refuses to accept for registration a pension plan filed for registration under this Act, or cancels a certificate of registration, the employer may, within sixty days of the day of mailing of a notification of refusal or cancellation of registration, serve on the Commission a notice of objection in duplicate in the prescribed form, setting out the reasons for the objection and all relevant facts.

Service

(2) A notice of objection under section 28 or this section shall be served by being sent by registered mail addressed to the Commission at Toronto.

Review by
Commission

(3) Upon receipt of a notice of objection, the Commission shall with all due despatch reconsider its opinion, and vary or confirm its opinion, and it shall thereupon notify the employer of its actions by registered mail. R.S.O. 1970, c. 342, s. 26.

Appeal to
Divisional
Court

36.—(1) Where an employer has served a notice of objection under section 28 or 35, he may appeal to the Divisional Court,

- (a) within ninety days after the Commission has confirmed its opinion; or

- (b) after ninety days and before 180 days have elapsed after service of the notice of objection and the Commission has not notified the employer that it has confirmed or varied its opinion.

(2) An appeal to the court shall be instituted by filing with the Registrar of the Supreme Court or by sending by registered mail addressed to him at Toronto three copies of a notice of appeal in such form as is determined by the rules of court.

(3) Upon receipt of the copies of the notice of appeal, the Registrar shall transmit two copies to the Superintendent.

(4) Immediately after receiving a copy of the notice of appeal, the Superintendent shall forward to the Registrar copies of all documents relevant to the appeal.

(5) An appeal may, in the discretion of the court, be heard *in camera* or in public, unless the appellant requests that it be heard *in camera*, in which case it shall be so heard.

(6) The court may dispose of an appeal by dismissing it, by referring the matters in issue back to the Commission for reconsideration, or by allowing the appeal.

(7) Where the court allows an appeal under this section, the Commission shall accept the pension plan for registration or reinstatement in accordance with the direction of the court, which may include conditions precedent to qualification for registration or reinstatement of the plan imposed upon the appellant. R.S.O. 1970, c. 342, s. 27.

37. The *Statutory Powers Procedure Act* does not apply to determinations of the Commission under this Act or the regulations. 1980, c. 80, s. 8.

38.—(1) The Lieutenant Governor in Council may make regulations,

- (a) respecting methods of computing pension benefit credits and pension benefits and the commuted value of a deferred life annuity;
- (b) governing defined benefit pension plans and governing the maintenance and administration of the Fund by the Commission including, without limiting the generality of the foregoing, regulations,

- (i) governing the procedures to be followed by employers in reporting to the Commission and prescribing information to be provided in reports,
- (ii) governing the procedures to be followed in making and determining claims from the Fund,
- (iii) prescribing the maximum pension benefits guaranteed by the Fund or prescribing a method of calculating the maximum pension benefits,
- (iv) prescribing the method of calculating the total limit of the Fund's liability,
- (v) prescribing classes of pension plans and exempting any class of plan or any pension plan from any provision of this Act or the regulations,
- (vi) prescribing the interest payable on loans from the Fund to a pension plan,
- (vii) prescribing information to be submitted on the wind up of a pension plan, the person who shall submit the information and the time within which the information is to be submitted,
- (viii) specifying the priorities in allocating assets of a defined benefit pension plan on its wind up,
- (ix) authorizing the Commission to appoint a trustee with investment powers in respect of money in the Fund,
- (x) governing the procedures to be followed by the administrator of a pension plan in the distribution of assets of the plan on winding up,
- (xi) requiring premiums to be paid into the Fund by employers and prescribing the amount of the premiums or the method of calculating the premiums, classifying pension plans and providing for different premiums in respect of different classes of plans,
- (xii) governing assignments or transfers of defined benefit pension plans from one employer to another and setting out the obligations and liabilities of the transferring employer,

- (xiii) governing the termination or wind up of a defined benefit pension plan,
 - (xiv) prescribing funding requirements into a plan for the purposes of section 32 and authorizing the Commission to vary the requirements where financial hardship would result to the employer,
 - (xv) prescribing events upon the occurrence of which the Commission may declare a plan wound up under clause 28 (2) (e);
- (c) respecting the variation of pension benefits and deferred life annuities by reference to pensions payable under the *Old Age Security Act* (Canada) or under any other pension plan administered by the Government of Canada or by the government of a province of Canada; R.S.C. 1970,
c. 0-6
- (d) prescribing the classes of investments and loans, both qualitative and quantitative, in which pension fund moneys heretofore or hereafter accumulated may be invested, and governing the making of such investments and loans;
- (e) prescribing tests and standards for solvency of pension plans;
- (f) prescribing the conditions under which, upon termination of employment of an employee, upon termination of an employee's membership in a pension plan or upon the termination or winding up of a pension plan, pension benefit credits may be held in trust by the administrator, insurer or trustee of the pension plan, or transferred to the administrator, insurer or trustee of another pension plan or to a registered retirement savings plan or to the agency described in section 16;
- (g) designating employees or pension plans, or any class thereof, that are excepted from the application of this Act and the regulations;
- (h) designating any province or territory of Canada as a province or territory, as the case may be, in which there is in force legislation substantially similar to this Act;
- (i) specifying service that shall be deemed not to be service in a designated province;

- (j) prescribing mental or physical disability for the purpose of clause 20 (5) (b);
- (k) providing for, regulating and governing the disposition of the assets of a pension plan that is discontinued, terminated or wound up;
- (l) requiring the furnishing of information to the Commission in respect of pension plans;
- (m) requiring the furnishing of documents and information by employers to members of pension plans and prescribing time limits within which such documents and information are to be furnished;
- (n) prescribing forms and providing for their use;
- (o) prescribing fees for registration and the annual supervision of pension plans;
- (p) prescribing approved contribution and benefit formulae in respect of pension plans required to be registered under this Act;
- (q) defining "defined benefit pension plan" and "bridging supplement" for the purposes of this Act and the regulations;
- (r) respecting any matter necessary or advisable to carry out effectively the intent and purpose of this Act. R.S.O. 1970, c. 342, s. 28; 1980, c. 80, s. 9 (1).

Retroactive regulations

(2) A regulation made under this Act may be made retroactive in its application. 1980, c. 80, s. 9 (2).

Penalties

39.—(1) Every person who contravenes any of the provisions of this Act or the regulations or who obstructs an officer or agent of the Commission in the performance of his duties is guilty of an offence and on conviction is liable to a fine of not less than \$200 and not more than \$10,000.

Idem

(2) Every employer who is convicted of an offence under subsection (1) shall pay to the insurer, trustee or administrator of the pension plan in respect of which the offence was committed all amounts that the employer has wrongfully failed to pay as required by this Act and the regulations.

Idem

(3) Where a corporation is guilty of an offence under this Act, an officer, director or agent of the corporation

who directed, authorized, assented to, acquiesced in, or participated in, the commission of the offence is a party to and guilty of the offence and is liable on conviction to the punishment provided for the offence whether or not the corporation has been prosecuted or convicted. R.S.O. 1970, c. 342, s. 29 (1-3).

(4) No proceeding under this section shall be commenced more than two years after the time when the subject-matter of the proceeding arose. 1980, c. 80, s. 10.

Time limit
for
commencing
proceedings

