

October 2003

I am pleased to advise you that the Pension Commission's report and recommendations for reforms to The Pension Benefits Act is now available for review and comment.

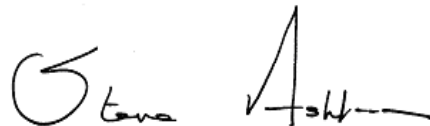
As you may be aware, the Pension Commission of Manitoba released a consultation paper in December 2002 on proposed reforms to the Act in order to obtain comments from stakeholders and interested persons. The Commission filed a report, containing its recommendations for pension reforms, with the Minister of Labour and Immigration for consideration by government, earlier this year.

In keeping with the philosophy that an open process of policy development leads to legislation that will benefit Manitobans, the Commission's report is available for viewing on its web site at <http://www.gov.mb.ca/labour/pension/index.html> under "What's New". Paper copies are available by contacting the Pension Commission at (204) 945-2740.

We invite you to share your comments on this report. Your comments will be taken into account in preparation of the legislation. Please send your feedback no later than March 31, 2004, to the following e-mail address: pensions@gov.mb.ca, or the Pension Commission of Manitoba at 1004 - 401 York Avenue, Winnipeg MB R3C 0P8.

We appreciate you taking the time to comment on the recommendations.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Steve Ashton". The signature is written in a cursive style with a large initial "S" and "A".

Steve Ashton
Minister of Labour and Immigration

Minister of Labour and Immigration

**The Pension Benefits Act of Manitoba
Reforms**



The Pension Commission of Manitoba

March 2003

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Minimum Standards

Recommendations

The Act should permit a pension plan to contain provisions that are more advantageous to members or other plan beneficiaries than those provided under the Act.

No person should be able to contract out of, or waive, a pension standard under the Act except as provided for under the Act.

Commentary

As all the pension standards in the Act are minimum requirements only, the change would formally recognize the ability of a plan to provide better or more advantageous provisions than the minimums, not just vesting and locking-in.

Expansion of Provision of Information and Inspection

Recommendations

In addition to a member, his or her spouse or partner, or an agent of either, the pension plan documentation and information presently available under the regulations should be accessible to:

- any other plan beneficiary;
- an employer required to contribute to the pension plan;
- an authorized agent of any other plan beneficiary or an employer;
- a representative of a trade union that represents members of the plan; or
- a prescribed person.

The pension plan documentation and information presently available for inspection should be expanded to include:

- a list of the investments held in the name of the plan, and
- the most recent audited financial statement of the plan, where applicable.

The annual benefit statement provided to active members should be expanded to include:

- prescribed information on contribution holidays, and
- a list of the documents and information held by the employer and available on request under the regulations.

Commentary

Expanding and improving disclosure requirements under the Act increases awareness and understanding of pension plans and their provisions.

It should be noted that these recommendations are not intended to expand access by other parties under the Act and regulations, to personal information being held by a pension plan in respect of a member or other plan beneficiary, which would otherwise not be accessible.

Pension Plan Eligibility & Membership

Recommendations

Manitoba should continue to require pension plan participation as a condition of employment where there is a pension plan in effect, or one established, for a class of employees. The exemptions presently in the legislation for the following groups should be maintained:

- students,
- members of religious groups,
- employees hired before 1984 or the effective date of the plan, if later, and
- employees receiving pensions that return to work for the same employer.

The earnings and service criteria for determining mandatory participation for non-full-time employees should be required membership in the plan upon completing 24 months of employment with the employer (as is presently required for full-time employees), and:

- earnings of not less than 35 per cent of the Year's Maximum Pensionable Earnings (YMPE) in each of two consecutive calendar years; or
- 700 hours of employment with the employer in each of two consecutive calendar years

immediately prior to membership in the pension plan. A pension plan may apply both the earnings and hours criteria in which case, the non-full-time employee would be required to join upon meeting one of the two criteria.

“Class” or “classes” should be set out in the regulations under the Act, as employees who fall within such categories as:

- employees who are paid a salary,
- employees who are paid on an hourly basis,
- employees who are members of a trade union,
- employees who are not members of a trade union,
- supervisory employees,
- management employees,
- executive employees,
- employees who are officers of the employer,
- employees who are significant shareholders, and
- employees belonging to such other identifiable group as is acceptable to the superintendent.

Separate plans for full-time and non-full-time employees, or the withdrawal or suspension by a member of his or her membership in the plan should not be permitted under the legislation.

Commentary

The Pension Commission is of the view that although Manitoba is the only jurisdiction that requires pension plan membership as a condition of employment, it should be maintained as a means of extending coverage in registered employment pension plans.

However, the service and earnings criteria for non-full-time employees should be harmonized with those of other jurisdictions, as the present minimum standards for membership are significantly different from all other jurisdictions.

Further, in defining “class” or “classes” in the legislation, Manitoba would be harmonized with all other jurisdictions in this regard.

Ancillary Benefits

Recommendation

“Ancillary benefits” are benefits which are in addition to regular pension benefits and survivor benefits in excess of those required by the legislation. Ancillary benefits should be recognized and defined in the legislation as including the following 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 regulations,
- enhanced early retirement benefits in excess of those required by the Act or regulations (e.g., unreduced pension with age and service equaling 85), and
- an ancillary benefit prescribed in the regulations under the Act (e.g., COLA).

Discretionary benefits that are granted only at the discretion or consent of the employer or the plan trustees should not be permitted under the legislation.

Commentary

Defining “ancillary benefits” will provide a clear distinction between the basic pension benefits which are subject to the vesting requirements of the Act, and the ancillary pension benefits which a member only has entitlement to on fully meeting the eligibility requirements for those benefits.

Further, this distinction will be useful for purposes of the Commission’s recommendation for flexible pension plans. Under a flexible pension plan, the “optional ancillary contributions” made by an active member to a flexible pension plan are used to purchase ancillary benefits which, while increasing the member’s total retirement benefit payable from the plan, do not increase the basic pension benefit determined by years of service and salary.

Finally, a member should be able to determine his or her pension benefit or entitlement to benefits according to the terms and conditions set out in the documents supporting the pension plan. A member cannot determine his or her benefits, if certain benefits are provided on a discretionary basis. For example, a pension plan should be prohibited from stating “a member will receive a benefit, subject to the consent or at the discretion of the employer.”

However, this recommendation is not intended to prevent an employer or trustees from providing a benefit solely for the benefit of a member, or class of members, provided the benefit is expressly documented in pension plan and funded in accordance with the tests for solvency under the legislation.

Vesting

Recommendation

Immediate and full vesting of basic pension benefits should be applied retroactively for all active members' service who become entitled to receive a basic pension benefit under a pension plan. It is recommended that this change would be effective on or after the coming into force of the legislation.

Commentary

With changes in the workplace and the increasing mobility of workers, pension benefits should vest as soon as the employee becomes a member of a pension plan. Immediate and full vesting will also simplify pension plan administration.

This recommendation is not intended to affect the vested rights of members who became entitled to benefits before the new legislation.

Entitlement to Pension Benefit

Recommendation

It is recommended that the normal retirement age under a pension plan should not be 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.

A member should be eligible to retire early on any date within 10 years prior to normal retirement age, and such pension may be reduced. The amount of pension payable to a member before he or she attains normal retirement age may be reduced, but the resulting pension payable should 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 the greater of:

- 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.

Commentary

A minimum standard for normal retirement age in the legislation ensures the right to early and deferred (late) retirement, as these rights are determined relative to the normal retirement or pensionable age.

A member's entitlement to retire early and commence receiving a pension is presently subject to "reasonable age and service" which are undefined. Clarity of the timing of this right is desirable. The amount of the early retirement adjustment to the pension by reason of early retirement is not presently limited under the Act.

Similarly on late retirement, the Act does not address the treatment of a defined benefit pension earned to the normal retirement date to reflect the period of time the member worked after normal retirement where the payment of that pension was deferred.

Fifty Percent Rule

Recommendation

The legislation should be clarified to provide that a member will not fund more than 50% of the commuted value of his or her accrued benefit respecting periods of contributory service on and after January 1, 1985. It should be further clarified that this rule is to be applied at the retirement or death of the member, the termination of membership or employment, or the conversion of the member's defined benefits to defined contribution benefits.

The 50% rule should not apply with respect to the member's:

- additional voluntary contributions,
- optional ancillary contributions (see Flexible Pension Plans, page 15), and
- contributions made to purchase past-service benefits and any benefits resulting from such contributions.

Where the application of the 50% rule results in excess member required contributions and accumulated interest, the plan should permit the member to elect, at his or her option, to receive such excess contributions as:

- a lump sum,
- a transfer directly to the member's Registered Retirement Savings Plan (RRSP) or Registered Retirement Income Fund (RRIF), if permitted under the *Income Tax Act (Canada)*, or
- if permitted under the plan, additional pension benefits purchased under the plan.

It is recommended that these changes would be effective on or after the coming into force of the legislation.

Commentary

Clarification that the 50% rule does not apply to the member's additional voluntary contribution, ancillary optional contributions to flexible pension plans (see Flexible Pension Plans, page 15), contributions made to purchase past service buy-backs etc., or to a period of non-contributory service, is desirable.

Further, the right to transfer excess member required contributions and interest to an RRSP provides more flexibility to the member.

Joint and Survivor Pension

Recommendation

The legislation should provide that the joint and survivor pension benefit be payable to the spouse or partner of a member *on the death of the member only*. The survivor pension payable should be not less than 60% of the pension benefit that was payable to the member before the member's death, the commuted value of which should not be less than the commuted value of the pension benefit that would be otherwise payable to the member.

The spouse or partner should be able to waive his or her entitlement to a joint and survivor pension benefit by providing a waiver in the prescribed form to the administrator within the prescribed period of time before payment of the member's pension benefit commences.

The waiver form should be signed separate and apart from the member. Further, it should include a recommendation that the spouse or partner obtain independent professional legal or financial advice, before executing the waiver.

The spouse or partner should be permitted to cancel or revoke the above-mentioned waiver by delivering a written and signed notice of cancellation to the administrator, before payment of the member's pension benefit commences.

Further, only a spouse or common-law partner who is cohabiting with the member or former member at retirement should be entitled to receive the survivor pension.

It is recommended that these changes only affect those retiring on or after the coming into force of the legislation.

Commentary

Manitoba is the only jurisdiction to require, as a minimum, that the pension payable to the married spouse or partner of a member, be a joint and 66% pension. Such a provision would harmonize the Act with all other jurisdictions.

If the spouse or partner predeceases the member, the pension should not reduce to the survivor level, which under the current legislation is 66%.

Requiring only the spouse or partner to execute the waiver, rather than both the member and the spouse or partner, would harmonize Manitoba's legislation with most other jurisdictions.

Presently, a separated spouse remains entitled to a joint and survivor pension under the Act until such time as he or she and the member have split and divided the pension benefits. If the pension is not divided, it is possible that a new common-law partner would not have the right to this benefit. It is therefore recommended that a spouse or partner must be cohabiting with the member at the time of retirement in order to have a right to the joint and survivor pension.

Pre-retirement Death Benefit

Recommendation

If a member dies before payment of the member's pension commences, the value of the benefit payable should not be less than the value of the member's pension benefit earned for all years of service since January 1, 1976, and not just those years since January 1, 1985.

As is the case with the joint and survivor pension at retirement, the spouse or partner should be permitted to waive entitlement to this benefit *before* the death of the member on a prescribed form. Further, where the member and spouse or partner, jointly agree, the waiver may be revoked, by delivering a written agreement of cancellation to the administrator, before the member's death.

Lastly, only a spouse or common-law partner who is cohabiting with the member or former member as of the date of death of the member, should be entitled to receive this pre-retirement death benefit.

It is recommended that these changes would be effective on or after the coming into force of the legislation.

Commentary

In keeping with the recommendation for full and immediate vesting of all basic benefits, the value of the pre-retirement death benefit should not be less than the full value of the deceased member's pension benefit for all years of service.

The spouse or partner should have the right, as with the joint and survivor pension, to waive the payment of this benefit, prior to the member's death, which would then permit the member to designate other parties, such as children, as beneficiaries in respect of the benefit.

Presently, a separated spouse remains entitled to the death benefit under the Act until such time as he or she and the plan member have split and divided the pension benefits. If the pension is not divided, it is possible for the separated spouse and a new common-law partner to claim entitlement to the death benefit. In order to address the issue of competing claims, it is recommended that a spouse or partner must be cohabiting with the member at the time of death in order to receive this benefit.

Portability of Benefits

Recommendation

A member's right, on termination of plan membership or employment, to transfer from the plan within the prescribed time should be clarified.

A member with defined benefits should only be entitled to transfer the commuted value of these vested benefits provided the member is not entitled to an immediate pension.

A member with defined contribution benefits should be entitled to transfer the amount of these vested benefits at any time prior to the commencement of the payment of a pension.

Commentary

This recommendation would harmonize Manitoba's portability provision with most other jurisdictions whereby the right to portability is not mandatory once a member, who terminates plan membership or employment, is entitled to elect an immediate pension.

Locking-in

Recommendation

In keeping with full and immediate vesting (see Vesting, page 5), basic pension benefits and ancillary benefits for which the member has full entitlement (see Ancillary Benefits, page 4), should be fully locked-in to provide a pension at retirement. It is recommended that this change would be effective on or after the coming into force of the legislation.

The exceptions to locking-in should be contained in the regulations under the Act. In addition to those exceptions presently permitted under the legislation, it is recommended that the exceptions to locking-in be expanded to include members' optional ancillary contributions (see Flexible Pension Plans, page 15), and funds for non-residents (see Unlocking for Non-Residents, page 18). It is not recommended that person be permitted to unlock pension funds by reason of financial hardship.

Commentary

The Pension Commission received many submissions on this issue. Consideration was given to all suggestions. However, the Pension Commission remains of the view that pensions and pension benefits should retain their locked-in status thereby ensuring members and their spouses or partners have *lifetime retirement income* at a time when other sources of income are limited.

A pension plan promises its members a lifetime retirement income, known as the "pension promise". Unlocking pension funds at retirement fundamentally alters this promise. Locking-in preserves the plan's original purpose and promise – that is, to provide lifetime retirement income. Unlocking these funds may result in financial hardship being transferred to future generations and governments, and given the aging population the impact of such an inter-generational transfer could be considerable.

At this point, there is no significant statistical research available relating to the management of retirement capital outside of pension plans. Since removing the present locking-in restrictions at retirement represents a significant departure from current public policy, statistical information and analysis regarding the management of unrestricted retirement capital is critical. Until such statistics are available, significant concerns remain regarding the potential costs to social agencies and the associated risk to the public interest.

For these reasons, the Commission did not consider the Saskatchewan model of unlocking all pension funds at retirement was appropriate. Further, we have noted that no other Canadian jurisdiction has passed legislation similar to Saskatchewan's.

Another suggestion considered by the Commission was to unlock employee contributions under money purchase or defined contribution ("DC") pension plans at retirement. This suggestion must be reviewed in relation to all other types of pension plans.

According to Statistics Canada, Manitobans participate in pension plans as follows:

- 114,000 (70%) in defined benefit pension plans under which the pension is determined by years of service and salary (DB),
- 36,000 (22%) in defined contribution pension plans (DC), and
- 12,000 (8%) in hybrid or combination plans which provide both DC and DB benefits.

Members' contributions toward defined benefits under both DB and hybrid plans are required to finance or pay for one-half of the cost of the defined benefit pension. The question arises as to what would constitute appropriate and reasonable treatment of the 126,000 members of DB and hybrid plan members?

Further, how should members of *non-contributory* DC pension plans, under which the employee is not required to contribute and the employer pays all the required contributions to the pension plan, be treated?

The above-mentioned questions raise concerns regarding fair and equitable treatment under the legislation of the members of these other types of plans.

Secondly, there are resulting practical considerations involving the administrative requirements for financial institutions holding locked-in funds. If, for example, a 30-year old terminating employee transfers his or her locked-in funds from the pension plan to a locked-in RRSP, the institution would be required to account for employee contributions separately until the individual retires, potentially some 25 years later. Would it be appropriate for that institution to rely on some arbitrary split at retirement (e.g., ½ the money is from employee contributions) which may not reflect the design of the original pension plan? Not all DC pension plans require matching employee and employer contributions.

In its consideration of unlocking employee contributions, the Commission was of the view that particular constituents' interests must be measured in relation to Manitoba pension plan members as a whole. In doing so, it is of the view that unlocking of employee contributions at retirement is neither an equitable or practical recommendation for Manitoba plan members.

Other submissions recommended that there should be no distinction between the prescribed retirement benefit plans, LIF and LRIF, and the maximum permitted annual withdrawal from a LIF/LRIF should be increased beyond the current national standard of 6% to 8%.

In recognition of the issues that have been raised regarding locking-in, the Canadian Association of Pension Supervisory Authorities (CAPSA) is presently engaged in review of the current locking-in requirements under legislation across Canada and will be developing recommendations for model locking-in principles in an effort to contribute to the harmonized regulation of pension plans.

In consideration of all the above and the complexities surrounding this issue, the Commission will not be making a specific recommendation regarding further exceptions to the locking-in requirement under the Act, but urges government to review the matter when CAPSA releases its recommendations for model locking-in principles in the spring of 2004.

Shortened Life Expectancy

Recommendation

The legislation should permit a pension plan or a prescribed retirement benefit plan to provide that an individual may receive a lump sum payment only by reason of a terminal illness or physical disability.

Further, the provision should quantify the duration of the individual's life expectancy to less than two years.

Commentary

The intent of commutation for shortened life expectancy is to permit those whose death is imminent to access their funds while still living. Mental illness itself does not cause an individual's life expectancy to be shortened within the meaning and intent of this provision.

Further, the term "shorten considerably" is open to broad interpretation, creating uncertainty on the part of members, spouses, partners, administrators, and physicians. Quantifying the life expectancy to less than two years reduces the likelihood of circumvention, provides clarity and certainty for all parties, and simplifies the administration.

The Commission recommends that the method used by plan administrators and actuaries to determine the lump sum value of the pension or pension benefit payable under this provision should be given further consideration. This method is typically set out in the regulations.

Phased Early Retirement

Recommendation

It is recommended that Manitoba's legislation permit pension plans to provide for phased retirement if there is a joint agreement between an active member and the employer to reduce the active member's hours of employment.

If the plan so provides, an active member of a pension plan whose hours of employment are reduced pursuant to a joint agreement with the employer, and who is within 10 years of attaining normal retirement age, or who has attained or exceeded normal retirement age, should be entitled to elect to be paid an early pension benefit from the plan for each year set out in the agreement.

It is recommended that the early pension benefit paid to the member should be in the form of a lump sum, the maximum amount of which, in any year, cannot exceed the lowest of:

- (a) 70% of the decrease in remuneration;
- (b) 40% of the YMPE for the year under the Canada Pension Plan; and
- (c) the value of the member's benefit in the event of termination, as of the date of application for phased retirement

The receipt of the lump-sum payment does not in itself affect the member's continued membership in the plan or the continuing accrual of the member's benefits.

If a plan offers phased retirement, following the making of such an agreement, the administrator would be required to give the member a prescribed statement that includes:

- the amount of pension the member could expect to receive without any withdrawals under the phased-in retirement arrangement,
- the maximum lump sum withdrawal the member is permitted to make, and
- the amount of pension payable after the withdrawal of the maximum amount.

Upon receipt of the statement, the member may elect to receive the early pension benefit. A further updated statement must be provided in each subsequent year while the agreement remains in force. When the member ultimately retires, the pension payable from the plan to the member should be adjusted in the appropriate manner in order to account for the lump sum received each year.

Commentary

Submissions were not overwhelmingly in favour of the Commission's proposal for phased retirement likely due to restrictions under federal tax legislation preventing the payment of pension benefits to a partially retired plan member in any other form than a lump sum.

Without changes to the *Income Tax Act* (Canada), the take-up by pension plans on this provision may be limited. However, the Commission remains of the view that given the growing labour challenges employers will be facing, phased retirement provides parties with added flexibility to address this issue.

Flexible Pension Plans

Recommendation

It is recommended that the legislation provide for the registration and regulation of flexible pension plan benefits in accordance with the following principles:

- A plan may provide for a separate class of contributions with specific characteristics (i.e., optional ancillary contributions), and forfeitures of such contributions may occur provided the prescribed disclosure is given to members.
- Optional ancillary contributions (OACs) are exempt from the 50% 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 should be credited with interest at the pension fund's rate of return.
- Optional ancillary contributions should 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 should 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).
- The prescribed disclosure must be provided to members making contributions to the flexible pension plan.

Commentary

The concept of flexible pension plans was developed by the pension industry in response to tax legislation introduced in 1990 that limited the amount an individual could contribute to an RRSP according to whether or not the individual participated in an employment pension plan. These changes had the most dramatic effect on the RRSP room for members with defined benefits.

The flexible pension plan is operated in conjunction with a plan providing defined benefits. It allows members to make extra tax-deductible contributions that don't reduce the amount the member can contribute to an RRSP. Based on the member's individual needs, these extra contributions earn interest under the plan, and are used by the member to acquire ancillary benefits.

Multi-Unit / Employer Pension Plans

Recommendation

The following principles should be considered in an effort to clarify and streamline the current multi-unit pension plan (MUPPs) provisions under the Act, and expand the application of such provisions so as to include multi-employer pension plans (MEPPs):

Definitions

"multi-unit pension plan" means a pension plan organized and administered for employees of

- (a) 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% of the members are employed by participating employers who are affiliates within the meaning of The Corporations Act or, if one or more of such participating employers are not business corporations, are directly or indirectly controlled by the same person; or
- (b) one or more employers who are required under two or more collective agreements or participation agreements to make contributions to that plan and those contributions are limited to the amount the employer is contractually required to contribute to the plan;

and is designated by the superintendent as a multi-unit pension plan;

"termination of membership" means

- (a) the termination of an employee's employment with an employer and, if applicable, of the employee's membership in the union, association or organization of employees in that employment, or
- (b) the occurrence of a continuous period of not less than 24 calendar months during which contributions are not remitted to a multi-unit pension plan by or on behalf of a member.

Board of trustees

A multi-unit pension plan should be administered by a board of trustees that is constituted so that the number of trustees representing plan members is not less than the number of trustees representing participating employers. Further, the board of trustees should consist of at least one trustee representing former members, pensioners and other plan beneficiaries.

Forfeiture of benefit

Where the pension benefit of a member of a multi-unit pension plan is able to be commuted under the minimum benefit commutation rules set out in the legislation, and the whereabouts of the member are unknown to the administrator following:

- (a) a period of two years during which no contributions have been made by or on behalf of the member, and

- (b) a reasonable effort has been made by the administrator to locate the member,

the commuted value of the pension benefit may be forfeited by the administrator and in that event becomes funds of the plan.

Required provisions in multi-unit plans

A multi-unit pension plan should contain provisions,

- (a) outlining the consequences of a participating employer's withdrawal from the plan, in respect of the funding of the benefits of members affected by the withdrawal; and
- (b) outlining the consequences of a participating union's withdrawal from the plan, in respect of the funding of the benefits of members affected by the withdrawal;

and unless approved by the superintendent, suspension or cessation of contributions by a participating employer to a plan does not constitute a partial plan termination unless the plan so provides.

Amendment to reduce benefits

The prohibition on the reduction of accrued pension benefits does not apply to an amendment that

- (a) is made with prior written consent of the superintendent, and
- (b) reduces benefits no more than is necessary to enable the pension fund to meet the prescribed tests for solvency.

Commentary

With respect to the composition of the board of trustees of these plans, the Commission was persuaded by submissions that the board of trustees should consist of at least one trustee that represents the views of pensioners, former members and other plan beneficiaries.

The method for selecting the trustees, as is presently the case, should be determined by the parties to the plan and in the manner set out under the terms of the documents governing the pension plan.

Unlocking for Non-Residents

Recommendation

It is recommended that if a former plan member or a LIRA, LIF or LRIF owner, applies to his or her pension plan or financial institution, as applicable, and

- provides to the plan administrator or institution written evidence that Canada Customs and Revenue Agency has confirmed that he or she has become a non-resident for the purposes of the *Income Tax Act (Canada)*,
- where the member has a spouse or common-law partner, or the owner is a former plan member with a spouse or partner, the spouse or partner waives all entitlements to the joint and survivor pension required under the legislation, and
- in the case of the member's pension plan, the plan so permits

money in the pension plan, the LIRA, LIF or LRIF, as the case may be, may be withdrawn as a lump sum.

Commentary

Presently, former members leaving the country permanently must leave their pension benefits in Canada. This has generally proven to be inconvenient and costly for LIRA, LIF and LRIF owners, as they have limited ability to deal with these funds from abroad. Once an individual becomes a non-resident for purposes of the *Income Tax Act (Canada)*, it is not advisable to require these individuals to continue to maintain funds in Canada.

Under tax law, for an individual to become a non-resident of Canada there must be a degree of permanence to his or her stay abroad. If an individual is absent from Canada for 2 years or longer, he or she is presumed to have become a non-resident, provided that he or she satisfies the other requirements for non-resident status dealing with residential ties within Canada and elsewhere, and regularity and length of visits to Canada. The individual must make application in writing to Canada Customs and Revenue Agency (CCRA) on the appropriate form and receive confirmation from CCRA that the person is no longer a Canadian taxpayer.

With respect to the joint and survivor waiver, it should once again be signed separate and apart from the member, and include a recommendation that the spouse or partner obtain independent professional legal or financial advice, before executing the waiver.

Pension Committee

Recommendation

Every pension plan must have an administrator. It is recommended that with the exception of certain plans, the administrator should be a pension committee as outlined below.

While a pension committee may be made up of as many members as provided for in the plan text, it is proposed that a committee should consist of at least:

- one member designated by the active members, and
- one member designated by the non-active members (former members and pensioners) and other plan beneficiaries.

The active members as a group, and the non-active members and beneficiaries as a group, may each designate an “additional” pension committee member in addition to the members mentioned above. An “additional” member has the same rights as other committee members except the right to vote.

Members should have the right at the annual meeting to designate a member to the pension committee, in the manner approved, by a majority of the votes cast. In the event that active members, and non-active members and beneficiaries do not exercise this right at the annual meeting, subject to such conditions as may be contained in the regulations under the Act, the provisions of the pension plan that pertain to the designation of members to the pension committee would apply.

A committee member’s term of office would not exceed three years, but he or she would remain in office until re-appointed or replaced.

Annual meetings would be held within six months after the end of each fiscal year of the plan. The purpose of the meeting includes, but is not limited to

- informing the members and beneficiaries of any amendments made to the plan, and of the financial position of the plan; and
- enabling the active members as a group and the non-active members and beneficiaries as a group to designate a member to the pension committee by a majority of the votes cast by the members or beneficiaries of each group.

If, however, the members and beneficiaries have adopted an alternative procedure for the designation of committee members, the pension committee would be exempted from calling an annual meeting. Nevertheless, if at any time 10% or more of the members and beneficiaries request, a meeting would be required to be held within a prescribed period of time, i.e. 60 days, that a meeting be held.

Certain plans should not be required to be administered by a pension committee. These plans should include plans with a small membership, e.g. twenty-five members or less, multi-unit/employer pension plans, simplified pension plans and plans with an administrator who has been appointed by the superintendent.

The pension committee should be required to exercise the prudence, diligence and skill in the administration of the plan that a reasonable person would exercise in similar circumstances and each committee member would be required to use all relevant knowledge or skill which, by reason of his or her profession or business, he or she ought to possess.

The pension committee should have all the powers that relate to the administration of a pension plan. Generally, its duties and powers should include the following:

- registering the pension plan, and all amendments thereto;
- notifying the Pension Commission of any unpaid contributions according to the time frame set out in the Act;
- acting with honesty and loyalty in the best interest of the members or beneficiaries, and no member may permit any conflict between his or her own interests and his or her powers and duties in respect of the plan;
- recommending plan amendments to the plan sponsor;
- delegating all or part of its powers to a third party, subject to the terms of the plan;
- filing with the Pension Commission all documents and reports required under the legislation;
- determining how the assets of the plan are to be invested, subject to any plan provision permitting members to select investments; and
- providing all required disclosure to individuals so entitled under the legislation.

Commentary

It is generally felt that as a plan administrator must act in the best interests of all members, this fiduciary role puts an employer, who is also the administrator, in a conflict of interest.

This new structure for the administration of pension plans is therefore proposed for the following reasons:

- increased member participation and involvement,
- distinguishes the roles of employer and administrator, and reduces inherent conflicts of interest,
- better optics – appearance of more objectivity,
- employer is able to maintain control of the plan in most cases as there is no requirement for joint employee/employer governance as in the case of multi-unit pension plans, and
- the employer may reserve the authority to amend the plan.

Division of Pension Benefits

Recommendation

It is recommended that the basic principles underlying the present legislation be maintained.

Once a court order or written agreement exists regarding the division of marital property, the pension credits accumulated by one or both spouses during marriage or common-law relationship will be divided on an equal basis in the event of marriage or relationship break-up on or after January 1, 1984. The spouse's or partner's share of the member's pension is determined as of the date of separation. The spouse or partner has the option of transferring their share to a LIRA or registered pension plan. With financial disclosure, married and common-law parties may opt-out by agreement.

As pensions constitute a special family asset accumulated to provide retirement income for the member and his or her spouse or partner, it is also appropriate that the provision for dividing and valuing the 'pension' asset be maintained under pension legislation.

In light of the changes contemplated by The Common-law Partners' Property and Related Amendments Act, S.M. 2002, c. 48, the Commission's recommendations have been confined to the following two issues. Once effective, The Common-law Partners' Property and Related Amendments Act will extend the property rights and obligations of spouses to common-law partners, so that, on breakdown or death, partners will be able to share in the property accumulated during the relationship. The Common-law Partners' Property and Related Amendments Act will therefore, once in force, result in equal treatment between common-law spouses and married spouses with regard to the pensions under the Act. These principles should otherwise be incorporated in The Pension Benefits Act.

Accordingly, the Commission recommends the following changes under the legislation.

Division of a pension after retirement

A pension plan or an insurer may provide that, where a marriage or relationship ends after the member's pension has commenced, if a portion of the member's pension is required to be paid to the spouse or partner, the pension may be adjusted.

A joint and survivor pension may be changed and adjusted so that it becomes payable as two separate pensions, one to the member and one to the spouse or partner, provided that the present value of the two pensions is not less than the present value of the joint and survivor pension.

A pension that is not a joint and survivor pension should remain unchanged, but may be adjusted so that it becomes payable as two separate pensions, one to the member and one to the spouse or partner, provided that the present value of the two pensions is not less than the present value of the pension being paid.

It is recommended that this change would be effective on or after the coming into force of the legislation.

Orders from other Canadian jurisdictions

It is recommended that the legislation accommodate parties who separate outside Manitoba and have made application under the family law legislation of the Canadian jurisdiction in which the breakdown occurred for an order to divide pension or pension benefits.

Commentary

In the event a separation occurs after retirement, the spouse or partner is entitled to a share of the pension that is presently being paid with no change to the form of pension that was elected when the member retired. If, for example, the member chose a 'life only pension' at retirement and the member dies, the spouse's or partner's share of that pension also ceases with the member's death.

It is therefore appropriate that, subject to the terms of the pension plan, the parties have the ability to convert the pension being paid into two separate pensions, one for the member and one for the spouse or partner on an actuarially equivalent basis.

By recognizing orders dealing with family property from other Canadian jurisdictions, couples separating in other jurisdictions who cannot agree to a sharing arrangement, and therefore obtain an order to divide property under the relevant family law legislation, will be able to divide a Manitoba pension benefit or pension under the Act.

Surplus

Recommendation

It is recommended that the ability to receive surplus on a going-concern, including on partial and full plan termination, remain as generally provided in the legislation, including the ability by the employer to take a contribution holiday.

However, it is recommended that the legislation permit an employer to develop a proposal for the distribution of surplus and file an application with the Pension Commission with the written agreement of:

- (a) 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;
- (b) the collective bargaining agent of the non-active members (former members and pensioners) of the plan or, if there is no collective bargaining agent, at least two-thirds of such non-active members of the plan; and
- (c) such number of other plan beneficiaries who are entitled to payments under the plan as the superintendent considers appropriate in the circumstances.

It is recommended that for purposes of all applications for the withdrawal filed under the Act for these purposes the administrator certify that the application complies with the requirements of the legislation. Further, the employer and the pension plan must comply with all other relevant requirements contained in the regulations under the Act, for the payment of surplus from a pension plan.

Commentary

It is advisable that the legislation permit the employer, the members and other plan beneficiaries to reach an agreement regarding the disposition of surplus under a pension plan subject to certain conditions which should be contained in the regulations under the Act.

Tests for Solvency

Recommendation

Although submitters generally agreed with the Commission that this is extremely complex, few specific recommendations for changes to the current provisions were brought forward. The Commission therefore has no specific recommendations for change at this time.

Commentary

The legislated tests for solvency are applied to defined benefit plans and are designed to ensure that the employer's required contributions to the plan are sufficient to pay for all the benefits promised under the plan. Clearly any recommendations made should balance the needs of members and other plan beneficiaries, as well as employers.

A number of submitters recommended that if Manitoba undertakes a review of the tests for solvency under its regulations, consideration should be given to what other jurisdictions may also be doing in this area.

The Commission is aware that the Canadian Association of Pension Supervisory Authorities (CAPSA) has a standing committee on funding which has a mandate of reviewing funding and benefit valuation issues for CAPSA. Presently this committee is reviewing current funding rules of all Canadian jurisdictions, identifying common and unique standards and developing a set of uniform funding principles.

In light of the concerns outlined as well as the work being undertaken in this area by CAPSA, consideration should be given to reviewing Manitoba's funding and solvency regulations when CAPSA releases its model regulatory principles for governing the funding of pension plans which is expected by the fall of 2003.

Pension Plan Investments and Loans

Recommendation

Employers and pension plan trustees should be permitted to consider non-financial criteria in relation to pension plan investments provided such considerations are made within the context of the requirements of the current legislation.

Commentary

The Act and regulations require that the funds of a pension plan may be invested and loaned only in accordance with the legislation.

The legislation requires that the employer or trustees of a plan exercise the care, diligence and skill in the administration of the plan and in the administration and investment of the pension fund that a person of ordinary prudence would exercise in dealing with the property of another person, that is the "standard of care approach." Further, they are required to invest the assets of a pension fund in a way that a reasonable and prudent person would apply to the investment portfolio of a pension fund, that is the "prudent person portfolio approach."

It is understood that trustees may be reluctant to consider non-financial criteria to formulate investment policy and to make an investment decision in the event they are found in breach of their fiduciary duties.

Section 79.1 of *The Trustee Act* of Manitoba permits, subject to restriction in the trust, the trustee of a trust fund to use non-financial criteria to formulate an investment policy or to make an investment decision without committing a breach of trust if, in making the policy or decision, the trustee exercises the judgment and care that a person of prudence, discretion and intelligence would exercise in administering the property of others.

In a manner similar to The Trustee Act, the legislation should be clarified such that employers and plan trustees be permitted to take non-financial criteria into consideration when making investment decisions. Although the Commission received this recommendation after the consultation period had closed, the Commission is of the view it has merit.

Modernization / Clarification

Manitoba's pension Act was enacted in 1976 and has been amended for the reforms that have taken place over the past 20 years. The Act differs considerably from the acts of other Canadian jurisdictions and has not gone through a process of modernization, as has been the case elsewhere. Therefore, although there are many provisions that are in need of modernization and/or clarification, the Pension Commission wishes to raise the following specific issues for consideration.

Administrator

Recommendation It is recommended that the legislation incorporate the concept of the pension plan administrator as the party generally responsible for administering the plan and the pension fund in accordance with the Act, regulations and the terms of the pension plan. "Administrator" would generally mean for most pension plans, a pension committee (see Pension Committee, page 19); for small pension plans, the employer; for a simplified pension plan, the financial institution that administers it; and for a multi-unit pension plan, a board of trustees.

Commentary Aside from the section dealing with the duties of the administrator, the Act presently presumes the employer, in almost all cases, is the administrator, and does not reflect the reality that other entities do administer pension plans under the Act. A general definition is desirable, and would harmonize the Act with its contemporary counterparts in other jurisdictions.

"Continuous Employment/Service" and "Temporary Suspension of Employment"

Recommendation It is recommended these definitions under the Act be combined. "Continuous" in relation to employment, membership or service, should not exclude periods of temporary interruption of employment, membership or service, without regard to periods of lay-off from employment for a prescribed period, and without regard to periods of disability during which the member continues to accumulate benefits under the plan.

Commentary

The revised definition clarifies that continuous service, employment or membership for purposes of the Act is to be determined from date of hire to date of termination, death or retirement, and includes periods of lay-off and disability. It is advisable to prescribe the maximum period for purposes of a temporary suspension in the regulations.

Member

Recommendation Two distinct definitions for "member" are recommended. A "member" should mean anyone entitled to a benefit under the plan, whether he or she is an employee or former employee. However, an "active member" should mean a member accruing benefits under the plan.

Commentary These terms are simple and clear, as the most relevant distinction between members is the accrual of benefits.

Glossary of Pension Terms

Act

The Pension Benefits Act of Manitoba regulating employment pension plans.

Accrued Pension

Amount of pension credited to a member according to service, earnings, etc., up to a given date.

Actuary

A professional in the pension and insurance fields responsible for calculating risks and premiums. In Canada, full professional recognition requires membership in the Canadian Institute of Actuaries.

Additional Voluntary Contributions

Voluntary contributions made to a plan, by an employee in addition to contributions required to be made to attain a pension. Extra benefits may be purchased by additional contributions but no additional cost is borne by the employer. Additional voluntary contributions are not locked-in by legislation.

Administrator

The person or persons who administer the pension plan. They arrange for pension payments, funding of the plan, etc. For most plans, the employer is responsible for administration (although the employer may hire a third party to administer the plan on its behalf). Some plans are administered by a board of trustees or similar body.

Ancillary Benefits

Benefits in addition to regular pension benefits and survivor benefits. These include bridging benefits and enriched early retirement benefits.

Annuity

Periodic payments (usually monthly) provided by the terms of a contract for the lifetime of an individual (the annuitant) or the individual and his or her designated beneficiary. An annuity may be a fixed or varying amount, and may continue to be paid for a period after the annuitant's death.

Beneficiary

A person who on the death of a member or former member, may become entitled to a benefit under the plan.

Benefit

Generally, any form of payment to which a person may become entitled under the terms of a plan. It often refers specifically to the pension normally provided by the plan formula.

Common-law partner

As defined under The Common-law Partners' Property and Related Amendments Act, S.M. 2002, c. 48, means a person who, not being married to the member or former member, cohabited with him or her in a conjugal relationship

- (a) for a period of at least three years, if either of them is married, or
- (b) for a period of at least one year, if neither of them is married.

Commutated Value

The amount of a lump sum payment payable today estimated to be equal in value to a future series of payments.

Continuous Service or Membership or Employment

Period where an employee is continuously employed by the same employer or continuously participates in his or her employer's pension plan, including periods of temporary absence or suspension or periods of layoff. To be distinguished from credited service.

Contribution Holiday

A portion of a pension plan's surplus is used to pay the employer's contributions to the plan. While funds do not leave the pension plan, the employer's contribution is paid, partially or fully, from the surplus.

Contributory Plan or Service

A pension plan under which, or period of service for which, the employees are required to make contributions by payroll deduction in order to qualify for benefits under the plan.

Defined Benefit

A pension benefit earned under a plan based on service, average earnings, etc. but not the total contributions. If the plan is contributory, the rate of employee contributions may be specified, with the employer contribution paying the balance of the cost of the pension benefit. To be distinguished from a defined contribution plan.

Defined Contribution Benefit

A pension benefit determined with reference to and provided by the accumulated contributions and the return on the investment of the contributions paid by or for the credit of a member and made to the member's individual account.

Division of Pension Benefits

Also known as "credit splitting". A provision in a pension plan or pension legislation where on break-up of the marriage or common-law relationship, one spouse or partner may obtain a share of pension benefits or pension earned by the other partner during the period of marriage or relationship.

Eligibility Requirement

A condition such as length of service that must be met before an employee is permitted or required to join a pension plan. Term may refer to the eligibility for certain benefits.

Employee

An individual, employed to do work or to provide a service, who is in receipt of or entitled to remuneration for the work or service.

Employer

The person or organization from whom an employee receives remuneration. This includes any or all of the employers that are required to contribute to a multi-unit pension plan or multi-employer pension plan.

Employment Pension Plan

A pension plan offered by an employer or supported by a group of employers for the benefit of employees. The term includes plans covering employees of governments and the private sector, but does not include the Canada Pension Plan or other public programs.

Enriched Early Retirement Benefits

A pension paid on retirement prior to the normal retirement date, which is not reduced to the extent it should be to fully account for the longer period of time over which the pension is likely to be paid.

Fifty Percent Rule

Legislative requirement under a contributory defined benefit plan that the member's contributions and interest provide no more than 50% of the commuted value of the member's basic accrued pension. Application of the test may result in member excess contributions.

Former Member

A person whose membership in a plan has terminated and who retains a present or future entitlement to a benefit pursuant to a plan. A pensioner would be considered a former member. However, a person who transferred pension money to a Locked-in Retirement Account is not a former member because he or she no longer retains an entitlement under the plan.

Funding

Systematic monthly payments into a pension fund that, with investment earnings on these funds, are intended to provide for benefits as they become payable.

Guaranteed Annuity

An annuity that will be paid for the lifetime of a person or for a certain period whichever is longer. For example, if an annuitant with a five-year guarantee dies after three years, payment will be continued to a designated beneficiary or the estate for two years.

Joint and Survivor Pension

An annuity payable until the death of the retired employee and continuing to the surviving spouse or common-law partner until that person's death. Required to be provided as an option at time of retirement.

Life Income Fund (LIF)

A prescribed pension arrangement that can be purchased with funds locked-in by pension legislation. The key characteristics of the LIF include:

- the LIF contract must be registered as a retirement income fund pursuant to the *Income Tax Act (Canada)*;
- money in the contract must be locked-in, meaning that it cannot be withdrawn as a lump sum and must provide income to the owner for the owner's lifetime;
- the owner of the contract must be paid an income each year (except for the first year of the contract);
- the owner determines the amount of income to be paid each year at the beginning of the year, subject to certain minimum and maximum withdrawal rules;
- at any time the owner of the contract may purchase a life annuity with the balance of money in the LIF, but the owner is never required to purchase an annuity; and
- the owner determines how the balance in the LIF is to be invested.

Locking In

Legislative requirement that pension benefits cannot be withdrawn or otherwise forfeited on termination of employment if the employee is vested.

Locked-In Retirement Account (LIRA)

A RRSP upon which certain contractual conditions have been placed. Key conditions include:

- money must be locked-in and must be used to provide a pension;
- non-assignable and exempt from seizure; and
- is administered as a deferred life annuity under the Act and regulations.

Locked-In Retirement Income Fund (LRIF)

A prescribed pension arrangement that can be purchased with funds locked-in by pension legislation. Key characteristics include:

- the LRIF contract must be registered as a retirement income fund pursuant to the *Income Tax Act(Canada)*;
- money in the contract must be locked-in, meaning that it cannot be withdrawn as a lump sum and must provide income to the owner for the owner's lifetime;
- the owner of the contract must be paid an income each year (except for the first year of the contract);
- the owner determines the amount of income to be paid each year at the beginning of the year, subject to certain minimum and maximum withdrawal rules;
- at any time the owner of the contract may purchase a life annuity with money in the contract, but the owner is never required to purchase an annuity; and
- the owner determines how the balance in the LRIF is to be invested.

Member

An employee on whose behalf an employer is required to make contributions to a pension plan and who has not terminated his or her membership or commenced his or her pension.

Multi-Employer Pension Plan (MEPP)

A plan established by a trade union or association in co-operation with employers in the industry and mainly for hourly employees. Participating employers pay contributions into a common fund, often on a cents-per-hour basis. Administered by a joint board of trustees.

Multi-Unit Pension Plan (MUPP)

A plan designated under *The Pension Benefits Act*. Generally established by one or more employers in co-operation with two or more unions or associations and may cover non-unionized as well as unionized employees. Participating employers pay contributions into a common fund. Administered by a joint board of trustees.

Non-Contributory Plan or Service

A pension plan in, or period of service during which, all required contributions are made by the employer.

Normal Retirement Date

The date at which the member becomes entitled to retirement benefits without reduction or increase.

Pension

Any periodic payment being paid for the lifetime of a person who has become entitled to such a benefit pursuant to the terms of a pension plan.

Pension Benefit

The amounts payable to a member or former member during their lifetime to which they will become entitled at the normal retirement age. The pension benefits may also refer to the amount to which any other person is entitled upon the death of the member or former member.

Pension Plan

A plan, scheme or arrangement organized and administered to provide pensions for members and former members pursuant to which an employer is required to make contributions.

Plan Sponsor

The employer sponsoring the pension plan for employees.

Plan Termination

This occurs when a pension plan ceases to operate and winds up. All members are vested and entitled to receive a pension or pension benefits.

Portability

Options available to certain members on termination of employment.

Prescribed

As prescribed in the legislation; act or regulations.

Prescribed Retirement Benefit Plan

See Locked-in Retirement Account, Life Income Fund or Locked-in Retirement Income Fund. The term "prescribed" means the details surrounding the RRSP or RRIF are provided in The Pension Benefits Regulation.

Regulations

The Pension Benefits Regulation under *The Pension Benefits Act* of Manitoba.

Registered Retirement Income Fund (RRIF)

A personal retirement income fund as defined by the *Income Tax Act (Canada)*.

Registered Retirement Savings Plan (RRSP)

A personal retirement savings plan as defined by the *Income Tax Act (Canada)*.

Retirement

Withdrawal from the active work force because of age. It may also be used in the sense of permanent withdrawal from the labour force for any reason, including disability.

Retirement Income

Income from pension and other sources to which a retired person is entitled. Term may include both private and public pension payments, income from personal savings, government income supplements and certain other sources of income.

Surplus

The difference when a pension plan's assets exceed the plan's liabilities.

Survivor Pension or Survivor Benefit

A monthly benefit payable under a pension plan to the surviving spouse or common-law partner of a deceased member or former member.

Tests for Solvency

Funding tests prescribed in regulations applicable to defined benefit plans and used by an actuary to determine the employer required contributions that are sufficient to pay for all the benefits under the plan assuming the plan is both continuing and terminating. The employer required contribution is set out in a report prepared by the actuary and filed with the Pension Commission. The employer is required to make contributions to the plan in accordance with that report.

Termination of Membership or Employment

Severance of the employment relationship for any reason other than death and retirement.

Vested Benefits (Vesting)

Benefits to which an employee has unconditional entitlement under the plan as a result of satisfying age or service requirements.

Year's Maximum Pensionable Earnings (YMPE)

Term used in the Canada Pension Plan (CPP) that refers to the earnings from employment on which CPP contributions and benefits are calculated. YMPE is changed each year according to a formula based on average wage levels. YMPE is published annually by Human Resources Development Canada.