



Policy Bulletin #21

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Missing Persons in Cases of Full Plan Termination

The *Employment Pension Plans Act* (the Act) and the *Employment Pension Plans Regulation* (the Regulation) is amended to adopt provisions in respect of missing plan members in situations of terminating pension plans. The Bulletin explains the process of transferring pension entitlements out of a terminated pension plan to the public trustee. This Bulletin has no legal authority. The Act and the Regulation should be used to determine specific legislative requirements.

Act and Regulation

Legislative Requirements

Section 77.1 of the Act outlines the requirements for missing person provisions. Section 64.1 of the Regulation establishes the prescribed conditions.

General Description

The Act and Regulation is amended to allow a plan administrator, where an individual with a benefit entitlement in a terminating pension plan cannot be located, to commute and transfer the benefit on a non-locked-in basis to the Public Trustee's Office in Alberta.

Clarification of Missing Members and Missing Persons

Section 77.1 (g) and (h) of the Act define missing member and missing person, respectively. A missing member is someone who was either a member or former member of the pension plan who is entitled to a benefit from the plan and is alleged to be missing.

A missing person, on the other hand, **includes missing members**, and is expanded to **also** include pension partners (married or common-law spouses) and other beneficiaries who are also entitled to benefits from the pension plan and who are alleged to be missing.

Process of Declaring a Missing Member

1. Plan Termination

The missing member provisions of the Act apply only on full plan termination. Plan administrators are required to proceed with the termination of the plan by filing the appropriate documentation, in order to obtain the consent of the Superintendent to disburse plan assets. For more information concerning the termination of a pension plan, please refer to [Policy Bulletin #6 – Termination of a Pension Plan.](#)

2. Payment of Plan Assets / Notification of Missing Members

Once the Superintendent has provided consent to the disbursement of plan assets related to the termination of the pension plan, the administrator must proceed forthwith to issue termination option statements and pay out termination benefits. Benefit notices are to be sent to the last known address of the member based on the Plan's current records.

After these notices have been sent, if either a termination statement is "returned to sender", or is not returned to the administrator at all, this is the initial indication of a missing person. Consequently, the plan administrator must commence with the searches described in item 4.

3. Division and Distribution of Matrimonial Property Orders/Agreements

In addition to disbursing plan assets related to the termination of the Plan, the administrator is also required to effect both the division and distribution of benefits in accordance with any matrimonial property orders / agreements (MPO/A) filed with the administrator.

The division and distribution must be done in accordance with the requirements of Part 4 of the Act. However, if an MPO/A filed with an administrator prior to the termination of the plan contemplates a delayed division of benefits (for example, which would be payable only when the member of the pension plan commences his pension) s.77.1(10) of the Act overrides that requirement and, instead, the division of the benefit must proceed as of the effective date of termination of the pension plan.

4. Searches for Missing Persons

A person entitled to benefits in a pension plan cannot be declared to be a missing person until the administrator has demonstrated to the Superintendent that they have performed the following actions and are still unable to locate the individual:

1. Contact the National Search Unit of Service Canada to conduct a search for missing persons. For an explanation of the information that is required, contact the NSU at (613) 957-9052.
2. Search for the missing persons through the printed white-pages, and online web-based resources for telephone listings.

Plan administrators are reminded that search results may also include relatives of the missing person, and these individuals may know the whereabouts of the missing person.

3. Run advertisements in relevant newspapers, requesting that anyone who believes they have a benefit entitlement in the plan come forth.

A relevant newspaper will depend on the company / nature of employment. For example, it may be sufficient to run an advertisement in only the local paper in which the company operated / the member was employed. However, due to Alberta's mobile work force, more newspaper ads may be required.

4. Where applicable, the plan sponsor must contact any Union to which the missing members may have belonged, and request that the Union perform a search of their records, or to update any relevant Union newsletter / publication to request that those members come forth.

Furthermore, if the plan records indicate that the missing person had a pension partner, or had named a designated beneficiary, then efforts to locate those individuals should also be made when attempting to find the missing person.

5. Consent to Apply Under Section 7(1) of the *Public Trustee Act* and Contents of that Application

If the administrator cannot locate persons to whom benefits are payable, the administrator shall provide the Superintendent, for each missing person, with :

- The name of the missing person, and if the missing person is not a former plan member, the name of the plan member,
- The date the member or former member's employment started,
- The date when the member or former member joined the plan,
- The amount of the missing person's benefit in the plan,
- The date, if applicable, when the member terminated membership or died or when the plan terminated, and
- Written certification that the searches in step 4 were performed.

The administrator can request that the Superintendent consent to their making an application to the Court (Alberta Court of Queen's Bench to declare a missing person in accordance with section 7(1) of the *Public Trustee Act* and the Act. If the Superintendent is satisfied that all reasonable efforts have been made to locate the person, he will consent to the making of the application.

Timing of Application

A plan administrator is not permitted to apply to the Superintendent for the consent to make an Application to the Court to declare someone a missing person until 1 year after the consent to disburse assets related to the termination of the pension plan was granted under s.77(1.1) of the Act.

If the Plan had a solvency deficiency and the employer is making amortization payments under s.73(2) of the Act, the timing is 60 days after the last solvency amortization payment is made.

Contents of the Application to the Court

Where the Superintendent consents, but before the application to the Court is made, the administrator **must notify the Public Trustee** of the impending application. The application must request that the Court issue an initial order (**subject to item 8 below**) which directs that:

1. the benefit payable to the missing person be unlocked and withholding tax be deducted and remitted to the Canada Revenue Agency (CRA),

2. the administrator transfer to the Public Trustee:
 - the benefit payable to a missing person, OR
 - on a missing person's behalf, the benefit that is payable to a missing person in respect of a MPO/A that had been filed with the administrator¹, and
3. the Public Trustee be appointed as the trustee of this benefit **(the benefit is herein referred to as the trust estate)**.

Furthermore, the application must be accompanied by the following information (based on the most recent plan records):

- the full name, address, pension partner status, and birth date of the missing person,
- for the missing **member** only, the names and addresses of the missing member's pension partner and designated beneficiaries, as applicable, and
- for a missing **person**, any current designation of beneficiary, and any waivers made by pension partners (e.g. which waives the entitlement to the benefit, thereby allowing it to be paid to a beneficiary).

The Court, in consideration of the application, may grant its consent to the application and issue the Initial Order in accordance with s.77.1(8) of the Act.

The application can be made only by the plan administrator and can only deal with the benefit otherwise payable under the pension plan. Any other application made under s.7(1) of the *Public Trustee Act* in respect of other property of a missing member is to exclude any pension benefits.

If the Court grants the application, the benefit payable to the member must be unlocked and the applicable withholding tax must be paid to the Canada Revenue Agency in accordance with the requirements of the federal *Income Tax Act*.

¹ This would occur, for example, where an administrator divides a benefit based on a MPO/A that had been filed with him, but the pension partner who is owed their share of the benefit cannot be located and becomes a missing person.

MPO/A Filed During Application Proceedings

If, during the application proceedings (but before the initial order is made), a MPO/A is brought before the Court, the Court shall stay the proceedings. The MPO/A is to be filed with the administrator (who then will effect the division and distribution of the benefit). The application proceedings do not recommence until the administrator has complied fully with the requirements of the MPO/A to the extent that it is possible to do so.

6. Representations by the Superintendent and Public Trustee The Superintendent, the Public Trustee, and any other person whom the Court regards as interested in the application and proceedings of a missing person are entitled to be heard and make representations to the Court during those proceedings.

7. Issuance of the Initial Order Where the Court makes an initial order, the administrator shall, within 30 days:

- Transfer the trust estate to the Public Trustee,
- Provide the Superintendent with a copy of the order; and
- Confirm to the Superintendent that the whole amount of the benefit has been transferred.

Notwithstanding any other requirements of the Act, where the initial order is made:

- the missing person (and anyone else who is entitled to a benefit under the initial order) loses all rights otherwise provided under the Act,
- the money subject to the application ceases to be a benefit under the pension plan, and instead becomes **trust estate**,
- to the extent they have acted in good faith, no other parties associated with the pension plan have any liability in respect of the trust estate.

8. Limitations on Transfers to the Public Trustee

The Public Trustee will not accept any after-tax trust estates which total **\$500 or less**. This amount is set by the Superintendent by way of publishing it in this publication, and may be changed in future. In this case, the amounts in respect of a missing person are not transferred to the Public Trustee and are, instead:

- in the case of a multi-unit pension plan, paid to the participating employer of the missing person, or if that employer no longer exists, to the administrator of that plan,
- in the case of a specified multi-employer pension plan, paid to the bargaining agent of the collective agreement to which the missing person's employer was a party to, or
- in the case of any other plan, paid to the employer of the missing member.

Such a transfer does not extinguish the right that a former pension plan member has to that money, but the person will have to pursue that claim with the party who has the money.

9. Items to Provide the Public Trustee

On the transfer of the trust estate to the Public Trustee, the plan administrator must file the following items with the Public Trustee:

1. A copy of the initial order,
2. As they appear in the plan's records, the full name, birth date, and social insurance number of the missing person, and,
3. any other documents and information that the administrator has that the Public Trustee requires to enable the proper administration of the trust estate.

Further, the Superintendent and the Public Trustee will provide each other any information that is necessary to deal with the trust estate in accordance with the legislation, including the collection and sharing of personal information of missing persons between the two offices for the purposes of the legislation.

The Superintendent will maintain a record of all pension plans that proceeded to transfer benefits under these missing member provisions, and all persons whose benefits were transferred.

Claim on the Trust Estate

The Public Trustee will pay out the trust estate under a **further order** If a person whose money is being held in a trust estate wishes to claim their money, they will need a further order from the Court. The purpose of the further order is to obtain the Court's consent to pay out the trust estate to the individual who is claiming entitlement to it.

1. On proof of evidence that they are the missing person, to the missing person who is beneficially entitled to it,
2. On proof of evidence of the death of a **missing member**, to:
 - a. the pension partner of the missing member, or
 - b. the designated beneficiary of the missing member, if there is no pension partner (or the pension partner had waived their entitlement to the beneficial death benefit of the member), or
 - c. the personal representatives of the missing member's estate in the event there in no one meets the criteria specified in a. and b. above.
3. On proof of evidence of the death of the **missing person** who was not a missing member, to the personal representatives of the missing person's estate.

Other Payment of the Trust Estate

1. Where there is a trust estate held for a missing member and a previously unknown pension partner comes forth with an MPO/A:
 - that affected the member's benefit in the pension plan but was not previously filed with the administrator, OR
 - is made after the initial order was made and affects the trust estate,

then that pension partner is entitled to have the MPO/A carried out against the trust estate provided that a further order is issued by the Court.

2. Any person that has a maintenance order which is enforceable against the trust estate is entitled to have that order carried out against the trust estate provided that a further order is issued by the Court.

More than One Designated Beneficiary

Where there are two or more designated beneficiaries who are alive and are entitled to a trust estate, the division of the trust estate will be made according to the proportions specified by the missing member.

Legal Costs of the Public Trustee

Section 41 of the *Public Trustee Act* permits the Court to order that costs payable to the Public Trustee be paid out of the trust estate.

Non-Alienation

The trust estate is exempt from execution, seizure, or attachment (except in satisfaction of a maintenance order as above).

However, section 10 of the *Public Trustee Act* permits the Public Trustee to spend any of the funds of that estate in an attempt to locate the missing person. Furthermore, sections 11(2) to (7) of that act allow the Public Trustee to transfer the trust estate into general revenues after they have held the trust estate for at least 10 years.

This does not extinguish the right of the missing person to claim the funds.

For further information please contact:

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