

Newsletter

express

Information bulletin for supplemental pension plans

30 September 1999

Recognizing same-sex spouses: legislative amendments

Bill 32 amending various legislative provisions concerning de facto spouses (chapter 14 of the 1999 laws), which is intended to give same-sex de facto spouses the same rights as opposite-sex de facto spouses, was adopted unanimously on 10 June 1999. The provisions of the law that affect us came into force on 16 June 1999. As a result, plans that are subject to the *Supplemental Pension Plans Act* must recognize same-sex spouses as of that date. In concrete terms, notably, this means that:

- If a member dies before retirement and after 15 June 1999, and does not have a legal spouse but has a same-sex de facto spouse (at least 3 years of conjugal relationship), the spouse is entitled to a death benefit for the portion accumulated since the *Supplemental Pension Plans Act* took effect (1 January 1990).
- If a member retires after 15 June 1999 and spousal status is established at retirement, and at that time the member does not have a legal spouse but has a same-sex spouse, the joint and survivor pension must be payable to the spouse.
- If a retiree dies after 15 June 1999 and spousal status is established at the time of the death, and at that time the member does not have a legal spouse but has a same-sex spouse, the joint and survivor pension must be payable to the spouse.
- If same-sex spouses stop living together after 15 June 1999, the pension plan can be partitioned if both spouses agree thereto.

If the definition of spouse in current plan texts contradicts the new definition in section 85 of the *Supplemental Pension Plans Act*, those texts must be amended. Since neither bill 32, nor the *Supplemental Pension Plans Act* impose a deadline for filing an application for registration of that amendment, the application must be made within a reasonable time limit. These amendments must take effect no later than 16 June 1999 for them to be in conformity with the examples above. As indicated in the *Newsletter Express* of 30 October 1998, they can also take effect on an earlier date, but not before 23 April 1998.

Persons whose whereabouts are unknown and the Public Curator

Amendments to the acts and regulations related to the transfer to the Public Curator of sums belonging to untraceable persons came into force on 1 July 1999. For pension plans, the new rules apply in cases of total termination as well as during the plan's existence.

For cases of total termination, the *Supplemental Pension Plans Act* is amended primarily to provide for a procedure and a time period for transferring sums belonging to untraceable persons to the Public Curator.

During a plan's existence, the *Act respecting the Public Curator* provides generally that where sums are payable to a member or beneficiary and he or she does not come forward within 3 years, the plan administrator must transfer the sums to the Public Curator. The *Act respecting the Public Curator* and its regulation provide specific rules concerning the notices that must be sent out, the deadlines to be respected, the amount to be transferred and the information that must be sent to the Public Curator. The regulation also provides that where amounts are claimed from a plan governed by the *Supplemental Pension Plans Act*, those amounts must remain locked-in.

Subject to the rules related to prescription, the new provisions apply even to sums that were unclaimed before the coming into force of the amendments. However, in that case, the deadlines are postponed to give the plan administrator until 1 July 2000 to issue the notice provided for by law.

For further information concerning these provisions, you can contact the Public Curator at:

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Transfer rights between plans with the same employer

The Régie's supervision of pension plans has brought to our attention the fact that transfer rights, which were introduced on 1 January 1990 when the *Supplemental Pension Plans Act* came into force, are not always correctly exercised or applied. It may be the case, for example, when an employer is party to more than one pension plan, and a member ceases to be active in one of the plans and becomes a member in another plan with the same employer without having left his or her employment.

The right to transfer, when applicable, is an individual right that must be exercised upon the member's initiative. There is nothing to prevent the administrator from recommending a choice that may be to the member's advantage. Suggesting a choice is allowed; imposing a choice is not.

The administrator cannot forbid members to exercise their right to a transfer when it is applicable, on the pretext that they have not left their employment. Nor can the administrator impose the transfer of their rights to another plan under the same employer. However, the administrator must properly inform members of how their transfer rights can be exercised so that they can make an informed choice.

For additional information on transfer rights, you can read sections 98 to 100 of the *Loi sur les régimes complémentaires de retraite, annotations et commentaires* (in French only).

For more information,
Contact our

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Québec 

Communiqués from the Canadian Association of Pension Supervisory Authorities (CAPSA)

The Canadian Association of Pension Supervisory Authorities (CAPSA) comprises the superintendents and directors of the 10 agencies that supervise pension plans. Last April, CAPSA published a first communiqué entitled *Flexible Pension Plans*, which summarizes the recommendations of the task force it created in March 1998 to study a variety of issues related to flexible pension plans. The communiqué has been prepared to contribute to discussion of the harmonized regulation of flexible pension plans. It should not be construed as the official position of any provincial or federal government or agency.

CAPSA will eventually publish other communiqués dealing with issues related to pension plans. It has already put together a distribution list but has asked that its members provide the addresses of companies or associations interested in receiving the communiqués.

If you are interested in receiving the *Flexible Pension Plans* communiqué and future CAPSA communiqués, please send the address of your company or association to the Direction des régimes de retraite of the Régie des rentes du Québec, which will make sure that it is registered on the distribution list.

(Version originale française disponible sur demande)