

OMERS Primary Pension Plan

Amended and Restated as of January 1, 2011

INTERPRETATION

1. (1) In this Plan,

“**actuarially equivalent**” means of equal value according to the actuarial assumptions prescribed by the actuary and calculated using unisex mortality tables for all service;

“**actuary**” means the actuary appointed by the Administration Corporation under subsection 19(1) of the *OMERS Act, 2006*;

“**Administration Corporation**” means the OMERS Administration Corporation continued by subsection 32(1) of the *OMERS Act, 2006*, which is a continuation of the Ontario Municipal Employees Retirement Board (the “OMERS Board”) established under the *Ontario Municipal Employees Retirement System Act*;

“**approved pension plan**” means a pension plan to which an employer has contributed or contributes in accordance with subsection 7(2) of the *OMERS Act, 2006*;

“**associated employer**” means, for the purposes of this Plan, an employer who is eligible to participate in the OMERS pension plans under subsection 6(1) of the *OMERS Act, 2006*;

“**beneficiary**” means a beneficiary designated under this Plan;

“**benefit**” means a pension, refund or other payment that may be payable under this Plan to or with respect to a member;

“**continuous service**” means unbroken service, and such service shall be deemed not to be broken by,

- (a) a period between employment by one participating employer and employment by another or the same participating employer unless a benefit has been received by or in respect of the member under subsection 25(6) or 27(1) or sections 29, 33, 34, or 36,
- (b) a leave of absence for any reason where the employer has authorized such leave and either before or after the commencement of such leave has agreed that it shall be deemed not to be a break in service,
- (c) in any case where the member is not considered under section 18 to be totally disabled, an absence that the employer determines is caused by the member being wholly prevented by mental or physical incapacity from performing the regular duties of the occupation of the member,
- (d) an absence due to a strike or lockout as defined in the *Labour Relations Act*,
- (e) in the case of a member who is a councillor, a period between a term of council with one participating employer and a term of council with another or the same participating employer

unless a benefit has been received by or in respect of the member under subsection 25(6) or 27(1) or sections 29, 33, 34, or 36,

- (f) a period, prior to the normal retirement date of a member, during which the member is in receipt of a pension under section 18,
- (g) the period of a layoff for so long as recall rights exist or the employer reasonably expects to recall the member, or
- (h) a period during which a member,
 - (i) is employed by or on the council of one participating employer (the “first employer”) and is absent from work with the first employer for a reason described in clause (b), (d) or (g), and
 - (ii) is employed by or on the council of another participating employer (the “second employer”) and is a member of this Plan as an employee or councillor of the second employer;

“**contributory earnings**” means,

- (a) in the case of an employee who was a member before the 1st day of January, 1978, the earnings of the member, and
- (b) in the case of an employee who was a member on and after the 1st day of January, 1978, the earnings of the member exclusive of salary or wages paid for overtime, payments made with respect to unused sick leave credit gratuities and payments made as retirement bonuses or otherwise as a result of retirement or other termination of employment whether in respect of long service or otherwise, and
- (c) in the case of a councillor who is a member, means any money paid to the councillor for the councillor’s services as a councillor under the *Municipal Act, 2001*,

provided that

1. The contributory earnings of a member for a calendar year after December 31, 2010 shall not exceed 150 per cent of the member’s base contributory earnings for the same calendar year.
2. For the purposes of paragraph 1, “base contributory earnings” means the member’s contributory earnings exclusive of any portion of the member’s earnings related to incentive pay.
3. For the purposes of paragraph 2, “incentive pay” means earnings related to short-term or long-term performance based bonus payments and similar pay arrangements. For greater certainty, performance based bonus payments do not include bonus payments based on length of service.
4. Unless the contrary is established to the satisfaction of the Administration Corporation, the contributory earnings of a member shall be deemed to be the contributory earnings that would be represented by the amount of contributions actually received by the Fund in respect of the member.

“**councillor**” means a person who is a member of a council of a municipality;

“**credited service**” means the years and part years of service of a member for which contributions under

section 11 have been made and not refunded and includes any service established for a member under sections 18, 30, 35, 38 and 39;

“**dependent child**” means the child of a deceased member who at the time of the member’s death was dependent on the member for support and,

- (a) is under 19 years of age and will not attain that age in the calendar year of the member’s death,
- (b) is under 21 years of age and in full-time attendance at an educational institution if the member dies prior to January 1, 2005, or;
- (c) is under 25 years of age and in full-time attendance at an educational institution if the member dies on or after January 1, 2005;

“**dependent child benefit period**” means the period,

- (a) up to the end of the calendar year in which a dependent child reaches 18 years of age,
- (b) during which a dependent child is under 21 years of age and continues in full-time attendance at an educational institution if the member dies prior to January 1, 2005, or
- (c) during which a dependent child is under 25 years of age and continues in full-time attendance at an educational institution if the member dies on or after January 1, 2005;

“**earnings**”, in the case of an employee who is a member, means the salary or wages paid to the employee by an employer including the value of any perquisites received from an employer and, in the case of a councillor who is a member, means any money paid to the councillor for his or her services as a councillor;

“**effective date**” means the date upon which an employer commences to participate in this Plan in respect of both councillors and employees or in respect of either of them, as the case may be, according to this Plan;

“**employee**” means, for the purposes of this Plan, a person who is employed by an employer and who is eligible to be a member of the OMERS pension plans under subsection 5(3) or 6(2) of the *OMERS Act, 2006*;

“**employer**” means, for the purposes of this Plan, an employer who is eligible to participate in the OMERS pension plans under subsection 5(1) or 6(1) of the *OMERS Act, 2006*;

“**Fund**” means the pension fund for this Plan, continued by subsection 3(3) of the *OMERS Act, 2006*;

“**local board**” means a local board as defined in section 1 of the *OMERS Act, 2006*;

“**member**” means a person who has become a member of this Plan;

“**OMERS Act, 2006**” means the *Ontario Municipal Employees Retirement System Act, 2006*;

“optional service” means,

- (a) service with any municipality or local board (including a local board as defined in the *Ontario Municipal Employees Retirement System Act* immediately before that Act was repealed) in Canada,
- (b) service with the civil service of Canada or of any province or territory of Canada,
- (c) service with the staff of any board, commission or public institution established under any Act of Canada or any province or territory of Canada,
- (d) service with any other organization which was not an employer under this Plan and which has been merged or amalgamated with or otherwise taken over by an organization named in clause (a), (b) or (c),
- (e) service with an associated employer, or
- (f) war service;

“pension” means an amount that is payable at periodic intervals in accordance with this Plan;

“pensionable earnings” means,

- (a) where a member has 60 or more months of credited service, the result obtained by taking the sum of the member’s contributory earnings for the 60 months of consecutive credited service during which such contributory earnings were the highest and dividing that sum by 5, and
- (b) where a member has less than 60 months of credited service, the result obtained by taking the sum of the member’s contributory earnings, dividing that sum by the number of months of such service and multiplying the figure so obtained by 12;

“physician” means a medical doctor licensed to practice under the laws of a province of Canada or the place where the applicable member resides;

“Plan”, means this pension plan, known as the “OMERS Primary Pension Plan”, which is a continuation of the pension plan that was governed by the *Ontario Municipal Employees Retirement System Act* immediately before that Act was repealed;

“Police and Fire Sector Supplemental Pension Plan” means the OMERS Supplemental Pension Plan for Police, Firefighters and Paramedics” established pursuant to section 11 of the *OMERS Act, 2006*;

“present value” means an amount that is actuarially equivalent to a payment or payments that become due in the future;

“prior service” means the service of an employee or councillor before the date upon which this Plan becomes applicable to the employer;

“prior service agreement” means an agreement entered into under this Plan for the provision of benefits

in respect of prior service;

“**private sector service**” means service in Canada with an employer which was not an employer under this Plan and which is not prior service or optional service;

“**RCA**” means the retirement compensation arrangement established to provide benefits to members of this Plan in excess of the maximum pension accrual limits in the *Income Tax Act* (Canada);

“**retire**” means retire from service and “retirement” has a corresponding meaning;

“**service**” means service rendered to an employer or to a predecessor thereof by an employee or councillor, as the case may be, for which earnings are received and, for purposes of supplementary benefits, may include optional service;

“**Sponsors Corporation**” means the OMERS Sponsors Corporation established by subsection 22(1) of the *OMERS Act, 2006*;

“**spouse**” has the same meaning as in the *Pension Benefits Act*;

“**supplemental pension plan**” means a supplemental pension plan established pursuant to the *OMERS Act, 2006*;

“**supplementary agreement**” means an agreement entered into under this Plan for the provision of supplementary benefits;

“**supplementary benefit**” means a benefit in addition to the benefit to which a member or the surviving spouse, child, beneficiary or estate of the member is entitled by reason of his or her membership in this Plan;

“**surplus**” has the same meaning as in the *Pension Benefits Act*;

“**surviving spouse**” means the person who was the spouse of a member immediately before the member's death;

“**war service**” means active service during World War II or the Korean War,

- (a) in His or Her Majesty's naval, army or air forces or in the Canadian or British Merchant Marine, or
- (b) in any naval, army or air force that was allied with His or Her Majesty's forces and that is designated by the Lieutenant Governor in Council,

providing satisfactory proof of such service is produced;

“**Year's Maximum Pensionable Earnings**” has the same meaning as in the *Canada Pension Plan*.

THE FUND

2. (1) The Fund is continued for the payment of pension benefits to and in respect of members in accordance with this Plan.
- (2) The Fund shall include the cash, investments and other assets and the liabilities and the reserves of the Administration Corporation relating to this Plan.
- (3) The contributions of the employers and of the members, the income from investments plus profits less losses on the sale of investments and any other credits of the Administration Corporation in connection with this Plan shall be deposited in the Fund.
- (4) The benefits payable under this Plan, the expenses of the Administration Corporation that constitute fees and expenses of administering this Plan, and costs of the Sponsors Corporation described in section 27 of the *OMERS Act, 2006* shall be paid out of the Fund.
- (5) The Administration Corporation shall invest the Fund in accordance with the *Pension Benefits Act*.

ACTUARIAL VALUATION

3. (1) The actuary appointed under section 19 of the *OMERS Act, 2006* shall make an actuarial study and valuation of the assets and liabilities of the Fund as required by the Administration Corporation, but not less frequently than at three year intervals, and shall report thereon to the Administration Corporation and shall make such recommendations to the Administration Corporation as the actuary considers advisable for the proper management and administration of this Plan.
- (2) The report to the Administration Corporation shall include a statement of the actuarial assumptions used by the actuary in the preparation of the valuation mentioned in subsection (1).

COMMUTED VALUE

4. (1) The commuted value of a pension is the value of that pension calculated in the manner prescribed under the *Pension Benefits Act* using unisex mortality tables for all service. However,
 - (a) the commuted value of a member's pension in respect of his or her credited service as of December 31, 1986 shall not be less than the contributions made by the member under this Plan on or before that date, plus interest, excluding the contributions referred to in subsections 15(7), 15(8), 38(14), 38(15) and section 47; and
 - (b) the commuted value of a member's total pension shall not be less than the contributions made by the member under this Plan plus interest, excluding the contributions referred to in subsections 15(7), 15(8), 38(14), 38(15) and section 47 and excluding any refund payable under subsection 27(2).

DUTIES OF THE EMPLOYER

5. (1) All member and employer contributions in respect of the contributory earnings of a member shall be paid by the employer to the Administration Corporation so that they shall be received by the Administration Corporation at its office in Toronto on or before the last day of the month next following the month in respect of which the contributions were made.
- (2) When an employer fails to pay to the Administration Corporation the contributions within the time set out in subsection (1), there shall be charged to the employer, in any month, interest at a rate equal to 1.5 per cent per month plus the prime rate on the first business day of that month of the bank that has the highest prime rate on that day on the amount of unpaid contributions from the end of the time period specified in subsection (1) until the date the total amount due has been received in the offices of the Administration Corporation.
- (3) An employer shall provide the Administration Corporation with the name, sex, date of birth, marital status, earnings and service of each member and such other information as the Administration Corporation determines is necessary for the administration of this Plan, within such time limit as the Administration Corporation may establish.
- (4) An employer shall provide each member with an explanation in writing of the contributions required and the pension benefits provided under this Plan and such other information as the Administration Corporation shall determine in the form and within the time established by the Administration Corporation.

PARTICIPATION BY EMPLOYERS

6. (1) An employer who is eligible under the *OMERS Act, 2006* to participate in the OMERS pension plans may, by by-law or resolution, participate in this Plan and pay to the Fund the total of the employer and member contributions, and has all of the powers necessary and incidental thereto.
- (2) Participation in this Plan by an associated employer is subject to any conditions agreed to by the associated employer and the Sponsors Corporation in accordance with subsection 6(1) of the *OMERS Act, 2006*.
- (3) Participation in this Plan by a municipality may be in respect of councillors, heads of council and employees or in respect of any of them.
7. (1) An employer may participate in this Plan by submitting an election in writing to the Administration Corporation.
- (2) An election by an employer who is an associated employer may specify the classes of employees who are to be members of this Plan.
- (3) The effective date with respect to employees, councillors or heads of council may be the first day of any month within the year in which the Administration Corporation receives the employer's election to participate in this Plan in respect of those employees, councillors or heads of council.
8. An employer who has elected to participate in this Plan may terminate its participation in this Plan subject to the conditions and restrictions applicable to termination of participation contained in the *OMERS Act, 2006*.

MEMBERSHIP

9. (1) In this section,

“employee employed on a continuous full-time basis” means an employee who: normally works and receives pay (whether it is regular pay or vacation pay) in respect of every week of the calendar year; has a standard full-time work week of at least 32 hours; and is employed in a continuing position of the employer, but does not include an employee who is employed: for less than 12 months; or for more than 12 months as a temporary replacement for another employee who is employed on a continuous full-time basis.

- (2) Subject to subsections (3) and (4), every employee who is employed on a continuous full-time basis by an employer who has elected to participate in this Plan,
- (a) if the employment on such basis commenced before the effective date, is entitled to become a member;
 - (b) if the employment on such basis commenced on or after the effective date, but before the 1st day of January, 1978, shall become a member on a day fixed by the employer that is within 12 months after the day on which the employee became employed on a continuous full-time basis but not later than the 1st day of January, 1978; and
 - (c) If the employment on such basis commenced on or after the 1st day of January, 1978, shall become a member on the date he or she was so employed.
- (3) If on the effective date the employer is required to make contributions to an approved pension plan under the terms of a bargaining agreement an employee to whom the agreement applies,
- (a) if the employee’s employment on a continuous full-time basis commenced before the date on which the agreement is terminated or before the 1st day of July, 1968, whichever is earlier, shall become a member on or after a day fixed by the employer after the 31st day of December, 1980, if,
 - (i) 75 per cent of such employees who are under normal retirement age at any time apply or have applied to become members, or
 - (ii) membership in this Plan is a condition of or required by the bargaining agreement;
 - (b) if the employee’s employment on a continuous full-time basis commenced after the date the agreement is terminated or after the 1st day of July, 1968, whichever is earlier, shall become a member on a day fixed by the employer that is within 12 months after the day on which the employee became employed on a continuous full-time basis but not later than the 1st day of January, 1978; and
 - (c) if the employee’s employment on a continuous full-time basis commenced on or after the 1st day of January, 1978, shall become a member on the date the employee was so employed.

- (4) If the employer makes contributions to an approved pension plan, an employee, other than an employee referred to in subsection (3), whose employment on a continuous full-time basis commenced before the effective date, shall become a member on or after a day fixed by the employer after the 31st day of December, 1980, if 75 per cent of such employees who are under normal retirement age at any time apply or have applied to become members.
 - (5) Where an employer so approves, subsection (2) applies with necessary modifications to employees or any class thereof who are employed on other than a continuous full-time basis, except that “effective date” in that case means the date of such approval, but all such employees who are members on the 31st day of December, 1977, shall have continued membership in this Plan.
 - (6) Despite subsection (5), an employee who is employed on other than a continuous full-time basis by an employer who has elected to participate in this Plan is entitled to become a member if, in each of the 2 consecutive calendar years immediately before the calendar year in which the employee elects to become a member, the employee,
 - (a) has earnings of not less than 35 per cent of the Year’s Maximum Pensionable Earnings, as defined in the *Canada Pension Plan*, with one or more employers who have elected to participate in this Plan; or
 - (b) has at least 700 hours of employment with one or more employers who have elected to participate in this Plan.
 - (7) Where an employee or councillor is entitled to become a member under clause (2)(a), clause (3)(a), subsection (6) or subsection (9), such employee or councillor becomes a member on the first day of the month following the month in which the employee’s or councillor’s application is received by the Administration Corporation provided that the Administration Corporation may at the request of the employer fix an earlier day on which the employee or councillor becomes a member but not before the day on which the employee or councillor became entitled to be a member or the 1st day of January in the year in which the application is received by the Administration Corporation.
 - (8) Where 2 or more employers are amalgamated, the new employer shall be deemed to have elected to participate in this Plan on the date of the amalgamation in respect of the employees and councillors, if any, of the former employers who were members of this Plan on the day immediately preceding such date and who are employed by the new employer on such date or are members of the council of the new employer on such date.
 - (9) A councillor or head of council in office on the effective date for councillors or heads of council is entitled to become a member.
 - (10) A person who becomes a councillor or head of council after the effective date becomes a member on the date he or she becomes a councillor or head of council.
 - (11) Despite any other provision of this section, no employee or councillor is entitled to become a member, or shall become a member, on or after the date on which a pension must commence under subsection 16(3).
- 10.** Despite the definitions of “continuous service”, “contributory earnings”, “credited service” and “pensionable earnings” in section 1, a member who is employed on other than a continuous full-time basis,

- (a) shall be deemed to have continuous service while so employed;
- (b) shall accrue credited service each year on a proportional basis to a member employed on a continuous full-time basis in a similar occupation with the employer; and
- (c) shall have the member's pensionable earnings calculated using annualized contributory earnings and continuous service in lieu of credited service.

CONTRIBUTIONS BY MEMBERS

- 11.** (1) Every member shall contribute to the Fund by payroll deduction in each pay period a percentage of the member's contributory earnings while he or she is an employee or councillor of an employer who participates in this Plan, but no contribution shall be payable by a member from the date a pension must commence under subsection 16(3).
- (2) On and after January 1, 2011, the contributions payable by a member under subsection (1) in respect of his or her contributory earnings in any pay period are,
- (a) for a member whose normal retirement age is 65 years, 7.4 per cent of the contributory earnings which are equal to or less than the result obtained by dividing the Year's Maximum Pensionable Earnings by the number of pay periods in the year, plus 10.7 per cent of the balance of the contributory earnings; and
 - (b) for a member whose normal retirement age is 60 years, 8.9 per cent of the contributory earnings which are equal to or less than the result obtained by dividing the Year's Maximum Pensionable Earnings by the number of pay periods in the year, plus 14.1 per cent of the balance of the contributory earnings.
- (3) On and after July 1, 2008, in addition to the contributions payable under subsection (2), each member of this Plan who is also a member of the Police and Fire Sector Supplemental Pension Plan shall, in each pay period in respect of which the member makes a contribution under the Police and Fire Sector Supplemental Pension Plan that is greater than zero, make the following additional contributions required by section 14 of the *OMERS Act, 2006* in respect of his or her contributory earnings in that pay period:
- (a) for a member who has coverage for a benefit described in clause 2(3)(a) of the Police and Fire Sector Supplemental Pension Plan whose normal retirement age is 65 years, 0.3 per cent of the contributory earnings payable from the coverage date for such benefit determined in accordance with the terms of the Police and Fire Sector Supplemental Pension Plan;
 - (b) for a member who has coverage for a benefit described in clause 2(3)(a) of the Police and Fire Sector Supplemental Pension Plan whose normal retirement age is 60 years, 0.2 per cent of the contributory earnings payable from the coverage date for such benefit determined in accordance with the terms of the Police and Fire Sector Supplemental Pension Plan;
 - (c) for a member who has coverage for a benefit described in subclause 2(3)(b)(i) of the Police and Fire Sector Supplemental Pension Plan, zero per cent of the contributory earnings payable from the coverage date for such benefit determined in accordance with the terms of the Police and Fire Sector Supplemental Pension Plan;

- (d) for a member who has coverage for a benefit described in subclause 2(3)(b)(ii) of the Police and Fire Sector Supplemental Pension Plan, zero per cent of the contributory earnings payable from the coverage date for such benefit determined in accordance with the terms of the Police and Fire Sector Supplemental Pension Plan;
 - (e) for a member who has coverage for a benefit described in clause 2(3)(c) of the Police and Fire Sector Supplemental Pension Plan whose normal retirement age is 65 years, zero per cent of the contributory earnings payable from the coverage date for such benefit determined in accordance with the terms of the Police and Fire Sector Supplemental Pension Plan;
 - (f) for a member who has coverage for a benefit described in clause 2(3)(c) of the Police and Fire Sector Supplemental Pension Plan whose normal retirement age is 60 years, zero per cent of the contributory earnings payable from the coverage date for such benefit determined in accordance with the terms of the Police and Fire Sector Supplemental Pension Plan;
 - (g) for a member who has coverage for a benefit described in clause 2(3)(d) of the Police and Fire Sector Supplemental Pension Plan whose normal retirement age is 65 years, zero per cent of the contributory earnings payable from the coverage date for such benefit determined in accordance with the terms of the Police and Fire Sector Supplemental Pension Plan; and
 - (h) for a member who has coverage for a benefit described in clause 2(3)(d) of the Police and Fire Sector Supplemental Pension Plan whose normal retirement age is 60 years, zero per cent of the contributory earnings payable from the coverage date for such benefit determined in accordance with the terms of the Police and Fire Sector Supplemental Pension Plan.
- (4) In any pay period, the contributory earnings in respect of which contributions are payable by a member shall not exceed the rate of contributory earnings which, when substituted for pensionable earnings in subsection 16(5), results in a pension amount equal to the limit established in subsection 16(11).
- (5) Despite subsections (1), (9) and (10), no contribution shall be payable by a member after the member has accrued 35 years of credited service.
- (6) Despite subsections (4) and (5), for the purposes of calculating pensionable earnings, the contributory earnings of a member shall be calculated as if subsections (4) and (5) had no effect and the member contributed to the Fund under subsection (1).
- (7) At the option of the employer, the amount of contributions payable by a member under subsection (1) shall, instead of being computed in accordance with subsection (2), for ranges in contributory earnings not exceeding \$10 monthly, be computed on the average of the highest and lowest amounts in the range.
- (8) Contributions made by members shall not be withdrawn from the Fund in whole or in part while the member remains an employee or councillor.

- (9) A member who does not make a contribution to the Fund under subsection (1) during an absence that is an absence described in clause (c) of the definition of “continuous service” in section 1 may establish the period of the absence as credited service by paying to the member’s employer for payment into the Fund on a date specified by the Administration Corporation an amount equal to the amount of contribution calculated in accordance with subsection (2) as if the annual rate of contributory earnings of the member on the day immediately preceding the absence had been received by the member during the absence.
- (10) A member who did not make a contribution to the Fund under subsection (1) during an absence that was an absence described in clause (b) or (d) of the definition of “continuous service” in section 1 may establish all or part of the period of the absence as credited service by paying into the Fund an amount equal to twice the amount of contribution calculated in accordance with subsection (2) as if the annual rate of contributory earnings of the member on the day immediately preceding the absence had been received by the member during the absence and the amount to be paid by the member shall be paid to the Fund on or before the end of the year next following the year in which the absence terminates.
- (11) Notwithstanding subsection (10), a member who did not make a contribution to the Fund under subsection (1) during an absence that was an absence described in clause (b) of the definition of “continuous service” in section 1 that was also an absence protected under Part XIV of the *Employment Standards Act*, may establish all or part of the period of absence, subject to the election rules set out in the *Employment Standards Act*, by paying into the Fund an amount equal to the contribution calculated in accordance with subsection (2) as if the annual rate of contributory earnings of the member on the day immediately preceding the absence had been received by the member during the absence and the amount to be paid by the member shall be paid to the Fund on or before the end of the year next following the year in which the absence terminates.
- (12) If a member elects not to purchase a period of absence described in subsection (11) in accordance with subsection (11) and subsequently wishes to purchase such period, the member shall do so in accordance with subsection (10).
- (13) A member may only establish credited service in accordance with subsections (9), (10) or (11) if he/she establishes credited service in the Police and Fire Sector Supplemental Pension Plan, for the same period and on the same terms and conditions, in accordance with the terms of that plan.
- (14) If during a calendar year a member has more than one break in service as described in subsection (9), (10) or (11) and, in the aggregate, such breaks do not exceed 20 days, or such other number as determined by the Administration Corporation, then for the purposes of subsection (9), (10) or (11), the member’s employer may treat the aggregate of such breaks as a single break in service and deem the member’s rate of contributory earnings for this break as equal to the member’s regular rate of contributory earnings in a typical pay period for that year.
- (15) For the purposes of subsections (10) and (11), if a member wishes to establish as credited service a period of absence which occurred after 1990 and has already established as credited service other such periods of absence totalling 5 years, plus, in respect of pregnancy or parental leave, up to 1 year of absence applied to any child up to a maximum of 3 years, no benefit shall be payable or funded in respect of any additional such periods of absence which the member wishes to establish as credited service until certification of the member’s past service pension adjustment under the *Income Tax Act* (Canada).

- (16) Subsection (15) shall not apply to any period of absence as a result of a disability described in clause (c) of the definition of “continuous service” or under subsections 18(1) or 18(2).
- (17) For the purposes of subsection (10), in order to establish as credited service a period of absence in respect of a “period of reduced pay” as defined in the *Income Tax Act* (Canada), the member must have been employed by the member’s employer at least 36 months before the commencement of the “period of reduced pay”.
- (18) Despite subsection (10), no member may establish as credited service a period of absence which occurred after 1990 if the member has accrued pension benefits in respect of that period under another pension plan registered under the *Income Tax Act* (Canada) without first obtaining certification of the member’s past service pension adjustment under the *Income Tax Act* (Canada).
- (19) For each member of this Plan who is also a member of the Police and Fire Sector Supplemental Pension Plan, any purchase of service under this Plan that is related to a service purchase in the Police and Fire Sector Supplemental Pension Plan is subject to subsection 8(5) of that plan.

CONTRIBUTIONS BY EMPLOYERS

- 12. (1) Every employer shall contribute to the Fund an amount equal to contributions made under subsection 11(1) by employees or councillors of the employer.
- (2) Where a member elects to make a contribution,
 - (a) under subsection 11(9), the employer shall make an equal contribution and shall pay such member contributions and employer contributions to the Fund forthwith;
 - (b) under subsection 11(10), the employer shall pay such contributions to the Fund forthwith; and
 - (c) under subsection 11(11), the employer shall make an equal contribution and shall pay such member contributions and employer contributions to the Fund forthwith.
- 13. Any sum the payment of which has not been made by an employer as required under this Plan is a debt recoverable from the employer by the Administration Corporation in a court of competent jurisdiction.
- 14. *Section 14 intentionally left blank*

NORMAL RETIREMENT AGE

- 15. (1) The normal retirement age of a member is,
 - (a) 65 years; or
 - (b) 60 years, if a member is a police officer or firefighter and the employer has changed the normal retirement age of the class of employees to which the member belongs to 60 years; or
 - (c) 60 years, if a member who is contributing to the Fund on the basis of a normal retirement age of 60 years becomes an employee of an employer who is an association of police officers or firefighters within 90 days of ceasing to be employed as a police officer or firefighter and the employer has changed the normal retirement age of the class of employees to which the member belongs to 60 years.

- (2) The normal retirement date of a member is the last day of the month in which the member attains the member's normal retirement age.
- (3) An employer may change the normal retirement age of all members or any class of members who are: police officers; firefighters; or former police officers or firefighters described in clause (1)(c), from 65 years to 60 years by submitting an election in writing to the Administration Corporation.
- (4) In subsection (3), "police officer" includes a police cadet.
- (5) The normal retirement age of a member who
 - (a) is contributing to the Fund on the basis of a normal retirement age of 60 years;
 - (b) previously contributed to the Fund on the basis of a normal retirement age of 65 years; and
 - (c) has not withdrawn from the Fund any of the contributions referred to in clause (b),

shall be deemed to be 60 years for his or her entire period of credited service, and the period of his or her credited service while his or her normal retirement age was 65 years shall be reduced by 25 per cent, unless credit is established in the Fund by or in respect of the member of an amount, determined by the Administration Corporation on the advice of the actuary, equal to the difference between the present value of the pension earned based on credited service while the member's normal retirement age was 65 years and the same pension calculated as if the member's normal retirement age had been 60 years.

- (6) Where a member who has had all or part of his or her credited service reduced under subsection 15(5) subsequently contributes to this Plan on the basis of a normal retirement age of 65, the credited service reduction previously applied under subsection 15(5) shall be reversed.
- (7) Despite subsection 11(8), a member who is contributing to the Fund on the basis of a normal retirement age of 65 years and previously contributed to the Fund on the basis of a normal retirement age of 60 years shall have refunded to him or her,
 - (a) the contributions made by the member under section 11 on the basis of a normal retirement age of 60 years minus the contributions that would have been made by the member under section 11 on the basis of a normal retirement age of 65 years; and
 - (b) any excess contributions made by the member under subsection (5) or section 30, 35, 36, 38 or 39,

with interest calculated in the manner provided under subsection 27(5).

- (8) Despite subsection 27(1) and in lieu of the benefit referred to in subsection (7), a member who ceases to be an employee or councillor of an employer may, by written request to the Administration Corporation, request that the contributions referred to in subsection (7) be paid to him or her, together with interest thereon at the rate set forth in subsection 27(5) less the amount of benefits that have been paid.
- (9) The normal retirement age of a member who,

- (a) is contributing to the Fund on the basis of a normal retirement age of 60 years;
- (b) previously contributed to the Fund on the basis of a normal retirement age of 65 years and before that contributed to the Fund on the basis of a normal retirement age of 60 years; and
- (c) has not withdrawn from the Fund any contributions other than under subsection (7), (8), 38(14) or 38(15),

shall be deemed to be 60 years for his or her entire period of credited service, and the period of credited service to the credit of the member based on a normal retirement age of 65 years shall be reduced by 25 per cent unless,

- (d) in respect of a prior period during which the member contributed to the Fund on the basis of a normal retirement age of 65 years, credit is established in the Fund by or in respect of the member of an amount calculated in accordance with subsection (5); and
 - (e) in respect of a prior period during which the member previously contributed to the Fund on the basis of a normal retirement age of 60 years, credit is established in the Fund by or in respect of the member of an amount equal to the excess of contributions made by the member referred to in subsection (7), together with interest thereon calculated in the manner provided in subsection 27(5).
- (10) If a member's age is 60 years or more, the 25 per cent reduction referred to in subsections (5) and (9) shall equal 0.05 times the number of complete years and months that the member's age is less than 65 years, and the calculation of the amount referred to in subsections (5) and (9) shall be modified accordingly.

NORMAL RETIREMENT PENSIONS

- 16.** (1) Every member who retires on or after the member's normal retirement date is entitled to receive a normal retirement pension.
- (2) A pension under this section is payable to a member beginning on the first day of the month, following the month of the member's retirement.
- (3) Despite subsections (1) and (2), a member's pension must commence no later than the end of the year in which the member attains 71 years of age or at such other time as prescribed under the *Income Tax Act* (Canada).
- (4) A member's normal retirement pension equals the sum of the member's lifetime normal retirement pension and bridge pension.
- (5) On and after January 1, 1999, the lifetime normal retirement pension payable to a member for life is calculated using the formula,

$$A + F + G$$

in which,

"A" is 2 per cent of the member's pensionable earnings multiplied by the member's credited

service before 1966;

“F” is the amount calculated by multiplying the member’s credited service after 1965 by 1.325 per cent of the lesser of,

- (a) the member’s pensionable earnings, or
- (b) the average of the Year’s Maximum Pensionable Earnings for the year in which the member ceased to be employed by the employer and for each of the 4 preceding years; and

“G” is the amount, if any, calculated by multiplying the member’s credited service after 1965 by 2 per cent of the greater of,

- (a) the member’s pensionable earnings less the amount that is the average of the Year’s Maximum Pensionable Earnings for the year in which the member ceased to be employed by the employer and for each of the 4 preceding years, or
- (b) zero.

- (6) In the circumstances described in subsection 28(3) and despite subsection (5), the amount of a member’s lifetime normal retirement pension is calculated according to the following rules:
 - 1. The expressions “old employment” and “new employment” have the same meaning as in subsection 28(1).
 - 2. A separate calculation must be made in respect of the following periods of credited service:
 - (i) all credited service of the member up to and including the date on which the old employment was terminated. If the member has more than one period of old employment, the period described in this subparagraph ends on the date on which the first period of old employment was terminated.
 - (ii) if the member has more than one period of old employment, the credited service earned by the member for each period of old employment after the first period of old employment.
 - (iii) all credited service of the member on and after the date on which the new employment began.
 - 3. The member’s pensionable earnings for each of those periods of credited service is determined as if the member had been a member of this Plan during the applicable period of credited service and not at any other time.
 - 4. The amount of the member’s pension with respect to each of the periods of credited service is calculated in accordance with subsection (5) as if the period were the member’s only period of credited service. The calculation must use the pensionable earnings for the period as determined under paragraph 3.
 - 5. The member’s lifetime normal retirement pension is the sum of the pension amounts calculated under paragraph 4 for each of the periods of credited service.

- (7) For the purposes of this section, the total number of years of credited service of a member may not exceed 35.
- (8) The bridge pension payable,
- (a) on or after January 1, 1999, to a member until he or she becomes or would have become entitled to a pension under the *Canada Pension Plan* that is unreduced for early retirement; or
 - (b) on or after January 1, 2005, to a member until the end of the month in which the member attains 65 years of age and is entitled to a disability pension under the *Canada Pension Plan*,

is calculated using the formula,

$$H \times L$$

in which,

“H” is the member’s credited service in respect of the years after 1965; and

“L” is the amount that is 0.675 per cent of the lesser of,

- (a) the member’s pensionable earnings, or
 - (b) the average of the Year’s Maximum Pensionable Earnings for the year in which the member ceased to be employed by the employer and for each of the 4 preceding years.
- (9) In the circumstances described in subsection 28(3) and despite subsection (8), the amount of a member’s bridge pension is calculated according to the following rules:
1. Paragraphs 1 to 3 of subsection (6) apply with respect to the calculation.
 2. The amount of the member’s pension with respect to each of the periods of credited service is calculated in accordance with subsection (8) as if the period were the member’s only period of credited service. The calculation must use the pensionable earnings for the period as determined under paragraph 3 of subsection (6).
 3. The member’s bridge pension is the sum of the pension amounts calculated under paragraph 2 for each of the periods of credited service.
- (10) When a member ceases to be entitled to a bridge pension, he or she also ceases to be entitled to any inflation adjustments made to the bridge pension under section 31.
- (11) Despite subsection (5) or (6), the lifetime normal retirement pension of a member for each year of credited service in respect of years after 1991 shall not exceed \$1,722.22 or such other limit prescribed under the *Income Tax Act* (Canada).
- (12) Despite subsection (5) or (6), for credited service in respect of years before 1990 accrued under section 39 or an agreement under section 38 entered into on or after the 8th day of June, 1990, if the member for whom such service accrues was not a member of any pension plan registered under the *Income Tax Act* (Canada) during any year in respect of that credited service, the lifetime normal retirement pension of a member, for each year of the credited service, shall not exceed \$1,150 or such other limit prescribed under the *Income Tax Act* (Canada).

17. (1) In this section,
- “**career average pension**” means a pension for a period of contributory earnings before January 1, 1978 calculated under Regulation 638 of the Revised Regulations of Ontario, 1970, as amended to December 31, 1977, or a predecessor of that regulation, excluding any pension calculated as the product of a percentage multiplied by credited service multiplied by pensionable earnings.
- (2) The pension payable to or in respect of a member shall be increased by 1.92 per cent of the career average pension payable in respect of credited service after December 31, 1965 but before January 1, 1978 if between those dates,
- (a) the member retired or terminated employment from an employer who participates or participated in this Plan; and
- (b) the member’s pension is a career average pension.
- (3) The effective date of the increase described in subsection (2) is January 1, 1999.

DISABILITY RETIREMENT BENEFITS

18. (1) Upon application and with the approval of the Administration Corporation, a member shall be considered to be totally disabled on the date that a physician appointed by the Administration Corporation certifies is the date that the member is wholly prevented due to mental or physical incapacity from performing the regular duties of the occupation in which he or she was engaged immediately before that date, and the disability shall be considered to continue if the member is so prevented during the first 24-month period immediately after that date, and, thereafter, the disability shall be considered to continue if the member is wholly prevented from engaging in any occupation or performing any work for compensation or profit for which the Administration Corporation, on the advice of a physician appointed by the Administration Corporation, considers the member is or may become reasonably qualified by education, training or experience.
- (2) Upon application and with the approval of the Administration Corporation, a member shall be considered to be totally disabled on the date that a physician appointed by the Administration Corporation certifies is the date that the member began suffering from a physical or mental impairment which wholly prevents the member from engaging in any occupation or performing any work for compensation or profit for which the Administration Corporation, on the advice of a physician appointed by the Administration Corporation, considers the member is or may become reasonably qualified by education, training or experience and which can reasonably be expected to last for the remainder of the member’s lifetime.
- (3) Despite subsections (1) and (2), total disability shall be considered not to exist,
- (a) during any period in which the member engages in any occupation for compensation or profit other than an occupation associated with a rehabilitation program approved by the Administration Corporation;
- (b) where such total disability in respect of a member results from wilfully self-inflicted injury or the commission or attempted commission by the member of an indictable offence under the *Criminal Code* (Canada) or the engagement by the member in an unlawful occupation.

- (4) A member who is considered under subsection (1) to be totally disabled and who has not elected to receive a benefit under section 22 or 23, subsection 25(6) or 27(1) or section 29, 33, 34, or 36 accrues credited service from the latest of,
 - (a) January 1, 1978;
 - (b) the first day of the fifth calendar month following the month in which the member is considered to be totally disabled; or
 - (c) the day the member ceases to make contributions under section 11, until the earliest of,
 - (d) the member's normal retirement date;
 - (e) the day, if any, on which the member subsequently elects to receive a benefit under section 22 or 23, subsection 25(6) or 27(1), or section 29, 33, 34 or 36;
 - (f) the day on which the member dies; or
 - (g) the day the member ceases to be considered under subsection (1) to be totally disabled.
- (5) During the period of the accrual of a member's credited service referred to in subsection (4),
 - (a) the contributory earnings of the member shall be deemed to be the annual rate of contributory earnings for which contributions were last made by the member under section 11; and
 - (b) for the purposes of any pension calculated in the manner prescribed in section 16, for any year of credited service accrual under subsection (4), the Year's Maximum Pensionable Earnings as defined in the *Canada Pension Plan* shall be deemed to be equal to that of the year in which the member's credited service accrual under subsection (4) began.
- (6) Despite section 11, no member shall make contributions to the Fund in respect of contributory earnings under subsection (5) during the period of accrual of credited service under subsection (4).
- (7) Whether or not a member who is accruing credited service under subsection (4) continues to have the status of an employee or councillor with respect to the employer, the member shall be deemed to be an employee or councillor of the employer for the purposes of this Plan.
- (8) Every member whose credited service accrual under subsection (4) began on or before December 1 of the year prior to an adjustment year and continues to January 1 of that adjustment year shall have,
 - (a) his or her deemed annual rate of contributory earnings, referred to in clause (5)(a), increased by the inflation adjustment in the manner prescribed in subsection 31(8) from the 1st day of January of the adjustment year; and
 - (b) his or her deemed Year's Maximum Pensionable Earnings referred to in clause (5)(b), from the 1st day of January of the adjustment year, increased to the lesser of,
 - (i) the member's deemed Year's Maximum Pensionable Earnings increased by the inflation adjustment in the manner prescribed in subsection 31(8), or

- (ii) the Year's Maximum Pensionable Earnings, as defined in the *Canada Pension Plan*, for the adjustment year.
- (9) Despite subsections (5) and (8), if on December 1 of the year which is two years prior to an adjustment year, or the 1st day of any month of the year prior to an adjustment year, a member is entitled to a disability benefit under subsection (4) and on January 1 of that adjustment year,
- (a) the member is entitled to a pension;
 - (b) the member is entitled to a deferred pension; or
 - (c) the member's surviving spouse or children are entitled to a pension in respect of a deceased member,

the pension referred to in clause (a), (b) or (c) shall be increased on the 1st day of January of the adjustment year by the inflation adjustment in the manner prescribed in subsection 31(8) using the date the member became entitled to a disability benefit as the commencement date of the pension or deferred pension to be increased by the inflation adjustment.

- (10) A member who is considered under subsection (2) to be totally disabled and who is entitled to accrue credited service under subsection (4) may, instead of accruing credited service under subsection (4), elect to receive a pension as follows:
1. The pension is to be calculated in the manner prescribed in section 16.
 2. The pension begins on the later of the first day of the fifth calendar month following the month in which the member is considered totally disabled and the first day of the month following the month the member ceases to make contributions under section 11.
 3. The pension continues to be payable until the member ceases to be considered totally disabled, unless it occurs after his or her normal retirement date, in which case the pension is payable for his or her life.
- (11) Where a member has accrued a period of credited service under subsection (4) and subsequently elects to receive a pension under subsection (10), the pension shall commence on the first day of the month next following receipt of the member's pension election in the Administration Corporation's offices.
- (12) The accrual of credited service under subsection (4) ceases on the last day of the month preceding the month in which a pension commences under subsection (10).
- (13) A member who elects to receive a pension under this section shall be deemed for purposes of that pension to cease to be an employee or councillor during any period that that pension is in pay.
- (14) Every member who under this section is considered to be totally disabled shall, at the request of the Administration Corporation and at the expense of the Fund, submit from time to time to a medical examination by a physician appointed by the Administration Corporation, but such an examination shall not be required more frequently than once a year and not after the normal retirement date of the member.
- (15) If a member fails within 60 days after a request therefore to submit to a medical examination in

accordance with subsection (14) the member shall be deemed not to be totally disabled.

- (16) Despite subsection (10), the amount of pension payable to a member in any month before his or her normal retirement date under this section, together with any amount of compensation payable to the member with respect to that month under the *Workplace Safety and Insurance Act*, shall not exceed 85 per cent of the monthly rate of contributory earnings of the member on the last day the member received the normal rate of contributory earnings from his or her employer.
- (17) For purposes of subsection (16), the amount of pension payable to a member shall exclude any adjustments made thereto under section 31 and any similar adjustments made to compensation payable to the member under the *Workplace Safety and Insurance Act*.
- (18) Despite subsections (4) and (10), if a member who was accruing credited service under subsection (4) or was receiving a pension under subsection (10) returns to work and ceases to accrue credited service under subsection (4) or to receive a pension under subsection (10) and within 6 months of returning to work again becomes disabled under subsection (1) or (2) as a result of the same mental or physical incapacity, as certified by a physician appointed by the Administration Corporation, the member may immediately resume accruing credited service under subsection (4) or receiving a pension under subsection (10).

PENSIONS TO SURVIVORS: DEATH OF A MEMBER BEFORE RETIREMENT

- 19. (1) A pension is payable under this section on the death of a member before the date that payment of the first instalment of the pension is due,
 - (a) to the surviving spouse, if the member and the surviving spouse were not living separate and apart on the date of the member's death; or
 - (b) to each dependent child of the deceased member,
 - (i) if, at the death of the member, there is no surviving spouse entitled to receive a pension under this section,
 - (ii) if the surviving spouse is not entitled to receive or to continue to receive a pension under this section by virtue of subsection 21(9), or
 - (iii) if the surviving spouse who was entitled to a pension under this section has died.
- (2) The annual amount of pension payable under this section,
 - (a) to a surviving spouse shall not exceed the annual amount of pension calculated under section 16 and is the sum of,
 - (i) 66 2/3 per cent of the annual amount of pension calculated under section 16, and
 - (ii) in respect of each dependent child of the member during his or her dependent child benefit period, 10 per cent of the annual amount of pension calculated under section 16; or
 - (b) to a dependent child is,

- (i) $66 \frac{2}{3}$ per cent of the annual amount of pension calculated under section 16, or
 - (ii) if the surviving spouse was receiving a pension immediately before her or his death, the amount of that pension excluding any adjustment in respect of a dependent child of the member,

divided by the number of dependent children of the member who remain in their dependent child benefit periods.
- (3) Every calculation of a member's pension under this section shall be on the basis that the member was entitled to a pension under the *Canada Pension Plan* at the time of the member's death.
- (4) For the purposes of this section, the minimum value of a member's pension earned to the date of the member's death is the sum of,
- (a) the contributions made by the member before the 1st day of January, 1987, under this Plan, exclusive of contributions referred to in subsections 15(7), 15(8), 38(14) and 38(15), plus interest; and
 - (b) the commuted value of the member's pension in respect of credited service of the member earned on or after the 1st day of January, 1987,
- less the sum of any benefits paid to or in respect of a member under this Plan, exclusive of benefits under subsections 15(7), 15(8), 38(14) and 38(15) and payments under subsections 27(2), 27(3) and section 47.
- (5) If the commuted value of the pension payable to a surviving spouse on the death of a member under this section is less than the minimum value of the member's pension as determined in subsection (4), the pension payable is increased accordingly.
- (6) A surviving spouse eligible for a pension under subsection (1) may elect to receive, instead of that pension, a refund of an amount equal to the minimum value of the member's pension.
- (7) A surviving spouse may elect to receive, instead of a refund under subsection (6), a deferred pension, the commuted value of which shall equal the amount of the refund, payable for life commencing the first day of the month following the month she or he attains the age of,
- (a) 65 if the normal retirement age of the member was 65 years; or
 - (b) 60 if the normal retirement age of the member was 60 years.
- (8) If, at the date of death of a member, there is no surviving spouse or child of the member eligible for a pension under this section, the member's designated beneficiary, or estate if there is no designated beneficiary, is entitled to a refund of an amount equal to the minimum value of the member's pension.
- (9) If, at the date of death of a member, there is no surviving spouse eligible for a pension under this section but there is a child or children of the member so eligible, the member's designated beneficiary, or estate if there is no designated beneficiary, is entitled to a refund of an amount equal to the commuted value of the member's pension in respect of credited service the member earned on or after the 1st day of January, 1987, less the commuted value of the pension payable to the

member's child or children under this section.

- (10) If no pension is payable to a surviving spouse or children of a deceased member under this section, the member's designated beneficiary, or estate if there is no designated beneficiary, is entitled to a refund of the contributions to the credit of the member, plus interest to the date of the member's death, less the amount of any benefits that have been paid to or in respect of the member.
- (11) Despite subsection (2), where the member was entitled to receive a deferred pension under section 22, the annual amount of pension payable under this section shall include any increases under subsections 22(6).

PENSIONS TO SURVIVORS: DEATH OF A MEMBER AFTER RETIREMENT

- 20. (1) A pension is payable under this section on the death of a member after the date that payment of the first instalment of the pension is due,
 - (a) to the surviving spouse of the member; or
 - (b) to each dependent child of the deceased member,
 - (i) if, at the death of the member there is no surviving spouse entitled to receive a pension under this section,
 - (ii) if the surviving spouse is not entitled to receive or continue to receive a pension under this section by virtue of subsection 21(9), or
 - (iii) if the surviving spouse who was entitled to a pension under this section has died.
- (2) The annual amount of pension payable to a surviving spouse shall not exceed the annual amount of pension the member was receiving immediately before death and is the sum of,
 - (a) $66 \frac{2}{3}$ per cent of the annual amount of the pension the member was receiving immediately before death and for the purposes of this calculation in the case of a member who retired before January 1, 1978 on an early retirement pension and who died on or after that day, the amount of the member's pension is increased to the amount it would have been but for early retirement; and
 - (b) in respect of each dependent child of the member during his or her dependent child benefit period, 10 per cent of the member's annual amount of pension described in clause (a).
- (3) The annual amount of pension payable to a dependent child is,
 - (a) $66 \frac{2}{3}$ per cent of the annual amount of the pension the member was receiving immediately before death occurred, but in the case of a member who retired before the 1st day of January, 1978 on an early retirement pension and who died on or after that day, increased to the amount it would have been if it had not been reduced for early retirement; or
 - (b) if the surviving spouse was receiving a pension immediately before her or his death, the pension the surviving spouse was receiving excluding any adjustment in respect of a dependent child of the member,

divided by the number of dependent children of the member who continue in their dependent child benefit periods.

- (4) Every calculation of a member's pension under this section shall be on the basis that the member was entitled to a pension under the *Canada Pension Plan* at the time of the member's death.
- (5) If, under this section, no pension is payable to a surviving spouse or child of a deceased member, the member's designated beneficiary, or estate if there is no designated beneficiary, is entitled to a refund of the contributions to the credit of the member, plus interest to the date of the member's retirement, less the amount of any benefits that have been paid to or in respect of the member.
- (6) Despite the definition of surviving spouse, with respect to a member's pension under this Plan where payment of the first instalment of the pension was due on or after January 1, 1988, upon the death of the member, the member's spouse at the date the first instalment of the pension was due shall be deemed to be the surviving spouse instead of the person who would otherwise be the surviving spouse under this Plan.
- (7) Subsection (6) does not apply if,
 - (a) the member and the member's spouse on the date that payment of the first instalment of the pension was due were living separate and apart at that date, or
 - (b) the member's spouse at the date that payment of the first instalment of the pension is due is not alive at the date of death of the member, or
 - (c) the entitlement of the spouse at the date that payment of the first instalment of the pension is due is not entitled to receive a benefit by virtue of a valid court order, a valid written domestic contract or any other valid waiver filed with the Administration Corporation.

(7.1) Subsection (6) does not apply to subsection 47(10).

PENSIONS TO SURVIVORS: CONDITIONS APPLICABLE TO SURVIVOR BENEFITS

21. (1) A pension payable to a person under section 19 or 20 is payable monthly beginning the first day of the month following the month in which the person becomes entitled to the pension and is payable,
 - (a) to a surviving spouse until her or his death; or
 - (b) to a dependent child until the earlier of the child's death and the end of the child's dependent child benefit period.
- (2) A child of a deceased member shall be deemed for the purposes of this section to be under the age of 19 years during the continuation of total disability if the child is determined by the Administration Corporation, on the advice of a physician appointed by the Administration Corporation, to be totally disabled,
 - (a) before the age of 21 years; or
 - (b) before the age of 25 years if the child is in full-time attendance at an educational institution and the member dies on or after January 1, 2005.

- (3) In subsection (2),
- “totally disabled” means that the child is afflicted by mental or physical infirmity that has rendered the child incapable of supporting himself or herself and “total disability” has a corresponding meaning, but total disability shall be considered not to exist,
- (a) during any period in which the child engages in any occupation for compensation or profit other than an occupation associated with a rehabilitation or workshop program approved by the Administration Corporation, or
 - (b) where the disability results from wilfully self-inflicted injury or the commission or attempted commission by the child of an indictable offence under the *Criminal Code* (Canada) or the engagement by the child in an unlawful occupation.
- (4) Despite clause 19(2)(a) or subsection 20(2), the increase in pension payable to the surviving spouse in respect of children of the member as provided in subclause 19(2)(a)(ii) or clause 20(2)(b) shall be paid to the person or agency who most recently had custody, care and control.
- (5) Subject to the *Children’s Law Reform Act*, for the purposes of sections 19 and 20, if a pension or other benefit is payable to a child of a deceased member under the age of 18 years or a disabled child referred to in subsection (2), payment may be made to the person or agency having custody, care and control of the child, or, if there is no such person or agency, to the person or agency named by the Administration Corporation.
- (6) The surviving parent of a child shall, in the absence of evidence to the contrary, be deemed to be the person having custody, care and control, except where the child is living apart from the parent.
- (7) If a surviving spouse, child or beneficiary of a deceased member cannot be found, and the Administration Corporation is satisfied that reasonable efforts have been made to find them and at least 1 year has passed since the member’s death, the Administration Corporation may, despite any other provision of this Plan, direct that any benefit that would be payable under this Plan if the surviving spouse, child or beneficiary had predeceased the member be paid to the person who would be entitled to receive the benefit in those circumstances, on such conditions as the Administration Corporation directs.
- (8) If a surviving spouse, child or beneficiary referred to in subsection (7) is subsequently found and a claim is made for any benefit payable under this Plan, the Administration Corporation may direct that the benefit, reduced by the amount actually paid under subsection (7), be paid to the surviving spouse, child or beneficiary, as the case may be.
- (9) The Administration Corporation may direct that a benefit be paid in accordance with this Plan as if the surviving spouse or the member’s beneficiary, as the case may be, had predeceased the member if a benefit would otherwise have been payable under section 19 or 20 to the surviving spouse of a deceased member but the Administration Corporation is satisfied,
- (a) that the person is not entitled to receive the benefit by virtue of a judicial decree or a separation agreement or other contractual arrangement between the person and the member that has been received by the Administration Corporation before any payment of the benefit is made to the person; or

- (b) that the person, or, where applicable, the member's beneficiary, has refused to accept the benefit.
- (10) If the benefit referred to in subsection (9) is a pension and the Administration Corporation is satisfied that the person is not entitled to receive the pension by virtue of a judicial decree, separation agreement or other contractual arrangement that is received by the Administration Corporation after payment of the pension is commenced, the Administration Corporation may direct that, thereafter, the pension or any other benefit be paid in accordance with this Plan as if the person had died on the date the judicial decree, separation agreement or other contractual arrangement was received.
- (11) Any person receiving or entitled to receive a pension under section 19 or 20 on January 1, 1998, shall have his or her pension recalculated as if this Plan, as it read on January 1, 1998, had been in effect on the date of death of the former member whose pension or pension entitlement was the basis of calculation of the pension or pension entitlement of the person, but the recalculated pension shall be payable only from and after January 1, 1998.
- (12) A person receiving or entitled to receive a pension under section 19 or 20 on January 1, 1999, shall have his or her pension recalculated as if this Plan as it reads on June 1, 1999, had been in effect on the date of the applicable former member's death. The recalculated pension is payable only from and after January 1, 1999.

DEFERRED PENSIONS

- 22.**
- (1) If a member ceases to be an employee or councillor of an employer before the member's normal retirement date for reasons other than the member's entitlement to a benefit under section 18 or the member's death, the member is entitled to receive a deferred pension.
 - (2) A deferred pension under this section is payable to a member for the member's life commencing the first day of the month next following the later of the member's normal retirement date or the last date the member made a contribution to this Plan, if the member is then living.
 - (3) The annual amount of deferred pension payable to a member under this section shall be calculated in the manner prescribed in section 16.
 - (4) A member entitled to a deferred pension under this section may in lieu thereof elect to the extent permitted therein to receive a benefit under section 23, subsection 25(6) or 27(1) or section 29, 33, 34 or 36.
 - (5) Despite subsection (2), where a member who has not made an election under subsection (4) once again becomes a member under section 9, the member shall cease to be entitled to receive the deferred pension under this section.
 - (6) Despite subsection (3), if on the 1st day of December of the year prior to an adjustment year a member is entitled to a deferred pension and on the 1st day of January of that adjustment year continues to be so entitled, the deferred pension of the member shall be increased on the 1st day of January of the adjustment year by the inflation adjustment in the manner prescribed in subsection 31(8).
 - (7) Despite subsection (3), if on the 1st day of December of a year which is two years prior to an adjustment year, or the 1st day of any month of the year prior to an adjustment year, a member is

entitled to a deferred pension and on the 1st day of January of that adjustment year,

- (a) the member is entitled to a pension; or
- (b) the member's surviving spouse or children are entitled to a pension in respect of the deceased member,

the pension referred to in clause (a) or (b) shall be increased on the 1st day of January of the adjustment year by the inflation adjustment in the manner prescribed in subsection 31(8) using the date the member became entitled to a deferred pension as the commencement date of the pension which is to be increased by the inflation adjustment.

- (8) For the purposes of subsection (3), any increase to a member's deferred pension under subsection (6) shall be deemed to apply to the amount of the reduction referred to in subsection 16(8) which occurs when the member becomes entitled to a pension under the *Canada Pension Plan* that is unreduced for early retirement.

EARLY RETIREMENT PENSIONS

23. (1) In this section, “**eligible service**” means the service of a member with an employer who participates in this Plan that is not credited service.
- (2) Despite subsection 23(1), a member may not accrue eligible service in respect of a pension during any period that that pension is in pay.
 - (3) If a member ceases to be an employee or councillor of an employer participating in this Plan within the 10 year period before the member's normal retirement age for reasons other than his or her death, the member may elect, in lieu of a deferred pension under section 22, to receive an early retirement pension.
 - (4) If a member is accruing credited service under subsection 18(4), the member may, within the 10 year period before his or her normal retirement age, elect, in lieu of continued accrual of the credited service, to receive an early retirement pension.
 - (5) An early retirement pension under this section is payable to the member for life commencing, in the case of an election under subsection (4), on the first day of the month following the month in which the election is received in the offices of the Administration Corporation and, in the case of an election under subsection (3), on the first day of the month following the month in which,
 - (a) the member ceases to be an employee or councillor if written notice of the election is received in the offices of the Administration Corporation within 6 months after the day he or she ceases to be an employee or councillor; or
 - (b) the election is received in the offices of the Administration Corporation if written notice of the election is not received within 6 months after the day he or she ceases to be an employee or councillor.
 - (6) Despite clause (5)(b), the election made by a member who is eligible for a benefit under subsection (7) will be deemed to have been received in the offices of the Administration Corporation within 6 months after the day the member ceases to be an employee or councillor.

- (7) The annual amount of early retirement pension payable to a member under this section is the annual amount of pension calculated in the manner prescribed in section 16 if, at the date of early retirement,
- (a) the sum of the member's age, counted in full years and months, plus credited service and eligible service, counted in full years and months, equals,
 - (i) in the case of a member whose normal retirement age is 65 years, at least 90 years or,
 - (ii) in the case of a member whose normal retirement age is 60 years, at least 85 years; or
 - (b) the sum of the member's credited service and eligible service counted in full years and months equals at least 30 years.
- (8) If at the date of early retirement the member is not eligible to receive an early retirement pension under subsection (7), the annual amount of early retirement pension payable to the member under this section is the annual amount of pension calculated in the manner prescribed in section 16, reduced at the annual rate of 5 per cent, multiplied by the least of,
- (a) the number of full years and months by which the member's age is less than the member's normal retirement age, on the date the early retirement pension is to commence;
 - (b) 90, in the case of a member whose normal retirement age is 65 years, or 85, in the case of a member whose normal retirement age is 60 years, minus the sum of the member's credited service and eligible service and the member's age, in full years and months on the date the member's early retirement pension is to commence; or
 - (c) the number of full years and months by which the sum of the member's credited service and eligible service is less than 30 years, on the date the member's early retirement pension is to commence.
- (9) If a member's pension is calculated in accordance with subsection (8) and the member becomes entitled to a CPP pension, the annual amount of pension payable to the member after the member becomes entitled to a CPP pension shall be determined in accordance with the following:
1. The annual amount of early retirement pension that was payable immediately before the member becomes entitled to a CPP pension shall be calculated in accordance with subsection (8).
 2. The bridge pension under subsection 16(8) that was payable immediately before the member becomes entitled to a CPP pension shall be determined without any reduction under subsection (8).
 3. The annual amount of pension payable to the member after the member becomes entitled to a CPP pension is the annual amount of early retirement pension determined under paragraph 1 minus the bridge pension determined under paragraph 2.
- (10) In subsection (9),
“**entitled to a CPP pension**” means entitled to a pension under the *Canada Pension Plan* that is unreduced for early retirement.

- (11) For the purposes of this section, a member's age shall be calculated as at the last day of the month immediately preceding the commencement date of the member's early retirement pension.
- (12) The following rules apply when a member becomes entitled to receive a deferred pension under section 22 and wishes to make an election to receive an early retirement pension:
 1. The member may make the election within the 10 year period before his or her normal retirement date with respect to an early retirement pension calculated under subsection (7) or subsection (8).
- (13) For the purposes of determining completed years and months of credited service and eligible service under this section,
 - (a) a month shall not be counted more than once; and
 - (b) a member employed on other than a continuous full-time basis shall be considered to have been employed on a continuous full-time basis.

DOWNSIZING BENEFITS

24. (1) This section applies if an employer has entered into a supplementary agreement described in section 26.2 of Regulation 890 of the Revised Regulations of Ontario, 1990.
- (2) Despite section 25, if a member receiving a pension under a supplementary agreement described in section 26.2 of Regulation 890 of the Revised Regulations of Ontario, 1990 again becomes an employee, payment of the pension to the member shall cease and the pension shall not be recommenced if the member subsequently ceases to be an employee.
- (3) Subsection (2) applies only in respect of a supplementary agreement which comes into force on or after March 29, 1996.

PAYMENT OF BENEFITS

25. (1) Pensions are payable in equal monthly instalments.
- (2) If, after beginning to receive a pension, a member becomes a councillor or employee of an employer, the member may elect to be deemed to cease being an employee or councillor for the purpose of the provisions of this Plan for making further contributions for a pension, and for accruing further contributory earnings and further credited service for a pension.
- (3) If a member is in receipt of a pension in the circumstances described in subsection (2) but does not make the election, the payment of the pension shall cease during the period that the member is an employee or councillor and upon recommencement, the pension shall be recalculated in accordance with section 16, 18 or 23, as the case may be.
- (4) A member shall be deemed, from the commencement date of the member's pension as determined under subsection 16(2) or 23(5), as the case may be, to cease being an employee or councillor for the purpose of any provision of this Plan for making further contributions for a pension or accruing further contributory earnings or credited service for a pension if,
 - (a) the member is or has been an employee or councillor of more than one employer in

overlapping periods; and

- (b) the member elects to receive an early retirement pension or a normal retirement pension in respect of his or her service with one employer while still an employee or councillor with another employer.
 - (5) A member who elects to receive an early retirement pension or a normal retirement pension under clause 25(4)(b) in respect of his or her service with an employer shall be deemed, despite subsection 22(1), to cease being an employee or councillor of any other employer for the purposes of receiving a deferred pension under section 22 in respect of the member's service with the other employer.
 - (6) Despite any other provision of this Plan, a member who ceases to be in the service of an employer, or the surviving spouse or child of such a member who is entitled to a pension or deferred pension, the annual amount of which is less than the amount prescribed in the *Pension Benefits Act*, may elect to receive instead of the pension or deferred pension a lump sum amount that is equal to the commuted value of the pension or deferred pension.
 - (7) Despite subsections 16(1) and 16(2), on or before February 28, 2014, a member who attains 69 years of age may elect to receive a normal retirement pension commencing on the first day of the month following the month in which the member's election is received in the office of the Administration Corporation.
 - (8) A member who elects to receive a normal retirement pension under subsection (7) shall be deemed to cease being an employee or councillor for the purpose of the provisions of this Plan for making further contributions for a pension, and for accruing further contributory earnings and further credited service for a pension.
26. Sections 65 and 66 of the *Pension Benefits Act* and the regulations made in relation to those sections apply to benefits payable under this Plan.

REFUND OF MEMBER CONTRIBUTIONS

27. (1) If a member, for reasons other than death or retirement, ceases to be an employee or councillor of an employer before normal retirement date, the member may elect to have a refund of contributions made by him or her to the Fund, plus interest less the amount of any benefits that have been paid under this Plan but,
- (a) contributions made by the member from the 1st day of January, 1965, to the 31st day of December, 1986, exclusive of contributions referred to in subsections 15(7), 38(14) and 38(15), shall not be refunded if the cessation occurs after the member has attained the age of 45 years and has completed 10 years of continuous service with the employer; and
 - (b) contributions made by the member on or after the 1st day of January, 1987, exclusive of contributions referred to in subsection 15(7) or 15(8), shall not be refunded if the cessation occurs after the member has completed 24 months of continuous membership or has accrued 24 months of credited service in this Plan.
- (2) Despite any other provision in this Plan, if a member dies, retires or otherwise ceases to be an employee or councillor, the member, or the member's designated beneficiary, or estate if there is no

designated beneficiary, as the case may be, is entitled to a refund equal to the sum of contributions made by the member under subsections 11(2), 11(9) and 38(6) since the 1st day of January, 1987, plus interest, minus 50 per cent the commuted value of the pension which the member has earned in respect of these contributions.

- (3) If, before January 1, 1992, a member accrued credited service in excess of 35 years, a refund equal to the sum of the member's contributions, plus interest, for the period of credited service in excess of 35 years is payable to the member or, if the member is deceased, to a person receiving a pension in respect of the member or, if there is no such person, to the member's designated beneficiary or, if there is no designated beneficiary, to the member's estate.
- (4) A refund under subsection (3) shall not include any amount paid to the member under subsection (2) in respect of the same period of credited service.
- (5) For the purposes of this section, interest on a contribution shall be calculated at the rate of 3 per cent per annum up to the 31st day of December, 1977, 5 per cent per annum up to the 31st day of December, 1986, and thereafter at a rate equal to the average monthly yield in the previous calendar year of five-year personal fixed term bank deposit rates as determined from the Canadian Socio-Economic Information Management (CANSIM) Series B 14045 published monthly in the Bank of Canada Review.
- (6) For the purposes of this section, interest shall be calculated in a manner consistent with the requirements of the *Pension Benefits Act*.

- 28.** (1) This section applies to a member,
- (a) who ceases to be employed (the "old employment") and ceases to be eligible to make contributions to the Fund upon cessation of that employment;
 - (b) who receives a refund of contributions under subsection 27(2) in respect of the old employment; and
 - (c) who, as a result of employment that begins on or after June 1, 1999 (the "new employment"), becomes required to make contributions to the Fund.
- (2) The member may elect to pay into the Fund an amount equal to the amount he or she received under subsection 27(2) in respect of the old employment, together with interest (at the rate described in section 27) from the date it was paid under that subsection.
 - (3) The normal retirement pension of a member who does not pay the entire amount described in subsection (2) shall be determined in accordance with subsections 16(6) and 16(9) instead of subsections 16(5) and 16(8).
 - (4) This section applies with necessary modifications for councillors.

SHORTENED LIFE EXPECTANCY

- 29.** (1) This section applies to
- (a) a member who is entitled to a deferred pension under this Plan, or

(b) a member who is in receipt of a pension under this Plan

and who has a life expectancy of less than 24 months as certified by a physician appointed by the Administration Corporation.

- (2) A member described in subsection (1) may elect to receive in a lump sum the payment described in subsection (3) and the amount payable under section 47, if any, in satisfaction of all his or her rights under this Plan.
- (3) The amount of the payment described in subsection (2) will be,
 - (a) in respect of a member described in clause (1)(a), the commuted value of the member's deferred pension less the sum of any benefits paid to or in respect of the member under this Plan other than amounts refunded under subsections 15(7), 15(8), 27(2), 27(3), 38(14) or 38(15); or
 - (b) in respect of a member described in clause (1)(b), the commuted value of the member's remaining pension entitlement under this Plan, as determined by the Administration Corporation on the advice of the actuary.
- (4) Despite subsection (1), a member who has a life expectancy of less than 24 months as certified by a physician appointed by the Administration Corporation may elect to receive in a lump sum the payment described in clause (3)(a) in satisfaction of all of his or her rights under this Plan. A member who makes such an election shall be deemed, despite subsection 22(1), to cease being an employee or councillor of an employer for the purposes of receiving a deferred pension under section 22.

UNION GRIEVANCE

30. (1) Where a member ceases to be an employee or councillor of the employer, receives benefit(s) from the Fund under subsection 25(6) or 27(1) or section 29 or 34, commences a grievance or other legal proceeding for wrongful dismissal and, as a result of the grievance or other legal proceeding, is reinstated as an employee or councillor of the employer, the member may elect to pay the amount of the benefit(s) received together with interest thereon at a rate set by the Administration Corporation on the advice of the actuary and thereby re-establish credited service for the period of time to which the benefit(s) is/are applicable and the member shall recommence contributing to the Fund from the time of reinstatement as an employee or councillor in accordance with subsection 11(1).
- (2) The member is not entitled to make the payment described in subsection (1) unless he or she obtains the prior approval required under the *Income Tax Act* (Canada) for such a payment.
- (3) The member is not entitled to make the payment described in subsection (1) unless he or she makes a repayment in respect of the same period(s) of service under section 28 of the Police and Fire Sector Supplemental Pension Plan.

ADJUSTMENT OF PENSIONS UNDER PAYMENT

31. (1) In this section, the inflation increase for any adjustment year means the monthly average for the Consumer Price Index (CPI) over the last 12 months of the 24 month period ending in October in

the immediately preceding year compared to the monthly average for the CPI over the first 12 months of that period.

- (2) The following is the inflation adjustment for the adjustment year indicated:
 1. For each adjustment year not otherwise specified in this subsection, 70 per cent of the inflation increase for that year
 2. For 1999 and subsequent years, 100 per cent of the inflation increase for the applicable year.
- (3) The inflation adjustment in excess of 6 per cent in any adjustment year shall be added to the inflation adjustment of the subsequent adjustment year.
- (4) The inflation adjustment in any adjustment year shall not be less than zero.
- (5) In this section and for the purposes of subsections 18(8), 18(9), 22(6) and 22(7), “**adjustment year**” means a year in which pensions are increased by the inflation adjustment.
- (6) Despite the definition of inflation adjustment, the inflation adjustment for the purposes of subsections 18(8) and 18(9) shall equal the lesser of the inflation increase for that year and the percentage increase in the monthly average of the average weekly wages and salaries of the Industrial Aggregate in Canada, as published by *Statistics Canada*, for the same period as the inflation increase is determined.
- (7) The year 1992 and subsequent years shall be considered adjustment years.
- (8) The pension payable to a person during his or her lifetime shall be determined in accordance with this Plan or a predecessor thereof and,
 - (a) where a pension is payable to a person on the 1st day of December of the year prior to an adjustment year in respect of a pension that was being paid on the 1st day of December of the year which is 2 years prior to that adjustment year, the pension payable to the person on the 1st day of January of that adjustment year shall be increased by the inflation adjustment; and
 - (b) where a person started receiving a pension during the period from the 1st day of January to the 1st day of November of the year prior to an adjustment year and it is not a pension payable to the person in respect of a pension that was being paid on the 1st day of December of the year which is 2 years prior to that adjustment year to a person who dies after that day, the pension payable to the person on the 1st day of January of the adjustment year shall be increased by the inflation adjustment multiplied by the factor in Column 2 of the Table opposite the pension’s commencement date in Column 1.

TABLE

Column 1	Column 2
<i>Commencement Date of Pension in the Year Prior to an Adjustment Year</i>	<i>Factor</i>
January 1	0.9167
February 1	0.8333
March 1	0.7500
April 1	0.6667
May 1	0.5833
June 1	0.5000
July 1	0.4167
August 1	0.3333
September 1	0.2500
October 1	0.1667
November 1	0.0833

- (9) In an adjustment year, where a person who would have been entitled to an inflation adjustment under subsection (8) dies before the 1st day of January of that adjustment year, the pension payable in respect of that deceased person to another person or persons on the 1st day of January of that adjustment year shall be increased on that date by the inflation adjustment that would have applied under subsection (8) in respect of the deceased person had he or she not died.

32. (1) Where, in the case of an employer who has elected to participate in this Plan,
- (a) a member;
 - (b) a retired employee or councillor who was not a member; or
 - (c) the surviving spouse or child of a person mentioned in clause (a) or (b),

has commenced to receive a pension under section 16, 18, 19, 20, 23 or 24 or under an approved pension plan, the Administration Corporation, upon entering into an agreement with the employer and upon receipt of an amount of money sufficient to provide for payment of such additional amount of pension, as the Administration Corporation upon the advice of the actuary may determine, shall pay the additional amount of pension to such member, retired employee or councillor, surviving spouse or child as the case may be.

- (2) A pension payable under subsection (1) is subject to the conditions for early retirement pensions and increases to pensions under the *Income Tax Act* (Canada) and its regulations.

TRANSFERS

33. (1) This section applies if a member ceases to be an employee or councillor before a pension commences under this Plan.
- (2) Upon the written request of a member, the Administration Corporation shall authorize the transfer of the amount described in subsection (4) from the Fund to any other fund or plan that the member is entitled to join.
- (3) Subsection (2) does not apply unless,

- (a) the requirements of *the Pension Benefits Act* and the *Income Tax Act* (Canada) are satisfied;
 - (b) the fund or plan to which the transfer is to be made permits the transfer;
 - (c) the amount transferred is used toward the provision of pensionable service for the member in the fund or plan to which the transfer is to be made;
 - (d) the pensionable service does not exceed the member's credited service or, if it does, the amount transferred will be reduced accordingly but to not less than the commuted value of the member's pension entitlement; and
 - (e) the fund or plan to which the transfer is to be made provides a reciprocal transfer arrangement.
- (4) Subject to subsection (5), the amount to be transferred is the greater of the commuted value or the present value, calculated as of the date of transfer, of the member's pension entitlement under this Plan, excluding any pension entitlement under subsections 15(7), 15(8), 38(14) and 38(15).
- (5) An amount to be transferred shall be reduced by the amount described in subsection (6),
- (a) if the present value of the member's pension entitlement exceeds its commuted value (both as determined for the purposes of subsection (4)); and
 - (b) if the member has received a refund under subsection 27(2) and has not repaid it.
- (6) The amount of the reduction is the lesser of,
- (a) the amount of the refund under subsection 27(2) plus interest from the date of payment to the date of the transfer at a rate to be determined by the Administration Corporation; and
 - (b) the present value of the pension entitlement less its commuted value (both as determined for the purposes of subsection (4)).
- 34.** (1) A member who is entitled to a deferred pension under section 22 and who is not eligible for an early retirement pension under section 23 may elect, in satisfaction of all rights under this Plan, to transfer the amount described in subsection (3) to a registered pension plan, a retirement savings arrangement or a provider of a life annuity.
- (2) Subsection (1) does not apply in respect of a pension entitlement under subsections 15(7), 15(8), 38(14) and 38(15) or additional voluntary contributions under section 47.
- (3) The amount is the commuted value of the deferred pension less the sum of any benefits paid to the member under this Plan. A payment under subsection 15(7), 15(8), 27(2), 27(3), 38(14), 38(15) or section 47 is not such a benefit.
- (4) The transfer must meet the requirements of the *Pension Benefits Act* and the *Income Tax Act* (Canada).
- (5) In lieu of a benefit under this section, a member may elect to transfer his or her pension entitlement under an agreement established under section 36. Such transfer value will be calculated in

accordance with section 36.

35. (1) Upon the written request of a member, the Administration Corporation shall accept a transfer to the Fund of an amount for the member from another pension fund or plan.
- (2) The Administration Corporation shall not accept a transfer to the Fund,
- (a) if the transfer would result in a member's credited service entitlement exceeding the member's pensionable service under the transferring fund or plan; or
- (b) if the transfer does not meet the requirements of the *Pension Benefits Act* and the *Income Tax Act* (Canada).
- (3) The amount transferred shall be compared to the present value of a pension under this Plan, calculated as of the date of transfer, based on credited service equal to the member's pensionable service in the transferring fund or plan and,
- (a) if the amount transferred is equal to the present value, the member shall receive the full credited service entitlement; or
- (b) if the amount transferred is less than the present value, the member shall receive a credited service entitlement reduced proportionately.
- (4) If all or part of the amount of the shortfall described in clause (3)(b) is contributed to the Fund within 6 months after the member is notified of the shortfall, the additional amount contributed shall be taken into account in determining the credited service entitlement the member receives under that clause.
36. (1) The Administration Corporation may enter into agreements to transfer amounts to or from the Fund in respect of members and former members.
- (2) The Administration Corporation may enter into such an agreement with only such persons as are authorized for the purpose under a pension or superannuation plan registered under the *Income Tax Act* (Canada).
- (3) The agreement shall set out the basis for calculating the amount to be transferred from the Fund or the benefits to be granted in respect of amounts transferred to the Fund, as determined by the Administration Corporation on the advice of the actuary.
37. If, as a result of a transfer under section 35 or under an agreement entered into under section 36, a past service pension adjustment as defined under the *Income Tax Act* (Canada) arises in respect of the past service of the member which occurs after 1989, no benefit shall be payable or funded in respect of the past service pension adjustment until it is certified under the *Income Tax Act* (Canada).

SUPPLEMENTARY BENEFITS

38. (1) Every employer who has elected to participate in this Plan may, by by-law or resolution filed with the Administration Corporation, enter into or amend an agreement with the Administration

Corporation for the payment of supplementary benefits from the Fund in respect of all or any class of the employees of the employer, or in respect of councillors of the employer, who are or become members and for this purpose employees to whom a bargaining agreement applies shall constitute a class of employees.

- (2) An agreement under subsection (1) may also provide for benefits in respect of all or a portion of optional service if the optional service is eligible service under the *Income Tax Act* (Canada).
- (3) The form and content of a supplementary agreement shall be determined by the Administration Corporation but in any event each such agreement shall provide that,
 - (a) the Administration Corporation, on the advice of the actuary, shall determine the amount of the contributions to be paid to the Fund and the manner of payment of the contributions to provide the supplementary benefits under the agreement; and
 - (b) section 27 applies to the contribution paid by a member under a supplementary agreement.
- (4) Where a supplementary agreement in force on the 31st day of December, 1982, provides for a pension benefit of a member to be calculated in the manner as prescribed in section 16 substituting prior service for credited service, the prior service of the member shall be deemed to be credited service.
- (5) A supplementary agreement in force on the 31st day of December, 1982, that provides a fixed amount of pension benefit payable to the member on the member's normal retirement date shall be deemed to provide that the fixed amount of pension shall be paid on the same terms and conditions and coincident with the payment of a pension to the member under section 16, 18, 19, 20, 22 or 23.
- (6) An employer may enter into a supplementary agreement or may amend an agreement referred to in subsection (5) to provide for a full pension benefit or a portion of a pension benefit of a member calculated in the manner as prescribed in section 16 substituting prior service for credited service, and,
 - (a) if the agreement provides for a full pension benefit, the prior service of the member shall be deemed to be credited service; and
 - (b) if the agreement provides for a portion of the pension benefit, the portion shall be paid under the same terms and conditions and coincident with the payment of a pension to the member under section 16, 18, 19, 20, 22 or 23.
- (7) A supplementary agreement in force on the 31st day of December, 1982, shall be deemed to be amended as of the 1st day of January, 1983, until such time as it is amended in fact, to accord with the form and content of such agreement as determined by the Administration Corporation under subsection (3) or by the OMERS Board under subsection 26(3) of Regulation 890 of the Revised Regulations of Ontario, 1990.
- (8) (a) An early retirement pension shall be payable to a member under a supplementary agreement only if the member is declared by the employer to be unable to perform the duties of his or her employment due to mental or physical incapacity, and only to the extent that the pension exceeds any amount payable to the member under section 23.

- (b) In calculating the amount of additional pension and the employer contributions required to provide the early retirement described in this subsection, the Administration Corporation shall take into account the member's aggregate benefits accrued under this Plan and any other OMERS pension plan as defined in the *OMERS Act, 2006*.
- (9) A pension payable to a member under subsection (8) is subject to the conditions for early retirement pensions under the *Income Tax Act* (Canada) and its regulations.
- (10) Where optional service is provided for under a supplementary agreement a member may establish credit for any or all such service if the member elects to purchase it and pays to the Administration Corporation the cost of the service on terms satisfactory to the employer and the Administration Corporation.
- (11) For the purposes of subsection (10), the cost of a benefit provided in respect of optional service pursuant to agreements entered into or amended on or after the 1st day of January, 1992, shall equal the present value of that benefit.
- (12) The cost of a benefit established under subsection (11) shall be paid to the Fund by a member or by an employer and may be shared by them in such manner as they may agree.
- (13) Where a member entitled to receive a supplementary benefit under subsection (2), (4) or (6) in respect of prior service is entitled to receive a pension benefit under a previous pension plan or fund in respect of the same period of service, the annual amount of the pension benefit under the previous pension plan or fund, as established on the later of the 31st day of December, 1982, or the effective date of an agreement under subsection (1), shall be deducted from any supplementary benefit payable under those subsections and, in the case of optional service, a reduction shall be made in the amount payable by the member under subsection (10) of an amount determined to be appropriate by the Administration Corporation on the advice of the actuary.
- (14) Member contributions towards the provision of a benefit under subsection (8) shall cease to be made to the Fund under a supplementary agreement as of the 31st day of December, 1982, and the amount of accumulated contributions of a member plus interest thereon at a rate determined by the Administration Corporation shall be placed to the credit of the member in the Fund to provide a benefit to be determined by the Administration Corporation on the advice of the actuary to be paid to or in respect of the member in addition to and under the same terms and conditions as any other benefit payable to or in respect of the member under this Plan, provided however that, on or after a date to be designated by the Administration Corporation, the member may elect to revoke the member's credit in the Fund and have the amount of the credit transferred to a registered retirement savings plan of the member or otherwise refunded to the member, subject to any restrictions under the *Income Tax Act* (Canada).
- (15) Member contributions that remain in the Fund as a result of the elimination of supplementary benefits that were duplicated by benefits otherwise payable under this Plan with effect from the 1st day of January, 1978, plus interest calculated in accordance with section 27, shall be retained to provide a benefit to be determined by the Administration Corporation on the advice of the actuary to be paid to or in respect of the member in addition to and under the same terms and conditions as any other benefit payable to or in respect of the member under this Plan.
- (16) Despite this section, in the event that employees or councillors of an employer who were members of an approved pension plan become members of this Plan on or after the 1st day of January, 1990, the employer may enter into an agreement with the Administration Corporation under subsection

(1) to continue to provide to the employees or councillors any benefits to which they were entitled under the approved pension plan but which are not provided under this Plan.

- (17) Despite anything in this section, no benefit shall be payable or funded in respect of a member's prior or optional service which occurs after 1989 until certification of the member's past service pension adjustment under the *Income Tax Act* (Canada).

MEMBER BUY BACK OF SERVICE

- 39.** (1) Despite section 38, a member may elect to purchase a benefit in respect of the following, subject to any conditions determined by the Administration Corporation on the advice of the actuary:
1. All or part of the member's prior service.
 2. All or part of the member's optional service that is eligible service under the *Income Tax Act* (Canada).
 3. All or part of the member's private sector service that is eligible service under the *Income Tax Act* (Canada).
- (2) For the purposes of subsection (1), the cost of a benefit provided in respect of prior service, optional service or private sector service shall equal the present value of that benefit.
- (3) If a member who has elected to purchase a benefit under subsection (1) is entitled to receive a benefit under a previous pension plan or fund in respect of the same period of service, the annual amount of the benefit under the previous pension plan or fund, as established on the date of election to purchase a benefit under subsection (1), shall be deducted from any benefit payable under this Plan in respect of the period of prior service or optional service and the cost of the benefit under subsection (2) shall be reduced accordingly.
- (4) If a member who has elected to purchase a benefit under subsection (1) is entitled to receive a benefit under section 38 in respect of the same period of service,
- (a) for the purposes of determining the benefit cost under subsection (2), the annual amount of benefit payable under section 38, as established on the date of election to purchase a benefit under subsection (1), shall be deducted from any benefit payable under this Plan in respect of the period of prior service or optional service; and
 - (b) when a benefit becomes payable under this Plan in respect of the period of prior service or optional service, the annual amount of benefit payable under section 38 shall be deducted from the benefit purchased under subsection (1).
- (5) Any benefit purchased under subsection (1) is an increase to the pension payable under section 16 up to the maximum allowed under that section.
- (6) Despite subsection 11(8), if any employer provides a benefit under section 38 in respect of the same period of service for which a member has purchased a benefit under subsection (1), any contributions made by the member under this section to purchase a benefit in respect of that period of service shall be refunded to the member, together with interest at the rate established in subsection 27(5).

- (7) Despite anything in this section, no benefit shall be payable or funded in respect of a member's prior service, optional service or private sector service which occurs after 1989 until certification of the member's past service pension adjustment under the *Income Tax Act* (Canada).

DUTY TO PROVIDE INFORMATION TO MEMBERS

40. The Administration Corporation shall provide to members or other persons, as the case may be, such information, in the prescribed form and within the prescribed time, as is required under the *Pension Benefits Act*.

APPEALS

41. Any person aggrieved by a determination made by the president of the Administration Corporation or by the failure of the president of the Administration Corporation to make a determination under any provision of this Plan relating to an approval, consideration or direction to be given or other action to be taken under this Plan by the president of the Administration Corporation may, in accordance with the appeals process adopted by the Board of Directors of the Administration Corporation, appeal to the Board of Directors of the Administration Corporation from such determination or failure to make a determination and the decision of the Board of Directors of the Administration Corporation is final.

PROOF OF AGE, ETC.

42. The Administration Corporation may from time to time require such proof of the age, retirement, employment, marital status and death of a member, or of a member's widow, widower, surviving same-sex partner or children and such proof of the identity of any person as is necessary for the purposes of making a determination under this Plan.

BENEFICIARY DESIGNATIONS

43. Every member, by filing a notice with the Administration Corporation, may designate a person as the member's beneficiary to receive such sums of money as may become payable to the member's beneficiary under this Plan and the RCA and may revoke any such notice and designate another person as the member's beneficiary.

SURPLUS WITHDRAWAL

44. Surplus may be paid from the Fund in accordance with the conditions set out in this Plan and subject to the limitations of the *Pension Benefits Act*.
45. (1) In the event that surplus is paid from the Fund, whether the Fund continues to operate or is wholly or partially wound up within the meaning of the *Pension Benefits Act*, the surplus withdrawal shall be shared half by members who are employees or councillors and half by employers who have elected to participate in this Plan under section 7.
- (2) The share of the surplus withdrawal referred to in subsection (1) that is attributable to members shall be distributed among them in proportion to the total contributions made by each of them under sections 11, 38 and 39, plus interest.
- (3) The share of the surplus withdrawal referred to in subsection (1) that is attributable to employers shall be distributed among them in proportion to the aggregate of the amounts distributable to the employees or councillors of each employer.

WIND UP

46. (1) If the Plan is fully or partially wound up within the meaning of the *Pension Benefits Act*, the assets of the Fund net of properly incurred liabilities shall be used to meet the accrued benefit entitlements of members, former members and any other persons entitled to a benefit under this Plan in respect of a member or former member before any other distribution is made
- (2) If the net assets of the Fund are insufficient to secure the benefit entitlements in subsection (1), such assets of the Fund shall first be allocated to provide the benefits payable under the Plan pursuant to section 47 and thereafter the pension benefits and other benefits payable under the Plan shall be reduced in the manner prescribed under the *Pension Benefits Act*.

ADDITIONAL VOLUNTARY CONTRIBUTIONS

47. (1) In this section,

“**additional voluntary contributions**” means voluntary contributions to the Fund by a member in accordance with subsection (2) which are in addition to any contributions payable by a member as required under section 11 and any lump sum voluntary transfers; and

“**lump sum voluntary transfer**” means any amounts transferred to the Fund in accordance with subsection (3) to be held as additional voluntary contributions which, for greater certainty, do not include amounts transferred to the Fund under sections 35, 36 or 39.

- (2) Subject to any conditions determined by the Administration Corporation and the limitations prescribed by the *Income Tax Act* (Canada), a member who,
- (a) is making contributions as required under subsection 11(1);
 - (b) is accruing credited service under subsection 18(4);
 - (c) is not eligible to make contributions under subsection 11(1) by virtue of subsection 11(5); or
 - (d) is not making contributions during an absence that is an absence described in clause (b), (c) or (d) of the definition of “continuous service” in section 1,
- may make voluntary contributions to the Fund.
- (3) Subject to any conditions determined by the Administration Corporation, upon the written request of,
- (a) a member referred to in subsection (2);
 - (b) a member who is entitled to a deferred pension; or
 - (c) a member who is in receipt of a pension,

the Administration Corporation shall accept a lump sum voluntary transfer to the Fund of an amount for the member from another pension fund or plan or any other transfer otherwise permitted

in accordance with the *Income Tax Act* (Canada). For greater certainty, a lump sum voluntary transfer can be requested by a member in lieu of or in addition to the options available under sections 35, 36 or 39.

- (4) The Administration Corporation shall not accept additional voluntary contributions if the contribution or transfer does not meet the requirements of the *Pension Benefits Act* and the *Income Tax Act* (Canada), as applicable.
- (5) For greater certainty, no employer shall contribute to the Fund any amount in respect of a member's additional voluntary contributions.
- (6) All additional voluntary contributions deposited to the Fund in accordance with subsections (2) and (3) shall be held to the credit of the member and credited with such rate of return as can be reasonably attributed having regard to the operation of the Fund net of investment and administration fees and expenses.
- (7) Despite subsection 11(8), and subject to subsection (8) and any conditions determined by the Administration Corporation, additional voluntary contributions that have been deposited to the Fund in accordance with subsection (2) or subsection (3) and credited with the rate of return in subsection (6) may be,
 - (a) withdrawn by a member;
 - (b) refunded to a member; or
 - (c) transferred to a registered pension plan (including, for greater certainty, payments and purchases under this Plan), a retirement savings arrangement or a provider of an annuity,as permitted or required under the *Pension Benefits Act* and in accordance with the *Income Tax Act* (Canada), as applicable.
- (8) All additional voluntary contributions that have been deposited to the Fund in accordance with subsection (2) or subsection (3) and credited with the rate of return in subsection (6), shall be withdrawn, refunded or transferred from the Fund in accordance with subsection (7) from the earlier date on which the member,
 - (a) elects to receive a lump sum amount under subsection 25(6), a refund of contributions under subsection 27(1) or a lump sum payment under section 29;
 - (b) elects to transfer the member's entitlement under section 33, 34 or 36 from the Fund to any other fund, plan or arrangement; or
 - (c) must otherwise start to commence a pension under subsection 16(3).
- (9) Clause (8)(a) or (8)(b), as applicable, do not apply if,
 - (a) the member is or has been an employee or councillor of more than one employer in overlapping periods; and
 - (b) the member elects to receive a lump sum amount or a refund of contributions described in clause (8)(a) or a transfer described in clause (8)(b) in respect of his or her service with one

employer while still an employee or councillor with another employer.

- (10) Subject to any conditions determined by the Administration Corporation, on the death of a member before all additional voluntary contributions that have been deposited to the Fund in accordance with subsection (2) or subsection (3) and credited with the rate of return in subsection (6) have been withdrawn, refunded or transferred from the Fund in accordance with subsection (7), the balance of additional voluntary contributions credited with the rate of return in subsection (6) held to the credit of the member shall be refunded to the member's,
- (a) surviving spouse, if the member and the surviving spouse were not living separate and apart on the date of the member's death;
 - (b) designated beneficiary if there is no surviving spouse entitled to a refund under this section;
or
 - (c) estate, if there is no surviving spouse entitled to a refund under this section and no designated beneficiary.

PRE-RETIREMENT INDEXING AND EARLY RETIREMENT SUBSIDIES

- 48.** (1) This section applies if a member ceases on or after January 1, 2013 to be an employee or councillor of an employer participating in this Plan before he or she is eligible for an early retirement pension under section 23.
- (2) Despite subsection 31(8), for the purposes of clause 18(9)(b) and subsection 22(6), the inflation adjustment in respect of credited service after December 31, 2012 shall be deemed to be zero.
- (3) Subsection 22(7) does not apply in respect of credited service after December 31, 2012.
- (4) Despite subsection 16(8) or 16(9),
- (a) for a member whose normal retirement age is 65 years, the bridge pension in respect of credited service after December 31, 2012 shall be deemed to be zero; and
 - (b) for a member whose normal retirement age is 60 years and starts to receive his or her pension before attaining 60 years of age, the bridge pension in respect of credited service after December 31, 2012 shall be actuarially equivalent to the bridge pension otherwise payable to the member under subsection 16(8) or 16(9) commencing on the first day of the month following the month in which the member attains 60 years of age.
- (5) Despite subsections 23(7) and 23(8), the annual amount of early retirement pension payable in respect of credited service after December 31, 2012 is the annual amount of pension payable to the member which is actuarially equivalent to the benefits otherwise payable to the member under section 16 in respect of credited service after December 31, 2012.
- 49.** (1) In this section, "old employment" has the same meaning as in subsection 28(1).
- (2) Where section 48 applies in respect of a period of old employment and the circumstances described in subsection 28(3) apply, the normal retirement pension in respect of the period of old employment shall continue to be subject to section 48.

