

Bill 186, Ontario Retirement Pension Plan Act (Strengthening Retirement Security for Ontarians), 2016

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Preamble

After a lifetime of hard work, Ontarians deserve to feel financially secure in their retirement. Strengthening the retirement income system is not only important to Ontario families, it is critical to the future prosperity of the province.

Canada and Ontario have a strong foundation of retirement benefit programs, namely the Canada Pension Plan, Old Age Security, the Guaranteed Income Supplement and the Ontario Guaranteed Annual Income System. However, studies have shown that many of today's workers are not saving enough to maintain their standard of living when they retire. The reasons for this are varied: workplace pension coverage is low and getting lower for younger generations; individuals are not taking sufficient advantage of voluntary savings tools; and people are living longer than ever before.

The Government of Ontario is taking a leadership role in addressing this pressing issue by establishing a new mandatory Ontario Retirement Pension Plan (“ORPP”) that will enable workers to build a more secure future. It is the first pension plan of its kind in Canada, and it is built on many key features of the Canada Pension Plan. Its purpose is to provide a lifetime pension.

The Government of Ontario is committed to ensuring that the ORPP is administered by an entity, the Ontario Retirement Pension Plan Administration Corporation, with a strong governance structure and investment strategy to ensure that the ORPP is efficiently managed, accountable, transparent and fair. The sustainability of the ORPP is of paramount importance and, accordingly, certain measures will be required if the ORPP has a funding shortfall or funding excess.

The Government of Ontario is moving forward with the ORPP as a priority. Contributions will begin on January 1, 2018, through a phased approach. The Administration Corporation will manage contributions in the best interests of the beneficiaries of the ORPP.

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

General

Interpretation

Definitions

1. (1) In this Act,

“actuarially equivalent” means actuarially equivalent as determined in accordance with the regulations; (“équivalent du point de vue actuariel”)

“Administration Corporation” means the Ontario Retirement Pension Plan Administration Corporation established under the Ontario Retirement Pension Plan Administration Corporation Act, 2015; (“Société d’administration”)

“employee” means,

(a) a person who is employed within the meaning of the definition of “employment” in subsection 2 (1) of the Canada Pension Plan, other than a person who is an officer within the meaning of that Act, or

(b) the holder of an office who is an employee under subsection (4); (“employé”)

“employer” means, subject to any regulations authorized under subsection (2) clarifying who is the employer for an employee, a person who,

(a) pays remuneration to an employee,

(b) is an employer under any regulations authorized under subsection (3), or

(c) is the employer of a holder of an office under subsection (4); (“employeur”)

“federal government” means the Government of Canada and any department, agency, board, commission, official or other body of the Government of Canada; (“gouvernement fédéral”)

“joint and survivor pension” means a pension payable during the joint lives of the member entitled to the pension and his or her spouse and thereafter during the life of the survivor of them; (“pension réversible”)

“member” means a person who has contributed to the ORPP as an employee, but does not include a person who is no longer entitled to any amount under the ORPP as a result of having been paid a lump sum under this Act; (“participant”)

“Minister” means the Minister of Finance or such other member of the Executive Council as may be assigned the administration of this Act under the Executive Council Act; (“ministre”)

“ORPP” means the Ontario Retirement Pension Plan; (“RRPO”)

“pensionable earnings” means the pensionable earnings of an employee as determined in accordance with the regulations; (“gains ouvrant droit à pension”)

“pension fund” has the same meaning as in section 1 of the Ontario Retirement Pension Plan Administration Corporation Act, 2015; (“caisse de retraite”)

“prescribed” means prescribed under the regulations made under section 88; (“prescrit”)

“regulations” means the regulations made under section 88; (“règlements”)

“spouse” means, either of two persons who,

(a) are married to each other, or

(b) are not married to each other and are living together in a conjugal relationship,

(i) continuously for a period of not less than three years, or

(ii) in a relationship of some permanence, if they are the natural or adoptive parents of a child; (“conjoint”)

“workplace pension plan” means,

(a) a pension plan registered under the Pension Benefits Act or under substantially similar legislation of another jurisdiction in Canada,

(b) a pension plan regulated under the laws of a jurisdiction outside Canada, if the pension plan meets the prescribed requirements,

(c) a pooled registered pension plan within the meaning of the Pooled Registered Pension Plans Act, 2015, or

(d) a prescribed pension plan. (“régime de retraite d’employeur”)

Regulations to clarify who is the employer

(2) The regulations may clarify who the employer is for an employee.

Remuneration paid by more than one person

(3) The regulations may, if an employee's remuneration is paid by more than one person, provide for such persons to be employers of the employee and govern and clarify the obligations of those persons under this Act.

Holder of an office

(4) For the purposes of this Act, the holder of an office, within the meaning of subsection (5), is an employee and the person who pays the holder the stipend or remuneration referred to in subsection (5) is the holder's employer.

Same

(5) For the purposes of subsection (4), the holder of an office is a person whose position entitles him or her to a fixed or ascertainable stipend or remuneration and includes the following, if the person is entitled to a fixed or ascertainable stipend or remuneration:

1. A director of a corporation.

2. The holder of a judicial office.

3. The holder of a position that is elected by popular vote or elected or appointed in a representative capacity including, without limiting the generality of the foregoing, a member of the Legislative Assembly or a member of a municipal council or school board.

Crown bound

2. This Act binds the Crown.

Establishment of the ORPP

Establishment of ORPP

3. The ORPP is hereby established.

Contributions

Employers required to contribute

4. An employer is required to contribute to the ORPP in respect of each of the employer's employees who is required to contribute to the ORPP.

Employees required to contribute

5. (1) Subject to sections 6 to 14, an employee is required to contribute to the ORPP in respect of employment for which the employee does not participate in a workplace pension plan that is comparable to the ORPP.

Employer opting-in despite comparable workplace pension plan

(2) Subject to sections 6 to 14, an employee is, despite subsection (1), required to contribute to the ORPP if the employer has elected, in accordance with the regulations, to contribute to the ORPP in respect of all of the employer's employees who participate in a workplace pension plan described in subsection (1) and the employer has not withdrawn that election in accordance with the regulations.

Comparable workplace pension plan

(3) The following apply to determine, for the purposes of this section, whether a workplace pension plan is comparable to the ORPP:

1. A defined benefit pension plan is comparable to the ORPP if the annual benefit accrual rate for the plan is at least 0.5 per cent of a member's annual remuneration as an employee, for a pension at the normal retirement date under the pension plan.

2. For the purposes of paragraph 1, if the defined benefit pension plan is of a type that is prescribed for the purposes of this paragraph, the annual benefit accrual rate for the pension plan shall be determined in accordance with the regulations.

3. A defined contribution pension plan is comparable to the ORPP if the total mandatory contribution rate for the plan is at least 8 per cent of a member's annual remuneration as an employee and the mandatory contribution rate for the plan for the employer is at least 4 per cent of the member's annual remuneration as an employee.

4. For the purposes of paragraph 3, if the defined contribution pension plan is of a type that is prescribed for the purposes of this paragraph, the total mandatory contribution rate for the plan and the mandatory contribution rate for the plan for the employer shall be determined in accordance with the regulations.

5. For greater certainty, none of the following shall be taken into account for the purposes of paragraphs 3 and 4:

i. Voluntary contributions.

ii. Contributions an employer is required to make in relation to an employee's voluntary contributions.

6. Despite paragraphs 1 and 2, a multi-employer pension plan, within the meaning of the Pension Benefits Act, that is a defined benefit pension plan is comparable to the ORPP if,

i. the pension plan meets the requirements to be comparable to the ORPP under paragraph 1, or

ii. the pension plan meets the requirements to be comparable to the ORPP under paragraph 3 that would be applicable if the pension plan were a defined contribution plan.

7. If a pension plan has both defined benefit provisions and defined contribution provisions, whether the pension plan is comparable to the ORPP shall be determined in accordance with the regulations.

8. If a pension plan is a pooled registered pension plan within the meaning of the Pooled Registered Pension Plans Act, 2015, whether the pension plan is comparable to the ORPP shall be determined in accordance with the regulations.

Different subsets of members with different rates

(4) The regulations may provide for different subsets of members of the same workplace pension plan to be deemed, for the purpose of this section, to be members of different workplace pension plans if different annual benefit accrual rates or mandatory contribution rates apply with respect to those different subsets.

“Participate”

(5) The regulations may define or clarify the meaning of “participate” for the purposes of this section.

Definitions

(6) In this section,

“defined benefit” has the same meaning as in the Pension Benefits Act; (“prestation déterminée”)

“defined benefit pension plan” means a pension plan that provides defined benefits; (“régime de retraite à prestations déterminées”)

“defined contribution benefit” has the same meaning as in the Pension Benefits Act; (“prestation à cotisation déterminée”)

“defined contribution pension plan” means a pension plan that provides defined contribution benefits; (“régime de retraite à cotisation déterminée”)

“remuneration”, in relation to a pension plan, means regular salary and wages as determined under the plan for the purposes of the plan. (“rémunération”)

Ontario employment only

6. (1) Section 5 applies only in respect of employment in Ontario.

Same

(2) For the purposes of subsection (1),

(a) if a person is required to report for work at an establishment of the person’s employer, the person is deemed to be employed in Ontario if that establishment is in Ontario; and

(b) if a person is not required to report for work at an establishment of the person’s employer, the person is deemed to be employed in Ontario if the establishment of the person’s employer from which the person’s remuneration is paid is in Ontario.

Federal government employment, etc., not included

7. Section 5 does not apply in respect of,

(a) employment by the federal government;

(b) employment as a judge appointed by the Governor General; or

(c) employment as a member of the Senate or the House of Commons or as the Governor General or Lieutenant Governor, or as an employee in the office of any of those officials.

Age limits

8. An employee is not permitted to contribute to the ORPP if the employee has not yet reached the age of 18 years or has reached the age of 70 years.

Exclusion — employee receiving ORPP pension

9. (1) An employee is not permitted to contribute to the ORPP if the employee is being paid a pension from the ORPP.

Exception for pension of surviving spouse

(2) Subsection (1) does not apply with respect to the pension paid to the surviving spouse after the member being paid a joint and survivor pension dies.

Exclusion — earnings exempt under tax treaty

10. Section 5 does not apply in respect of employment if, under a tax treaty that Canada has with another country, the earnings from that employment are not included in computing income for the purposes of the Income Tax Act (Canada).

On-reserve First Nations employment

11. (1) Subject to subsection (2), section 5 does not apply in respect of employment of an Indian, as defined in the Indian Act (Canada), if the earnings from that employment are not included in computing income for the purposes of the Income Tax Act (Canada).

Elections to participate

(2) Subsection (1) does not apply with respect to an employer and employee if,

(a) the employer has elected, in accordance with the regulations, to contribute to the ORPP in respect of employees with respect to whom subsection (1) would apply;

(b) the employee has elected, in accordance with the regulations, to contribute to the ORPP; and

(c) neither the employee nor the employer has withdrawn their election in accordance with the regulations.

Religious exemption

12. Section 5 does not apply in respect of employment of a person if,

(a) the person applies to the Administration Corporation for an exemption on religious grounds; and

(b) the Administration Corporation grants the exemption after determining that the prescribed conditions have been satisfied.

Exclusion — prescribed employment

13. Section 5 does not apply in respect of prescribed employment.

Leaves under the Employment Standards Act, 2000

14. (1) An employee is not permitted, unless the employee makes an election under subsection (2), to contribute to the ORPP in respect of the period of a leave under Part XIV of the Employment Standards Act, 2000.

Election to contribute

(2) An employee may elect to contribute to the ORPP in respect of a period described in subsection (1), except in the prescribed circumstances.

Same

(3) If the employee elects to contribute,

(a) for the purposes of this Act, the employee's pensionable earnings for the period shall be the amount determined in accordance with the regulations; and

(b) for greater certainty, the employee's employer shall also contribute to the ORPP in respect of the contributions made by the employee.

Manner and timing of election

(4) The employee's election shall be made in accordance with the regulations, and the regulations may permit the election to be made before or after the leave begins.

Contributions after leave

(5) The regulations may provide for an employee who has not made an election under subsection (2) to make contributions after the employee's leave in respect of the period of the leave and the regulations may govern such contributions, including providing for how this Act applies with respect to such contributions and requiring the employee to make the contributions that the employer would otherwise be required to make.

Employer contributions

(6) An employee's employer is not permitted to contribute in respect of a period described in subsection (1) except in respect of contributions made by the employee after the employee makes an election under subsection (2).

Amount of Contributions

Determination of employee's contribution

15. (1) The amount of an employee's contribution to the ORPP in respect of the pensionable earnings from an employer is the amount determined by multiplying the contribution rate under section 16 by the contributory pensionable earnings from the employer determined under subsection (2).

Contributory pensionable earnings

(2) The amount of an employee's contributory pensionable earnings from an employer for a pay period shall be determined in accordance with the regulations, subject to the following:

1. Only amounts that exceed the minimum earnings threshold for that pay period, determined under subsection (3), shall be included.

2. No amount shall be included that would result in the total of the employee's contributions on earnings from that employer for the year exceeding the maximum contributions for that year on earnings from that employer, determined under subsection (4).

Minimum earnings threshold for pay period

(3) For the purposes of paragraph 1 of subsection (2), the minimum earnings threshold for a pay period is a portion of \$3,500 prorated for that pay period in accordance with the regulations.

Maximum contribution

(4) For the purposes of paragraph 2 of subsection (2), an employee's maximum contributions for a year on earnings from an employer is the amount determined in accordance with the following formula:

$$\text{Amount} = \text{Rate} \times (\text{Maximum} - \$3,500)$$

in which,

“Rate” means the contribution rate under section 16; and

“Maximum” means the maximum annual earnings threshold under section 17.

Multiple employment — related employers

(5) The regulations may, for an employee who has earnings from two or more employers who are related to each other, within the meaning of the regulations,

(a) provide that the employee's maximum contributions, under subsection (4), for a year on earnings from the related employers is what that maximum would be if all the related employers were a single employer; and

(b) govern and clarify the obligations of the respective related employers with respect to the contributions the employers are required to deduct from the employee's earnings and with respect to the contributions the employers are required to make.

Contribution rate

16. The contribution rate is 1.9 per cent or such other rate provided for in the amendments to the text of the ORPP made, under section 45 or 46, by the Administration Corporation or the Lieutenant Governor in Council.

Maximum annual earnings threshold

17. (1) The maximum annual earnings threshold for a year is the maximum annual earnings threshold for the previous year as adjusted for changes in the average wage in accordance with the regulations.

Threshold for first year

(2) The maximum annual earnings threshold for 2018 is what it would be under subsection (1) if the maximum annual earnings threshold for 2017 was \$90,000.

Changes related to plan sustainability

(3) The adjustments under subsection (1) are subject to such changes as may be provided for in the amendments to the text of the ORPP made, under section 45 or 46, by the Administration Corporation or the Lieutenant Governor in Council.

Determination of employer's contribution

18. The amount of an employer's contribution to the ORPP in respect of an employee shall be equal to the amount of the employee's contribution to the ORPP in respect of the pensionable earnings from the employer.

Employer Duties Relating to Collecting and Remitting Contributions

Duties of contributing employers

19. (1) An employer who is required to contribute to the ORPP shall, in accordance with the regulations,

- (a) remit the employer's contributions to the Administration Corporation;
- (b) deduct the contributions of each of the employer's employees from the employee's remuneration and remit those contributions to the Administration Corporation; and
- (c) keep the prescribed records and retain them for the prescribed amount of time.

Liability for failure to deduct and remit

(2) Every employer who fails to deduct and remit an amount from the remuneration of an employee as and when required under subsection (1) is liable to pay to the Administration Corporation the whole amount that should have been deducted and remitted from the time it should have been deducted.

Trust property

20. (1) If an employer deducts an employee's contributions from the employee's remuneration, the employer is deemed to hold the money in trust for the employee until the employer remits those contributions to the Administration Corporation.

Accrued contributions

(2) An employer who is required to make a contribution in respect of its employees under this Act is deemed to hold in trust for the beneficiaries of the ORPP an amount of money equal to the employer's contributions due and not paid to the Administration Corporation.

Lien and charge

(3) The Administration Corporation has a lien and charge on the property of the employer in an amount equal to the amounts deemed to be held in trust under subsections (1) and (2).

Application of subs. (1), (2) and (3)

(4) Subsections (1), (2) and (3) apply whether or not money has been kept separate and apart from other money or property of the employer.

Accrual re contributions

21. Money that an employer is required to remit under section 19 to the Administration Corporation accrues on a daily basis.

Interest re contributions

22. If an employer fails to remit to the Administration Corporation an amount that the employer is required to remit under section 19 at the time when required to do so, the employer shall pay to the Administration Corporation interest on that amount at the prescribed rate computed from the day on which the employer was required to remit the amount to the day of the remittance of the amount to the Administration Corporation.

ORPP Benefits: Pensions and Other Payments

Entitlement

23. A member is entitled to be paid a lifetime pension from the ORPP in accordance with this Act.

Amount of pension

24. (1) The annual amount of a member's pension at the time it begins shall be equal to the total of the pension benefits the member has accrued.

Joint and survivor pension

(2) If a pension is in the form of a joint and survivor pension, the amount of the pension shall be determined so that the value of that pension is actuarially equivalent to the value of the pension that would be payable if the pension was not a joint and survivor pension.

Adjustment if pension does not start at age 65

(3) If a member's pension begins before or after the member reaches the age of 65 years, the pension shall be actuarially adjusted, in accordance with the regulations, from what the pension would have been had the pension begun when the member reached the age of 65 years.

Accrued pension benefits

25. (1) The pension benefits that a member accrues in a year in which the member contributed to the ORPP shall be determined by multiplying a benefit accrual rate of 0.375 per cent by the member's pensionable earnings for the year, as adjusted in accordance with the regulations.

Indexing

(2) Accrued pension benefits shall be adjusted, in accordance with the regulations, for changes in the maximum annual earnings threshold under section 17.

Joint and survivor pension

26. (1) A member's pension shall be a joint and survivor pension if the member has a spouse on the day that payment of the first instalment of the pension is due.

Interpretation re "spouse"

(2) If, on the day that payment of the first instalment of the pension is due, a member has a spouse described in clause (a) of the definition of "spouse" in subsection 1 (1) from whom the member is living separate and apart, that spouse is not a spouse for the purposes of subsection (1).

Same

(3) If, on the day that payment of the first instalment of the pension is due, a member has a spouse described in clause (b) of the definition of "spouse" in subsection 1 (1) and a spouse described in clause (a) of that definition from whom the member is living separate and apart, the spouse described in clause (b) of the definition is the spouse for the purposes of subsection (1).

Amount of pension of surviving spouse

(4) Upon the death of the member, the pension payable to the member's surviving spouse shall be 60 per cent of the pension paid to the member during their joint lives.

Waiver

(5) This section does not apply if the persons who would otherwise be entitled to a joint and survivor pension have waived, in accordance with the regulations, the entitlement to receive the pension in that form.

When pension begins

27. (1) The payment of the first instalment of a member's pension is due,

(a) if the member has made an election in accordance with the regulations, on the day the member has specified in the election; or

(b) if the member has not made an election in accordance with the regulations, on the day the member reaches the age of 70 years.

Earliest and latest days

(2) The following apply with respect to the day a member may specify in an election for the purposes of clause (1) (a):

1. The earliest day that a member may specify is the day the member reaches the age of 60 years.
2. The latest day that a member may specify is the day the member reaches the age of 70 years.

No application to pension of surviving spouse

(3) For greater certainty, this section does not apply with respect to the pension that becomes payable to the surviving spouse when the member being paid a joint and survivor pension dies.

Restriction, if member is required to make contributions

28. (1) A pension shall not begin to be paid to a member if, on the day that payment of the first instalment of the pension would be due, the member is employed in employment in respect of which the member is required to make contributions to the ORPP.

No application if member reaches 70 years of age

(2) Subsection (1) does not apply if the member has reached the age of 70 years.

No application to pension of surviving spouse

(3) For greater certainty, subsection (1) does not apply with respect to the pension that becomes payable to the surviving spouse when the member being paid a joint and survivor pension dies.

Election void

(4) An election to have a pension begin is void if the pension may not, under subsection (1), begin to be paid on the day specified in the election.

Inflation indexing of pensions

29. (1) A pension shall be adjusted, in accordance with the regulations, to provide inflation-related increases.

Changes related to plan sustainability

(2) The adjustments under subsection (1) are subject to such changes as may be provided for in the amendments to the text of the ORPP made, under section 45 or 46, by the Administration Corporation or the Lieutenant Governor in Council.

Monthly instalments

30. A pension shall be paid in equal monthly instalments.

Election to suspend pension to allow further contributions

31. (1) For the purpose of making further contributions to the ORPP as an employee, a member who is being paid a pension may elect, in accordance with the regulations, to suspend the payment of the pension.

Restriction — not after 70 years of age

(2) A member may not make an election under subsection (1) if the suspension would begin on or after the day the member reaches the age of 70 years.

Resumption of pension

(3) A member who has made an election under subsection (1) may subsequently make an election, in accordance with the regulations, to have the pension resume and if the member does not make an election to have the pension resume before the member reaches the age of 70 years, the pension shall resume when the member reaches that age.

Amount of pension

(4) The amount of the resumed pension shall be determined in accordance with the regulations.

Form of pension

(5) The form of the resumed pension shall be determined in accordance with the following:

1. If the pension that was suspended was a joint and survivor pension, the resumed pension shall also be a joint and survivor pension and the individual who would be the surviving spouse shall not change.

2. For greater certainty, paragraph 1 applies even if the individual who would have been the surviving spouse for the member's suspended joint and survivor pension has died or is no longer the spouse of the member.

3. If the pension that was suspended was not a joint and survivor pension, the resumed pension shall also not be a joint and survivor pension.

4. For greater certainty, paragraph 3 applies even if, when the pension resumes, the member has a spouse.

Death during suspension

(6) If the member who made an election under subsection (1) dies while the pension is suspended, the following apply:

1. If the pension that was suspended was a joint and survivor pension, the pension shall become payable to the surviving spouse, if any, and the amount of the pension shall be determined in accordance with the regulations.

2. If the pension that was suspended was not a joint and survivor pension, section 32 applies and section 33 does not apply.

10-year guarantee — for pension payable for life of member

32. (1) If the pension a member is being paid is not a joint and survivor pension and the member dies before being paid 120 monthly instalments, a lump sum shall be paid to the personal representative of the member or, if a beneficiary has been designated in accordance with the regulations, to that beneficiary.

Determination of amount

(2) The lump sum paid under subsection (1) shall be determined in accordance with the regulations so that it is equal to the present value of the further monthly instalments the member would have been paid had the member been paid 120 instalments.

Application to resumption of suspended pension

(3) For the purposes of applying subsections (1) and (2) to a pension that resumed after being suspended under section 31, the references to instalments are references only to instalments paid after the pension resumed, not instalments paid before the pension was suspended.

Definition

(4) In this section,

“personal representative” has the same meaning as in section 1 of the Estates Administration Act.

Pre-retirement death amount

33. (1) If a member dies before beginning to be paid a pension, a lump sum shall be paid,

(a) if the member had a spouse at the time of death, to the member’s spouse; or

(b) if the member did not have a spouse at the time of death,

(i) if a beneficiary has been designated in accordance with the regulations, to that beneficiary, or

(ii) if a beneficiary has not been designated in accordance with the regulations, to the personal representative of the member.

Amount of lump sum

(2) The amount of a lump sum paid under subsection (1) shall be equal to the greater of the following amounts, determined as of the time of death:

1. An amount that is actuarially equivalent to the value the member's pension would have been under subsection 24 (1).

2. An amount that is equal to the total of the member's contributions to the ORPP plus interest determined in accordance with the regulations.

Payment in satisfaction of entitlement

(3) A person who has been paid a lump sum under this section in respect of accrued pension benefits shall not be entitled to any other amount in respect of those benefits.

Interpretation re "spouse"

(4) If, at the time of death, a member has a spouse described in clause (a) of the definition of "spouse" in subsection 1 (1) from whom the member is living separate and apart, that spouse does not have an entitlement under subsection (1).

Same

(5) If, at the time of death, a member has a spouse described in clause (b) of the definition of "spouse" in subsection 1 (1) and a spouse described in clause (a) of that definition from whom the member is living separate and apart, the spouse described in clause (b) of the definition has an entitlement under subsection (1).

Same, entitlement as beneficiary or personal representative

(6) Subsection (4) does not prevent a spouse from having an entitlement as a designated beneficiary or as a personal representative under clause (1) (b).

Definition

(7) In this section,

"personal representative" has the same meaning as in section 1 of the Estates Administration Act.

Shortened life expectancy

34. (1) A member shall be paid a lump sum if,

(a) the life expectancy of the member is less than two years;

(b) the member applies to the Administration Corporation, in accordance with the regulations, for the payment of the lump sum; and

(c) the prescribed requirements have been satisfied.

Amount of lump sum if pension not being paid

(2) If the member is not being paid a pension, the amount of the lump sum paid under subsection (1) shall be equal to the greater of the following amounts, determined as of the prescribed date:

1. An amount that is actuarially equivalent to the value the member's pension would be under subsection 24 (1).

2. An amount that is equal to the total of the member's contributions to the ORPP plus interest determined in accordance with the regulations.

Amount of lump sum if pension being paid

(3) If the member is being paid a pension, the amount of the lump sum paid under subsection (1) shall be determined in accordance with the regulations.

Payment in satisfaction of entitlement

(4) A member who has been paid a lump sum under this section in respect of accrued pension benefits or a pension shall not be entitled to any other amount in respect of those benefits or that pension.

Application to pension of surviving spouse

(5) Subsections (1), (3) and (4) apply, with necessary modifications, with respect to the pension being paid to a surviving spouse after the member being paid a joint and survivor pension dies.

Lump sum if pension is small

35. (1) A member's pension shall be paid in the form of a lump sum if the amount of the pension at the time it would begin to be paid is below the prescribed threshold.

Amount of lump sum

(2) The amount of a lump sum paid under subsection (1) shall be equal to the greater of the following amounts, determined as of the time the pension would begin to be paid:

1. An amount that is actuarially equivalent to the value of the pension.

2. An amount that is equal to the total of the member's contributions to the ORPP plus interest determined in accordance with the regulations.

Payment in satisfaction of entitlement

(3) A member who has been paid a lump sum under this section in respect of a pension shall not be entitled to any other amount in respect of that pension.

Application to pension of surviving spouse

(4) This section, other than paragraph 2 of subsection (2), applies, with necessary modifications, with respect to the pension payable to a surviving spouse when the member being paid a joint and survivor pension dies, if the amount of the pension payable to the surviving spouse at the time it would begin to be paid is below the threshold applicable under subsection (1).

Return of payment where recipient not entitled

36. A person who has received a payment under this Act to which the person is not entitled, or a payment in excess of the amount of the payment to which the person is otherwise entitled, shall promptly return the amount of the payment, or the excess amount, as the case may be.

Protection of Funds

Locking in

37. No person is entitled to a refund of contributions or to the payment of any amount under the ORPP except as provided for under this Act.

Void agreements, arrangements

38. Every agreement or arrangement that purports to assign, charge, anticipate or give as security money payable under the ORPP is void.

Exemption from execution, seizure or attachment

39. (1) Money payable under the ORPP is exempt from execution, seizure or attachment.

Exception, order for support

(2) Despite subsection (1), payments of a pension under this Act are subject to execution, seizure or attachment in satisfaction of an order for support enforceable in Ontario to a maximum of one-half the money payable.

Commutation or surrender

40. Except as permitted under this Act, a pension or pension benefit to which a person is entitled is not capable of being commuted or surrendered, in whole or in part, during the person's life, and an agreement or arrangement that purports to commute or surrender such a pension or pension benefit, in whole or in part, is void.

Division of Pension on Relationship Breakdown

Division of pension on relationship breakdown

41. (1) The regulations may provide for the division and reallocation of contributions to the ORPP made by one or both persons in a spousal relationship in circumstances where the spouses separate.

Same

(2) Without limiting the generality of subsection (1), the regulations may govern,

(a) the interpretation of "separate" in subsection (1);

(b) the time period, in relation to the spousal relationship, in respect of which the contributions shall be divided and reallocated;

(c) the manner of dividing the contributions and reallocating them to each spouse;

(d) the manner of redetermining each spouse's entitlement under this Act following a division and reallocation, including the entitlement of a spouse who has not previously been a member but who, as a result of a division and reallocation under this section, gains an entitlement under this Act.

Earliest division

(3) No division or reallocation shall take place before January 1, 2022.

Plan Sustainability

Interpretation

Definitions

42. (1) In this section and in sections 43 to 46,

“designated actuary” means the person designated under section 43; (“actuaire désigné”)

“funded on a sustainable basis” has the meaning provided for under subsection (2); (“capitalisé sur une base viable”)

“funding excess” has the meaning provided for under subsection (2); (“excédent de capitalisation”)

“funding shortfall” has the meaning provided for under subsection (2); (“insuffisance de capitalisation”)

“SCRD” means the Sustainability Contribution Rate Differential determined in accordance with the formula set out in subsection 44 (4); (“ETCV”)

“valuation date” means the date as of which the assets and obligations of the ORPP are valued for the purposes of a valuation report; (“date d'évaluation”)

“valuation report” means the valuation report required under section 44. (“rapport d'évaluation”)

Funded on a sustainable basis, excess, shortfall

(2) The following apply for the purposes of the definitions of “funded on a sustainable basis”, “funding excess” and “funding shortfall” in subsection (1):

1. The ORPP has a funding shortfall if the SCRD is less than or equal to negative 0.1 per cent.
2. The ORPP is funded on a sustainable basis if the SCRD is more than negative 0.1 per cent but less than 0.1 per cent.
3. The ORPP has a funding excess if the SCRD is greater than or equal to 0.1 per cent.

Designated actuary

43. The Administration Corporation shall designate a Fellow of the Canadian Institute of Actuaries who is not an employee of the Administration Corporation as the designated actuary for the purposes of sections 44 to 46.

Actuarial valuation

44. (1) The Administration Corporation shall ensure that a valuation report for the ORPP is prepared by the designated actuary every three years to determine if the ORPP is funded on a sustainable basis.

Timing for first report

(2) The following apply with respect to the first valuation report:

1. The valuation date for the report shall be December 31, 2018.
2. The report shall be completed and provided to the Administration Corporation on or before June 30, 2020.

3. For the purposes of determining the SCRD under subsection (4), the contribution rate under section 16 shall be the contribution rate under that section without regard to any lower rate provided for under regulations authorized under section 90.

Timing for subsequent reports

(3) The following apply with respect to a valuation report prepared after the first valuation report:

1. The valuation date for the report shall be three years after the valuation date for the previous valuation report.
2. The report shall be completed and provided to the Administration Corporation within one year after the valuation date.

SCRD

(4) The valuation report shall set out the SCRD which shall be determined by the designated actuary in accordance with the following formula:

$$\text{SCRD} = \text{Total Contribution Rate} - \text{Sustainability Rate}$$

in which,

“SCRD” is the Sustainability Contribution Rate Differential;

“Total Contribution Rate” means the product of two multiplied by,

- (a) the contribution rate under section 16, or
- (b) if, on the valuation date, an amendment to the text of the ORPP has been made under section 45 or 46 or an Act has been passed that would change the contribution rate under section 16 but that change has not yet become effective, the contribution rate under section 16 as it will be after those changes become effective; and

“Sustainability Rate” means the lowest total contribution rate, determined in accordance with the regulations, that, if implemented three years after the day after the valuation date, would be

projected to result in the ORPP being able to satisfy its obligations, as they become due, for 100 years after the valuation date.

Copy to Minister

(5) The Administration Corporation shall provide a copy of the valuation report to the Minister within 15 days after receiving it.

Publication

(6) The Administration Corporation shall publish the valuation report within 30 days after receiving it.

Prescribed requirements

(7) The valuation report shall comply with the prescribed requirements.

If ORPP has a funding shortfall

45. (1) If, according to a valuation report, the ORPP has a funding shortfall, the Administration Corporation shall determine, in consultation with the designated actuary, the remedial action provided for under subsection (2).

Determination of remedial action

(2) The remedial action referred to in subsection (1) shall be determined as follows:

1. The Administration Corporation shall determine what increase in the contribution rate under section 16 would be necessary to eliminate any previous reduction in the contribution rate under section 46.

2. If any increase determined under paragraph 1 would not result in the ORPP being funded on a sustainable basis, the Administration Corporation shall determine what reductions in the adjustments under subsections 17 (1) and 29 (1), implemented concurrently, together with any increase determined under paragraph 1, would result in the ORPP being funded on a sustainable basis, subject to the following:

i. The reductions shall be expressed as percentage reductions that would be added to any previous reductions under this section.

ii. The reduction in the adjustment under subsection 29 (1) must not exceed 25 per cent.

iii. The percentage reduction in the adjustment under subsection 29 (1) must be 2.5 times the percentage reduction in the adjustment under subsection 17 (1).

3. If the measures determined under paragraphs 1 and 2 would not result in the ORPP being funded on a sustainable basis, the Administration Corporation shall determine what increase in the contribution rate under section 16, not exceeding 0.1 percentage points, would, together with the measures under paragraphs 1 and 2, result in the ORPP being funded on a sustainable basis.

4. The remedial action referred to in subsection (1) is the measures determined under paragraphs 1 to 3.

If remedial action under subs. (2) is sufficient

(3) If the remedial action provided for under subsection (2) would result in the ORPP being funded on a sustainable basis, the Administration Corporation shall amend the text of the ORPP, under subsection 87 (5), to implement that remedial action beginning,

(a) three years after the day after the valuation date for the valuation report referred to in subsection (1); or

(b) one year after the time specified under clause (a) if the Minister, within two years after the valuation date for the valuation report referred to in subsection (1), gives the Administration Corporation a written direction to delay the implementation of the remedial action.

If remedial action under subs. (2) is not sufficient

(4) If the remedial action provided for under subsection (2) would not result in the ORPP being funded on a sustainable basis, the following apply:

1. The Administration Corporation shall give the Minister a notice, within 60 days after the Administration Corporation received the valuation report, that the remedial action provided for under subsection (2) would not result in the ORPP being funded on a sustainable basis and the notice shall set out the Administration Corporation's recommendations to the Government on how to address the funding shortfall.

2. The Minister shall give the Administration Corporation a notice, within 120 days after receiving the notice under paragraph 1, indicating whether the Government has made a decision about what to do, if anything, to address the funding shortfall.

3. If either the notice under paragraph 2 indicates that no decision has been made or no notice is given by the deadline required under paragraph 2, the following apply:

i. The Administration Corporation shall determine, in consultation with the designated actuary, what increase in the contribution rate under section 16 would, together with the remedial action provided for under subsection (2), result in the ORPP being funded on a sustainable basis.

ii. The Administration Corporation shall amend the text of the ORPP, under subsection 87 (5), to implement the remedial action provided for under subsection (2) and the increase determined under subparagraph i, beginning three years after the day after the valuation date for the valuation report referred to in subsection (1).

Authority for Lieutenant Governor in Council to make changes

(5) If the Minister is given a notice under paragraph 1 of subsection (4), the Lieutenant Governor in Council may, for the purpose of providing for the ORPP to be funded on a sustainable basis, amend the text of the ORPP, under subsection 87 (2), to do the following:

1. Reduce the adjustments under subsections 17 (1) and 29 (1).

2. Increase the contribution rate under section 16.

If ORPP has a funding excess

46. (1) If, according to a valuation report, the ORPP has a funding excess, the following apply:

1. The Administration Corporation shall give the Minister a notice, within 60 days after the Administration Corporation received the valuation report, setting out the Administration Corporation's recommendations to the Government on how to address the funding excess.

2. The Minister shall give the Administration Corporation a notice, within 120 days after receiving the notice under paragraph 1, indicating whether the Government has made a decision about what to do, if anything, to address the funding excess.

3. If the SCRD in the valuation report is greater than 1 per cent and either the notice under paragraph 2 indicates that no decision has been made or no notice is given by the deadline required under paragraph 2, the following apply:

- i. The Administration Corporation shall determine, in consultation with the designated actuary, what increases in the adjustments under subsections 17 (1) and 29 (1) would be necessary to eliminate any previous reductions in those adjustments under section 45.

- ii. If any increases determined under subparagraph i would not result in the SCRD being 1 per cent or less, the Administration Corporation shall determine, in consultation with the designated actuary, what reduction in the contribution rate under section 16, together with any increases under subparagraph i, would result in the SCRD being 1 per cent.

- iii. The Administration Corporation shall amend the text of the ORPP, under subsection 87 (5), to implement the measures determined under subparagraphs i and ii beginning three years after the day after the valuation date for the valuation report.

Authority for Lieutenant Governor in Council to make changes

- (2) If the Minister is given a notice under paragraph 1 of subsection (1), the Lieutenant Governor in Council may, for the purpose of reducing or eliminating the funding excess, amend the text of the ORPP, under subsection 87 (2), to do the following:

1. Eliminate any previous reductions under section 45 in the adjustments under subsections 17 (1) and 29 (1).

2. Reduce the contribution rate under section 16.

Sustainability changes prospective only

47. An amendment to the text of the ORPP under section 45 or 46 may only affect adjustments that would be made, or contributions that would be payable, after the amendment is made.

Information from Administration Corporation

Information from Administration Corporation

48. (1) The Administration Corporation shall give such information as may be specified by regulation to the persons specified by the regulations, at such time and in such manner as may be prescribed, for the purposes of the administration of the ORPP.

Same, public information

(2) The Administration Corporation shall publish such information as may be specified by regulation, at such time and in such manner as may be prescribed, for the purposes of the administration of the ORPP.

Collection, Use and Disclosure of Information

Definitions

49. In sections 50 to 60,

“employed in Ontario” means employed in Ontario within the meaning of section 6; (“employé en Ontario”)

“head” means the chair of the Administration Corporation’s board of directors; (“personne responsable”)

“personal information” has the same meaning as in section 2 of the Freedom of Information and Protection of Privacy Act, and includes information that is not recorded; (“renseignements personnels”)

“public body” means,

(a) any ministry, agency, board, commission, official or other body of the Government of Ontario,

(b) any municipality in Ontario, or

(c) a local board, as defined in section 1 of the Municipal Affairs Act, and any authority, board, commission, corporation, office or organization of persons some or all of whose members, directors or officers are appointed or chosen by or under the authority of the council of a municipality in Ontario. (“organisme public”)

Collection of information by the Administration Corporation

50. (1) The Administration Corporation may request and collect from a public body, the federal government, an employer, a person employed in Ontario or any other person the information, including personal information, that is necessary for the purpose of carrying out its objects set out in section 3 of the Ontario Retirement Pension Plan Administration Corporation Act, 2015.

Direct or indirect collection

(2) Information may be collected directly or indirectly.

Response to request

(3) A person who receives a request for information from the Administration Corporation under subsection (1) shall, within 30 days after the request, disclose to the Administration Corporation the requested information from his, her or its records.

Exception

(4) Subsection (3) does not apply to the federal government.

Extension of time

(5) The Administration Corporation may extend the time limit referred to in subsection (3), before or after it has expired, if the Administration Corporation is satisfied that there are reasonable grounds for doing so.

Personal information

Notice of collection, direct collection

51. (1) If the Administration Corporation collects personal information directly from the individual to whom the information relates, the Administration Corporation shall inform that individual of,

(a) the legal authority for the collection;

(b) the principal purpose or purposes for which the personal information is intended to be used; and

(c) the title, business address and business telephone number of an employee of the Administration Corporation who can answer the individual's questions about the collection.

Notice of collection, indirect collection

(2) If the Administration Corporation collects personal information indirectly, it shall issue a general notice of collection and make the notice available on a website that is accessible to the public.

Same, content of notice

(3) A notice issued under subsection (2) shall contain,

(a) a description of the type of personal information being collected; and

(b) the information described in clauses (1) (a) to (c).

Use of personal information

52. The Administration Corporation shall not use personal information in its custody or under its control except,

(a) where the individual to whom the information relates has identified that information in particular and consented to its use;

(b) for the purpose for which it was obtained or compiled or for a consistent purpose; or

(c) for a purpose for which the information may be disclosed to the Administration Corporation under section 42 of the Freedom of Information and Protection of Privacy Act or under section 32 of the Municipal Freedom of Information and Protection of Privacy Act.

Disclosure of personal information

53. The Administration Corporation shall not disclose personal information in its custody or under its control except,

(a) where the individual to whom the information relates has identified that information in particular and consented to its disclosure;

(b) for the purpose for which it was obtained or compiled or for a consistent purpose;

(c) where disclosure is made to an officer, employee, consultant or agent of the Administration Corporation who needs the information in the performance of their duties and where disclosure is necessary and proper in the discharge of the Administration Corporation's functions;

(d) for the purpose of complying with an Act of the Legislature or an Act of Parliament or a treaty, agreement or arrangement thereunder;

(e) where disclosure is to a public body or a law enforcement agency in Canada to aid an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result;

(f) in compelling circumstances affecting the health or safety of an individual if upon disclosure notification thereof is mailed to the last known address of the individual to whom the information relates;

(g) in compassionate circumstances, to facilitate contact with the spouse, a close relative or a friend of an individual who is injured, ill or deceased;

(h) to a member of the Legislative Assembly who has been authorized by a constituent to whom the information relates to make an inquiry on the constituent's behalf or, where the constituent is incapacitated, has been authorized by the spouse, a close relative or the legal representative of the constituent;

(i) to a member of the bargaining agent who has been authorized by an employee to whom the information relates to make an inquiry on the employee's behalf or, where the employee is incapacitated, has been authorized by the spouse, a close relative or the legal representative of the employee;

(j) to the Minister;

(k) to the Information and Privacy Commissioner;

(l) to the federal government or to the government of a province or territory where the Administration Corporation has entered into an agreement under section 21 of the Ontario Retirement Pension Plan Administration Corporation Act, 2015 with that jurisdiction;

(m) pursuant to a warrant or order of a court or tribunal; or

(n) to a law enforcement agency if the Administration Corporation reasonably believes the information relates to the commission of an offence.

Consistent purpose

54. Where personal information has been collected directly from the individual to whom the information relates, the purpose of a use or disclosure of that information is a consistent purpose under clause 52 (b) or 53 (b) only if the individual might reasonably have expected such a use or disclosure.

Individual's access to personal information

55. (1) An individual may, in writing, request access to the individual's own personal information in the Administration Corporation's custody or control.

Disclosure by Administration Corporation

(2) Within 30 days after receiving the request, the head shall disclose the individual's personal information to the individual. It must be provided in a comprehensible form and in a manner which indicates the general terms and conditions under which the personal information has been retained and used.

Exceptions

(3) The head may refuse to disclose the individual's personal information to the individual,

(a) if the disclosure would reveal information that is subject to solicitor-client privilege, litigation privilege or settlement privilege;

(b) if the disclosure would reasonably be expected to do any of the things described in subsection 14 (1) of the Freedom of Information and Protection of Privacy Act; or

(c) if the head is of the opinion on reasonable grounds that the request for personal information is frivolous or vexatious.

Refusal

(4) If the head refuses to disclose the individual's personal information, the head shall notify the individual in writing within 30 days after receiving the request and shall give the individual information about the right to appeal the refusal.

Same, refusal under clause (3) (a) or (b)

(5) If the head refuses to disclose the individual's personal information under clause (3) (a) or (b), the notice under subsection (4) shall also set out,

(a) whether the disclosure is being refused under clause (3) (a) or under clause (3) (b); and

(b) the reason clause (3) (a) or (b) applies to the information.

Same, frivolous or vexatious request

(6) If the head refuses to disclose the individual's personal information because the head is of the opinion that the request is frivolous or vexatious, the notice given under subsection (4) shall also set out,

- (a) a statement that the head is of the opinion that the request is frivolous or vexatious; and
- (b) the reasons for which the head is of the opinion that the request is frivolous or vexatious.

Extension of time

(7) The head may extend the 30-day time limit described in subsection (2) or (4) for a period of time that is reasonable in the circumstances and shall give the individual who made the request written notice of the extension setting out,

- (a) the length of the extension; and
- (b) the reason for the extension.

Deemed refusal

(8) If the head fails to disclose information within the 30-day period described in subsection (2) or (4), or within the extended time period referred to in clause (7) (a) if the head has extended the time limit, the head is deemed to have given notice of refusal to disclose the information on the last day of the period during which notice should have been given.

Request for correction of personal information

56. (1) An individual may, in writing, request a correction in the personal information requested under subsection 55 (1) or disclosed to the individual under subsection 55 (2) if the individual believes the personal information contains an error or omission.

Refusal

(2) If the head refuses the request for a correction, the head shall notify the individual in writing and give the individual information about the right to appeal the refusal.

Same

(3) If the head refuses the request for a correction, the individual is entitled to,

(a) require that a statement of disagreement be attached to the information reflecting any correction that was requested but not made; and

(b) require that any person or body to whom the personal information has been disclosed within the year before the time a statement of disagreement is required be notified of the statement of disagreement.

Notification of correction

(4) If the head makes the correction, the individual is entitled to require that any person or body to whom the personal information has been disclosed within the year before the time the correction is requested be notified of the correction.

Appeal to Information and Privacy Commissioner

57. (1) An individual may appeal to the Information and Privacy Commissioner,

(a) a refusal by the head to disclose the individual's personal information under subsection 55 (3) or (8);

(b) the extension of time under subsection 55 (7); or

(c) a refusal to correct the individual's personal information under subsection 56 (2).

Same

(2) Part IV (Appeal) of the Freedom of Information and Protection of Privacy Act applies, with the following modifications, with respect to the appeal:

1. A reference in Part IV to a "head" shall be read as if it were a reference to the chair of the Administration Corporation's board of directors.

2. A reference in Part IV to an "institution" shall be read as if it were a reference to the Administration Corporation.

3. A reference in Part IV to a "record" shall be read as if it were a reference to a record containing the personal information of the appellant.

4. Subsections 52 (4) to (7) of Part IV do not apply with respect to the appeal. Instead, in an inquiry, the Commissioner may require to be produced to the Commissioner, and may examine, any record containing the personal information of the appellant that is in the Administration Corporation's custody or control.

5. A reference in section 53 of Part IV to "specified exemptions" shall be read as if it were a reference to the exceptions listed in subsection 55 (3) of this Act.

6. Subsection 56 (2) of Part IV does not apply.

Compliance

(3) The Administration Corporation shall comply with the Commissioner's production requirements and with the Commissioner's order disposing of the appeal.

Information and Privacy Commissioner's review of practices

58. (1) The Information and Privacy Commissioner may, from time to time, review the Administration Corporation's practices to check that there has been no unauthorized collection, use, disclosure, access to or modification of personal information in its custody.

Duty to assist

(2) The Administration Corporation shall co-operate with and assist the Commissioner in the conduct of the review.

Orders

(3) If the Commissioner determines that a practice contravenes this Act, the Commissioner may order the Administration Corporation to discontinue that practice and to destroy personal information collected or retained under that practice.

Delegation

59. The head may, in writing, delegate the head's powers or duties under sections 55 and 56 to an officer of the Administration Corporation subject to any limitations, restrictions, conditions and requirements set out in the delegation.

Collection of information by the Minister

60. (1) The Minister may request and collect from any employer, any public body or the federal government any information, including personal information, described in subsection (2) that the Minister considers necessary for the purpose of this Act and the ORPP.

Information that may be requested and collected

(2) The information referred to in subsection (1) is the following:

1. Information about persons employed in Ontario and their employers, including the numbers of employees of an employer, the age and gender of employees, classes of employment, and annual salaries and wages payable to employees.

2. Information concerning Ontario's population, labour force and economy, including demographic and economic projections.

3. Information necessary to determine whether an employer provides a workplace pension plan to its employees employed in Ontario and, if so, which employees participate in the plan, the nature and level of the benefits provided by the plan and the contribution rates under the plan.

4. Any other information that the Minister considers necessary for the purpose of this Act and the ORPP.

Notice under privacy legislation

(3) Any collection by the Minister of personal information under this section is exempt from the application of subsection 39 (2) of the Freedom of Information and Protection of Privacy Act.

Deemed consistent purpose

(4) For the purposes of the Freedom of Information and Protection of Privacy Act, personal information in the custody or control of the Ministry that has been collected otherwise than in accordance with this section may be used by the Ministry for the purpose described in subsection (1), and that use shall be deemed to be for a purpose that is consistent with the purpose for which the personal information was obtained or compiled.

Disclosure to Minister

(5) Upon receipt of a request for information from the Minister under subsection (1), a public body shall disclose to the Minister the requested information from its records for the purpose set out in that subsection.

Requirement for employers to give information

(6) Upon receipt of a request for information from the Minister under subsection (1), an employer shall, within 30 days after the request, disclose to the Minister the requested information from its records for the purpose set out in that subsection.

Exception

(7) Subsection (6) does not apply to the federal government.

Extension of time

(8) The Minister may extend the time limit referred to in subsection (6), before or after it has expired, if the Minister is satisfied that there are reasonable grounds for doing so.

Examinations, Audits and Inquiries

Authorized persons and purposes

61. In sections 62 to 64,

“authorized person” means,

(a) the Administration Corporation, or

(b) a person designated by the Administration Corporation, and the designate does not have to be a person employed by the Administration Corporation; (“personne autorisée”)

“authorized purpose” means,

(a) the administration of this Act and the regulations,

(b) the enforcement of any section of this Act or the regulations,

(c) the exercise of a power or the carrying out of a duty under this Act or the regulations, or

(d) the carrying out of an order made by the Administration Corporation under this Act. (“fin autorisée”)

Examinations, audits and inquiries

Entry

62. (1) For an authorized purpose, an authorized person may enter and have access to, through and over any business premises, where the person has reasonable grounds to believe books, papers, documents or things are kept that relate to the ORPP or any workplace pension plan.

Examinations, audits and inquiries

(2) For an authorized purpose, an authorized person may make examinations, audits or inquiries and may require the production of any book, paper, document or thing related to the ORPP or any workplace pension plan.

Application of Public Inquiries Act, 2009

(3) Section 33 of the Public Inquiries Act, 2009 applies to an examination, audit or inquiry conducted by an authorized person for an authorized purpose.

Copies or extracts

(4) An authorized person may make, take and remove or require the making, taking and removal of copies or extracts related to an examination, audit or inquiry for an authorized purpose.

Reasonable times

(5) The authority under subsections (1) to (4) shall be exercised only at reasonable times.

Private residence

(6) Subsection (1) is not authority to enter a private residence without the consent of the occupier.

Removal of books, etc., for copying

(7) An authorized person who is making an examination, audit or inquiry may, on giving a receipt, remove any books, papers, documents or things relating to the subject matter of the examination, audit or inquiry for the purpose of making copies of the books, papers, documents or things, but the copying shall be carried out within a reasonable time and the books, papers, documents or things shall be returned promptly after the copying is completed.

Copies

(8) A copy of any written or recorded material found in an examination, audit or inquiry and purporting to be certified by an authorized person is admissible in evidence in any action, proceeding or prosecution for all purposes for which the original would have been admissible.

Application for warrant

(9) An authorized person may apply to a justice of the peace for an inspection order under section 64 if an occupier of a premises,

- (a) denies entry or access to, through or over the premises to an authorized person;
- (b) instructs an authorized person to leave the premises;

(c) obstructs an authorized person who is acting for an authorized purpose; or

(d) refuses to comply with a request for the production of any thing the production of which is requested for the purpose of an examination, audit or inquiry or for an authorized purpose.

Identification

(10) A person exercising a power under this section shall provide identification at the time of entry.

Opinion, report, etc.

(11) The Administration Corporation may require a person exercising a power under this section to prepare an opinion, report or professional attestation about the results of any examination, audit or inquiry made by the person under this section.

Cost of examination

(12) The Administration Corporation may order any person to pay all or part of the cost of an examination, audit or inquiry under this section and to pay all or part of the cost of any opinion, report or professional attestation prepared following such an examination, audit or inquiry (whether or not the opinion, report or attestation was required by the Administration Corporation), if the Administration Corporation considers it to be reasonable and fair in the circumstances to do so.

Same

(13) Without limiting the generality of subsection (12), an employer may be required to make a payment under that subsection.

Obstruction

63. (1) No person shall hinder or obstruct an authorized person who is lawfully carrying out a duty under this Act.

Private residence

(2) A refusal of consent to enter a private residence is not and shall not be deemed to be hindering or obstructing within the meaning of subsection (1).

Orders by justice of the peace

64. (1) This section applies if a justice of the peace is satisfied on evidence on oath or affirmation that,

(a) there are reasonable and probable grounds for believing that it is necessary, for an authorized purpose, to,

(i) enter and have access to, through and over any premises,

(ii) make examinations, audits or inquiries, or

(iii) make, take and remove photographs, samples, copies or extracts related to an examination, audit or inquiry; and

(b) the occupier of the premises has denied an authorized person entry to the premises, instructed the person to leave the premises, obstructed the person, or refused production of any thing related to an examination, audit or inquiry, or an authorized person has reasonable grounds to believe that the occupier of the premises will deny the person entry to the premises.

Inspection order

(2) The justice of the peace may issue an inspection order authorizing an authorized person to do anything described in clause (1) (a) in respect of the premises specified in the inspection order, by force if necessary, together with such police officer or officers as the person calls on for assistance.

Execution of order

(3) An inspection order issued under this section shall be executed between 6 a.m. and 9 p.m. standard time unless the justice of the peace otherwise authorizes in the order.

Expiry of order

(4) An inspection order issued under this section shall state the date on which it expires, and the date shall not be later than 15 days after the inspection order is issued.

Application without notice

(5) A justice of the peace may receive and consider an application for an inspection order under this section without notice to and in the absence of the owner or the occupier of the premises.

Enforcement, Penalties and Offences

Certificate re default

65. (1) If an employer does not remit contributions or pay a penalty, interest or other amount owing under this Act when they become due, the Administration Corporation may issue a certificate stating that the employer is in default under this Act and setting out the contributions or the penalty, interest or other amount that is owed.

Filing of certificate with court

(2) The Administration Corporation may file the certificate with the Superior Court of Justice or with the Small Claims Court and it shall be entered in the same way as an order of that court and is enforceable as such. Despite any other rule of the court, the Administration Corporation may file the certificate by mail or, if permitted, electronically and personal attendance at the court is not required.

Lien upon property

66. (1) Subject to subsection (2), the amount set out in a certificate filed with the court under subsection 65 (2) is a first lien upon all the property of the employer.

Same

(2) The lien is effective only if,

(a) notice of the lien is filed by way of writ of seizure and sale in the office of the sheriff for the area in which the affected property is situated; and

(b) a copy of the writ is delivered by the sheriff or by registered mail to the proper land registrar, if affected land is registered under the Land Titles Act.

Effect of deemed trust

(3) The filing of a notice of lien under this section does not affect the operation of section 20 and shall apply to secure any liability of an employer in addition to any deemed trust under that section.

Use of remedies

67. The use of any of the remedies provided by this Act does not bar or affect any of the other remedies provided by this Act, and the remedies provided by this Act for the recovery and enforcement of an obligation under this Act are in addition to any other remedies existing by law, and no action or other proceeding taken in any way prejudices, limits or affects any lien, charge or priority existing under this Act or otherwise.

Director liability

68. (1) If an employer who fails to remit an amount as and when required under section 19 is a corporation, the persons who are directors of the corporation at the time when the failure occurred are jointly and severally liable together with the corporation to remit that amount and any interest or administrative penalties that are imposed for the failure to remit.

Exception

(2) A director of a corporation is not liable under subsection (1) unless,

(a) a certificate for the amount of the corporation's liability has been filed with the Superior Court of Justice or Small Claims Court under subsection 65 (2) and execution for that amount has been returned unsatisfied in whole or in part; or

(b) the corporation has become bankrupt due to an assignment or receiving order or it has filed a notice of intention to file or a proposal under the Bankruptcy and Insolvency Act (Canada), and a claim for the amount of the corporation's liability referred to in subsection (1) has been proved within six months after the date of the assignment, receiving order or filing of the proposal.

Standard of care

(3) A director is not liable for a failure under subsection (1) if the director exercised the degree of care, diligence and skill to prevent the failure that a reasonably prudent person would have exercised in comparable circumstances.

Execution

(4) If execution referred to in clause (2) (a) has been issued, the amount recoverable from a director is the amount remaining unsatisfied after execution.

Same

(5) If a director of a corporation pays an amount in respect of a corporation's liability referred to in subsection (1) that is proved in a liquidation, dissolution or bankruptcy proceeding, the director is entitled to any preference that the Administration Corporation would have been entitled to if the amount had not been paid and, if a certificate for the amount of the corporation's liability has been filed with the Superior Court of Justice or Small Claims Court under subsection 65 (2), the director is entitled to the assignment of the certificate to the extent of the director's payment, and the Administration Corporation may make the assignment.

Directors' recovery

(6) A director who has satisfied a claim under this section is entitled to contribution from the other directors who were liable for the claim.

Limitation period

(7) Recovery of any amount payable by a director of a corporation under subsection (1) shall not be commenced more than two years after the director last ceased to be a director of that corporation.

Administrative penalty — failure to remit

69. If an employer fails to remit to the Administration Corporation an amount that the employer is required to remit under clause 19 (1) (a) or (b) at the time when required to do so, the Administration Corporation may, by order, impose on an employer an administrative penalty.

Administrative penalties — general

70. The Administration Corporation may, by order, impose on a person an administrative penalty if, in the opinion of the Administration Corporation, the person has,

- (a) contravened a prescribed provision of this Act or the regulations;
- (b) failed to provide a document that is required to be provided under this Act within the period required under this Act for the provision of the document;
- (c) contravened this Act by failing to provide any information requested by the Administration Corporation within the period required under this Act;
- (d) made a statement or declaration, in an application or otherwise, that the person knew was false or misleading;
- (e) made a statement or declaration, in an application or otherwise, that the person knew was false or misleading because of the non-disclosure of facts;
- (f) received or obtained a payment to which the person knew that they were not entitled, or a payment that the person knew was in excess of the amount of the payment to which they were

entitled, and did not return the amount of the payment, or the excess amount, as the case may be, without delay; or

(g) participated in, assented to or acquiesced in an act or omission mentioned in clauses (a) to (f).

Decision to impose administrative penalty

Purpose of penalty

71. (1) The purpose of an administrative penalty is to promote compliance with this Act and not to punish.

Criteria re decision to impose a penalty

(2) The Administration Corporation shall consider such criteria as may be prescribed by regulation when determining whether to impose an administrative penalty.

Notice required

(3) In the event that the Administration Corporation decides to impose an administrative penalty on a person, the Administration Corporation shall give notice by serving a notice on the person.

Same, corporation

(4) In the event that an administrative penalty is imposed on a corporation under section 69, the Administration Corporation shall also serve notice on every director of the corporation if required to do so by the regulations.

Contents re notice of administrative penalty

(5) A notice of administrative penalty must specify the following:

1. The contravention.

2. The amount of the administrative penalty.

3. In the case of an administrative penalty imposed on an employer under section 69, the amount of contributions that the employer has not remitted and the interest owing.

4. The date by which the person must pay the administrative penalty, which date must be not less than 45 days after the date on which the notice is served.

5. The right of the person, within 45 days after the notice is served, to dispute one or both of the imposition and the amount of the administrative penalty.

6. Any prescribed information.

Amount of penalty, s. 69

(6) The amount of an administrative penalty under section 69 shall be determined in accordance with the regulations, and the regulations may prescribe the amount of a penalty, or the method for

calculating the amount of a penalty, and may prescribe different penalties or ranges of penalties for different classes of employers.

Amount of penalty, s. 70

(7) The amount of the administrative penalty imposed under section 70 shall be determined in accordance with such criteria as may be prescribed, and shall not exceed \$10,000.

Limitation on imposition of penalties

(8) The Administration Corporation shall not impose an administrative penalty if,

- (a) a prosecution for the act or omission has been initiated against the person; or
- (b) more than six years have passed since the date on which the act or omission occurred.

Payment of penalty

(9) The person on whom an administrative penalty is imposed shall pay the administrative penalty,

- (a) within the period specified in the notice of administrative penalty; or
- (b) if the person requests a reconsideration by serving a notice of objection under subsection 73 (1), within the period specified in the written notification of the reconsideration served by the Administration Corporation under subsection 73 (2).

Rescission, etc., of penalty

(10) The Administration Corporation may at any time and on its own initiative rescind the decision to impose a penalty under this section, or reduce the penalty,

- (a) on the presentation of new facts;
- (b) on being satisfied that the penalty was imposed without knowledge of, or on the basis of a mistake as to, some material fact;
- (c) on being satisfied that the penalty cannot be collected within the reasonably foreseeable future; or
- (d) on being satisfied that payment of the penalty would cause undue hardship to the debtor.

Enforcement of administrative penalty

72. If an administrative penalty is imposed under section 69 or 70, the following rules apply:

1. If no notice of objection is served under subsection 73 (1) within the period referred to in that subsection, the penalty constitutes an amount owing to the Administration Corporation by the person on whom the penalty is imposed.

2. If a notice of objection is served under subsection 73 (1) and a notice of reconsideration is served under subsection 73 (2) that indicates that the decision to impose the penalty is confirmed, that penalty constitutes an amount owing to the Administration Corporation by the person on whom the penalty is imposed.

3. If a notice of objection is served under subsection 73 (1) and a notice of reconsideration is served under subsection 73 (2) that indicates that the decision to impose the penalty is varied to change the amount of the penalty, the penalty set out in the notice of reconsideration constitutes an amount owing to the Administration Corporation by the person on whom the penalty is imposed.

4. If a notice of objection is served under subsection 73 (1) and a notice of reconsideration is served under subsection 73 (2) that indicates that the decision to impose the penalty is rescinded, that penalty ceases to apply to the person.

5. If the Administration Corporation rescinds its decision to impose the penalty under subsection 71 (10), that penalty ceases to apply to the person.

Notice of objection

73. (1) Within 45 days after service of the notice of administrative penalty, the person on whom the notice was served may serve on the Administration Corporation a notice of objection setting out the reasons for the objection and all the relevant facts.

Reconsideration

(2) Promptly after receipt of the notice of objection under subsection (1), the Administration Corporation shall,

(a) reconsider the decision referred to in section 71;

(b) rescind, vary or confirm that decision; and

(c) serve on the person who provided the notice of objection a written notice of that reconsideration.

Notice of reconsideration

(3) A notice of reconsideration must be accompanied by reasons, unless the Administration Corporation rescinds its decision made under section 71.

Appeal of administrative penalty

74. A person on whom a notification of reconsideration is served under subsection 73 (2) may appeal the reconsideration in accordance with the regulations to a tribunal specified by regulation.

Offences

Employers — failure to remit, etc.

75. (1) Every employer is guilty of an offence who fails to comply with clause 19 (1) (a), (b) or (c).

Offences re employer obligations

(2) Every person is guilty of an offence who,

(a) makes, or participates in, assents to or acquiesces in the making of, false or deceptive statements in a return, form, certificate, statement or answer filed or made by an employer as required by or under this Act or the regulations;

(b) to evade payment of a contribution imposed under this Act, destroys, alters, mutilates, secretes or otherwise disposes of a record required to be kept under clause 19 (1) (c);

(c) makes, or assents to or acquiesces in the making of, false or deceptive entries, or omits, or assents to or acquiesces in the omission, to enter a material particular, in a record required to be kept under clause 19 (1) (c);

(d) wilfully, in any manner, evades or attempts to evade, any obligation of an employer under this Act, or any remittance required under this Act; or

(e) conspires with any person to commit an offence described in any of clauses (a) to (d).

Offences, general

(3) Every person is guilty of an offence who,

(a) contravenes an order made by the Administration Corporation under this Act;

(b) contravenes section 63;

(c) knowingly, makes a false or misleading statement in any application, election or declaration or makes any application, election or declaration that by reason of any non-disclosure of facts is false or misleading;

(d) knowingly obtains or attempts to obtain any payment by false pretences; or

(e) knowingly fails to return the amount of any payment or any excess amount as required by section 36.

Offences re information

(4) Every person is guilty of an offence who,

(a) fails to comply with a requirement under section 50 or 60; or

(b) in giving information to the Administration Corporation or the Minister as required under this Act, knowingly gives false or misleading information, including information that is false or misleading by reason of any non-disclosure of facts.

Directors, officers, etc.

(5) Every director, officer, official or agent of a corporation and every person acting in a similar capacity or performing similar functions in an unincorporated association is guilty of an offence if the person,

(a) causes, authorizes, permits, acquiesces or participates in the commission of an offence referred to in subsection (1), (2), (3) or (4) by the corporation or unincorporated association; or

(b) fails to take all reasonable care in the circumstances to prevent the corporation or unincorporated association from committing an offence referred to in subsection (1), (2), (3) or (4).

Penalty

76. (1) A person who is guilty of an offence under section 75 is liable on conviction to a fine of not more than \$100,000 for the first conviction and not more than \$200,000 for each subsequent conviction.

Directors, officers, etc.

(2) A person who is guilty of an offence described in subsection 75 (5) is liable on first conviction to a fine of not more than \$100,000, and on each subsequent conviction to a fine of not more than \$200,000, whether or not the corporation or unincorporated association has been prosecuted for or convicted of an offence arising from the same facts or circumstances.

Order for payment

(3) If an employer is convicted of an offence related to the failure to remit contributions to the Administration Corporation, the court that convicts the employer may, in addition to any fine imposed, assess the amount not remitted and order the person to remit the contribution to the Administration Corporation.

Enforcement

(4) An order for payment under subsection (3), exclusive of reasons therefor, may be filed in the Superior Court of Justice and is thereupon enforceable as an order of that court.

Time limit

(5) A prosecution for an offence under section 75 may be commenced within, but not later than, six years after the date on which the Administration Corporation becomes aware that the offence has occurred or is alleged to have occurred.

Use of penalties, fines

77. Any administrative penalty and any fine paid as a penalty for a conviction under this Act shall be paid to the Administration Corporation and the Administration Corporation shall,

(a) deposit the amount in the pension fund, but only if doing so would not result in the registration of the ORPP under the Income Tax Act (Canada) being subject to revocation under that Act; or

(b) use the amount to pay fees and expenses relating to the administration of the ORPP and the administration and investment of the pension fund that would otherwise be paid from the pension

fund under section 35 of the Ontario Retirement Pension Plan Administration Corporation Act, 2015.

Miscellaneous

Limit on payments from the CRF

78. (1) No payment shall be made from the Consolidated Revenue Fund for the purposes of funding the ORPP.

Clarification

(2) For greater certainty, subsection (1) does not apply to a payment that the Crown is required to make under this Act as an employer.

Amounts in trust not part of CRF

79. Contributions made under this Act and any accruals from the investment of those contributions do not form part of the Consolidated Revenue Fund.

Duties of employers

80. (1) An employer shall perform the prescribed duties.

Limits to certain employers

(2) The regulations may limit the employers who must perform a prescribed duty.

Duties to provide information and declarations

(3) For greater certainty, the prescribed duties may include duties to provide information and to provide declarations, from specified persons, relating to the information provided.

Reimbursement of overpayments

81. (1) If an employer remits an amount in respect of the employer's contributions to the Administration Corporation that exceeds the amount that the employer is required to remit or otherwise makes a payment on its own behalf in error to the Administration Corporation, the Administration Corporation is permitted to make or authorize a payment from the pension fund to reimburse the employer.

Same, reimbursement to employees

(2) The Administration Corporation is permitted to make or authorize a payment from the pension fund to reimburse an employee if either of the following circumstances exist:

1. The employee's employer remits an amount in respect of the employee's contributions to the Administration Corporation that exceeds the amount that the employer is required to remit.

2. The employee pays or makes a payment on the employee's own behalf in error to the Administration Corporation.

Successor employers

82. (1) This section applies when an employer immediately succeeds another as a result of the formation or dissolution of a corporation or the acquisition, with the agreement of the former employer or by operation of law, of all or part of a business of the former employer.

Liability of successor employer

(2) The successor employer is jointly and severally liable, together with the former employer to pay all amounts owing under this Act by the former employer immediately before the succession.

Enforcement

(3) The Administration Corporation may enforce the obligation against the successor employer as if the successor employer had been the former employer at all relevant times.

Succession as employer of an employee

(4) The following apply if the successor employer succeeds the former employer as the employer of an employee:

1. The successor employer may take into account amounts paid, deducted, remitted or contributed under this Act by the former employer as though they had been paid, deducted, remitted or contributed by the successor employer.

2. If the employer takes amounts described in paragraph 1 into account with respect to the employer's contributions, the employer shall also take those amounts into account with respect to the employee's contributions.

Serving a document

83. (1) Any notice, order or other document that is required to be served by the Administration Corporation on a person under this Act is sufficiently served if it is,

- (a) delivered directly to the person;
- (b) left at the person's last known address, in a place that appears to be for incoming mail or with an individual who appears to be 16 years old or older;
- (c) sent by regular mail to the person's last known address;
- (d) sent by commercial courier to the person's last known address;
- (e) sent by email to the person's last known email address;
- (f) sent by fax to the person's last known fax number; or
- (g) given by other means specified by the regulations.

Deemed receipt

(2) Subject to subsection (4),

(a) a document left under clause (1) (b) is deemed to have been received on the first business day after the day it was left;

(b) a document sent under clause (1) (c) is deemed to have been received on the fifth business day after the day it was mailed;

(c) a document sent under clause (1) (d) is deemed to have been received on the second business day after the day the commercial courier received it;

(d) a document sent under clause (1) (e) or (f) is deemed to have been received on the first business day after the day it was sent; and

(e) a document given under clause (1) (g) is deemed to have been received on the day specified by the regulations.

Definition

(3) In subsection (2),

“business day” means a day from Monday to Friday, other than a holiday as defined in section 87 of the Legislation Act, 2006.

Failure to receive document

(4) Subsection (2) does not apply if the person establishes that he or she, acting in good faith, did not receive the document or received it on a later date because of a reason beyond the person’s control, including absence, accident, disability or illness.

General notice

(5) If the Administration Corporation is of the opinion that because the persons who are to be given any notice or document under this Act are so numerous or for any other reason it is not reasonable to give the notice or document to all or any of the persons individually, the Administration Corporation may authorize the giving of the notice or document or reasonable notice of the contents of the notice or document to the persons by public advertisement or otherwise as the Administration Corporation may direct and the date on which the notice or document or the reasonable notice of the contents is first published or otherwise given as directed is deemed to be the date on which the notice or document is given.

Format, etc., of information

84. (1) Despite subsection 3 (1) of the Electronic Commerce Act, 2000, the Administration Corporation may require persons who use, provide or accept information, including documents, under this Act to use, provide or accept the information or documents in an electronic form or in another format without the person’s consent.

Required format

(2) The Administration Corporation may require information, including documents, and declarations to be provided to the Administration Corporation in electronic format or another format specified by the Administration Corporation.

Required form

(3) The Administration Corporation may require information to be provided to the Administration Corporation on a form specified or provided by the Administration Corporation.

Other requirements

(4) The Administration Corporation may specify the manner in which information to be provided to it must be certified and documents to be provided to it must be signed or certified.

Information provided by Administration Corporation

(5) The Administration Corporation may provide information, including documents, to persons under this Act in an electronic form or in another format as determined by the Administration Corporation.

Review of ORPP

85. (1) Before January 1, 2025, the Minister shall initiate a review of the following and shall prepare a report setting out the findings of the review:

1. This Act, the regulations and the text of the ORPP.

2. The Ontario Retirement Pension Plan Administration Corporation Act, 2015 and the regulations, or portions of that Act and the regulations.

Same

(2) The Minister shall,

(a) inform the public when a review under this section begins; and

(b) make the report setting out the findings of the review available to the public.

Subsequent reviews

(3) The Minister shall initiate subsequent reviews every 10 years after the report setting out the findings of the first review is made available to the public under clause (2) (b).

Conflict

86. In the event of a conflict between this Act and any other Act except the Ontario Retirement Pension Plan Administration Corporation Act, 2015, this Act prevails to the extent of the conflict unless the other Act states that it is to prevail over this Act.

Text of the ORPP

Text of the ORPP — establishment

87. (1) The Lieutenant Governor in Council may, by order, establish the text of the ORPP which, together with this Act and the regulations, shall govern the ORPP.

Amendment — Lieutenant Governor in Council

(2) The Lieutenant Governor in Council may, by order, amend the text of the ORPP.

Same

(3) Subject to subsection (4), an order may be made under subsection (2) to amend the text of the ORPP to revoke an amendment made under section 45 or 46.

Limitation

(4) No order may be made under subsection (2) to eliminate or reduce any remedial action provided for under subsection 45 (2) except as authorized under subsection 46 (2).

Amendment — Administration Corporation

(5) The Administration Corporation may amend the text of the ORPP in accordance with section 45 or 46.

Legislation Act, 2006

(6) Part III (Regulations) of the Legislation Act, 2006 does not apply to an order under subsection (1) or (2) or an amendment under subsection (5).

Consistency with Act and regulations

(7) The text of the ORPP shall be consistent with this Act and the regulations.

Registration

(8) The Administration Corporation shall,

(a) apply to register the text of the ORPP as a pension plan under the Income Tax Act (Canada); and

(b) apply to have any amendments to the text of the ORPP accepted under the Income Tax Act (Canada).

Regulations

Regulations, Lieutenant Governor in Council

88. (1) The Lieutenant Governor in Council may make regulations for the purposes of this Act including, without limiting the generality of the foregoing, regulations,

(a) governing the ORPP;

(b) prescribing or otherwise providing for anything required or permitted under this Act to be prescribed or otherwise provided for in the regulations, including governing anything required or permitted to be done in accordance with the regulations;

(c) providing that references to when an employee or member reaches a particular age shall be deemed to be references to a specified day within one month before or after the birthday of the employee or member;

(d) subject to subsection (2), providing for this Act to apply to self-employed persons, as defined in the regulations, and providing for how this Act applies to such persons including, without restricting the generality of the foregoing, modifying or excluding the application of provisions of this Act to such persons or providing for other provisions to apply instead of or in addition to the provisions of this Act.

Limitation relating to self-employed persons

(2) A regulation may not be made under clause (1) (d) that would result in the registration of the ORPP under the Income Tax Act (Canada) being subject to revocation under that Act.

Incorporation by reference of registered text

(3) A regulation made under subsection (1) may incorporate by reference the registered text of the ORPP, in whole or in part, as amended from time to time.

“registered text of the ORPP”

(4) In subsection (3),

“registered text of the ORPP” means the text of the ORPP, as registered under the Income Tax Act (Canada), including any amendments accepted under the Income Tax Act (Canada).

Regulation setting out text of the ORPP

89. (1) The Minister may make regulations setting out the registered text of the ORPP.

“registered text of the ORPP”

(2) In subsection (1),

“registered text of the ORPP” means the text of the ORPP, as registered under the Income Tax Act (Canada), including any amendments accepted under the Income Tax Act (Canada).

Transition

Transition — contributions

90. (1) For transitional purposes, the regulations shall provide for when employers and their employees are required to begin to contribute to the ORPP.

Dates for different employers

(2) The regulations shall provide that employers and their employees are not required to begin to contribute,

(a) for large and medium employers, as determined in accordance with the regulations, before January 1, 2018; and

(b) for small employers, before January 1, 2019.

“small employer”

(3) In clause (2) (b),

“small employers” means employers who are not large or medium employers described in clause (2) (a).

Certain employers — different date

(4) The regulations may provide that an employer described in subsection (5) and the employer’s employees are not required to begin to contribute to the ORPP until January 1, 2020.

Same

(5) An employer referred to in subsection (4) is an employer who provides a workplace pension plan if the prescribed conditions, relating to the employer or the plan, are satisfied.

Adjustments to rates

(6) For transitional purposes, the regulations may provide,

(a) for the purpose of section 15, for the contribution rate for different years to be lower than what the rate would be under section 16;

(b) for the purpose of section 24, for the benefit accrual rate for different years to be lower than what the rate would be under section 25;

(c) for the rates referred to in clauses (a) and (b) to be different for different employers or the employees of different employers.

Transition — limit on payment of first benefits

91. (1) Except as provided in the regulations, no pension or other amount under sections 23 to 35 shall be paid from the ORPP before January 1, 2022.

Adjustments

(2) The regulations may provide for adjustments to pensions or other amounts that are paid on or after January 1, 2022 that would have, but for subsection (1), been payable before that date.

Complementary Amendments and Repeals

Insurance Act

92. Section 267.8 of the Insurance Act is amended by adding the following subsection:

Ontario Retirement Pension Plan

(14.1) In the event of a conflict, subsections (9) to (13) prevail over sections 38, 39 and 40 of the Ontario Retirement Pension Plan Act (Strengthening Retirement Security for Ontarians), 2016.

Ontario Municipal Employees Retirement System Act, 2006

93. The Ontario Municipal Employees Retirement System Act, 2006 is amended by adding the following section:

Ontario Retirement Pension Plan

7.1 Despite any other provision of this Act and despite any other Act, a municipality or a local board may make a contribution for the provision of a pension to a person if the contribution is authorized or required under the Ontario Retirement Pension Plan Act (Strengthening Retirement Security for Ontarians), 2016.

Ontario Retirement Pension Plan Act, 2015

94. The Ontario Retirement Pension Plan Act, 2015 is repealed.

Ontario Retirement Pension Plan Administration Corporation Act, 2015

95. (1) The definition of “federal government” in section 1 of the Ontario Retirement Pension Plan Administration Corporation Act, 2015 is repealed.

(2) The definition of “Ontario Retirement Pension Plan” in section 1 of the Act is repealed and the following substituted:

“Ontario Retirement Pension Plan” means the Ontario Retirement Pension Plan established by section 3 of the Ontario Retirement Pension Plan Act (Strengthening Retirement Security for Ontarians), 2016; (“Régime de retraite de la province de l’Ontario”)

(3) Subsection 5 (2) of the Act is amended by striking out “Sections 132, 134, 135 and 136” at the beginning and substituting “Section 132, subsections 134 (1) and (3), and sections 135 and 136”.

(4) The Act is amended by adding the following section:

Trust

12.1 (1) The Corporation shall establish a trust in which the contributions made under the Ontario Retirement Pension Plan Act (Strengthening Retirement Security for Ontarians), 2016, and any accruals from the investment of those contributions, shall be held for the beneficiaries of the Ontario Retirement Pension Plan.

Segregated account

(2) The Corporation shall hold the amounts described in subsection (1) in an account that shall be kept separate from the Corporation's assets.

(5) The Act is amended by adding the following section:

Protection from liability

13.1 (1) No action or other proceeding shall be commenced or continued against a member of the board of directors or a member of a committee of the board of directors for any act or omission done in good faith,

(a) in the performance or intended performance of any duty or exercise or intended exercise of any power under this Act or under the Ontario Retirement Pension Plan Act (Strengthening Retirement Security for Ontarians), 2016; or

(b) under an agreement between the Corporation and the Government of Canada, or a government of a province or territory of Canada, or the delegate of such a government, to provide for co-operation in matters relating to the carrying out of the Corporation's objects.

Same, officers

(2) No action or other proceeding shall be commenced or continued against an officer of the Corporation for any act or omission done in good faith,

(a) in the performance or intended performance of any duty or exercise or intended exercise of any power under this Act or under the Ontario Retirement Pension Plan Act (Strengthening Retirement Security for Ontarians), 2016; or

(b) under an agreement between the Corporation and the Government of Canada, or a government of a province or territory of Canada, or the delegate of such a government, to provide for co-operation in matters relating to the carrying out of the Corporation's objects.

Corporation

(3) Subsections (1) and (2) do not relieve the Corporation of any liability to which it would otherwise be subject in respect of an act or omission of a person mentioned in those subsections.

(6) The Act is amended by adding the following section:

Management of pension fund

13.2 (1) The Corporation shall manage the pension fund's assets in the best interests of the beneficiaries of the Ontario Retirement Pension Plan.

Same

(2) Every person engaged in selecting an investment to be made with the pension fund's assets shall ensure that the investment is selected in accordance with this Act and the prescribed rules.

(7) Subsection 16 (1) of the Act is amended by striking out "120 days" and substituting "100 days".

(8) Subsection 16 (4) of the Act is repealed and the following substituted:

Report to be publicly accessible

(4) The Corporation shall ensure that the annual report is available to the public by posting the report on a website and in such other manner as the Corporation considers appropriate, and the report shall be made available,

(a) no earlier than 21 days after the day the board of directors submits it to the Minister under subsection (1); and

(b) no later than 121 days after the end of the Corporation's fiscal year.

(9) Part III of the Act is repealed.

(10) Section 35 of the Act is amended by adding the following subsection:

Fiduciary insurance

(1.1) Without limiting the generality of subsection (1) and for greater certainty, the Corporation may be paid from the pension fund reasonable expenses relating to obtaining and maintaining fiduciary insurance.

(11) Sections 38 and 40 of the Act are repealed.

Pension Benefits Act

96. The definition of "pension plan" in subsection 1 (1) of the Pension Benefits Act is amended by adding the following clause:

(0.a) the Ontario Retirement Pension Plan;

Personal Property Security Act

97. Subsection 30 (7) of the Personal Property Security Act is amended by adding "or the Ontario Retirement Pension Plan Act (Strengthening Retirement Security for Ontarians), 2016" at the end.

Commencement and Short Title

Commencement

98. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

99. The short title of this Act is the Ontario Retirement Pension Plan Act (Strengthening Retirement Security for Ontarians), 2016.

EXPLANATORY NOTE

This Explanatory Note was written as a reader's aid to Bill 186 and does not form part of the law. Bill 186 has been enacted as Chapter 17 of the Statutes of Ontario, 2016.

The Bill enacts the Ontario Retirement Pension Plan Act (Strengthening Retirement Security for Ontarians), 2016, which establishes the Ontario Retirement Pension Plan (the ORPP) and makes other complementary and consequential amendments to other Acts.

Requirement to contribute (sections 4 and 5): Employers are required to contribute to the ORPP in respect of each of their employees who is required to contribute to the ORPP. Employees are required to contribute in respect of employment for which the employee does not participate in a workplace plan that is comparable to the ORPP, as determined in accordance with specified criteria. Employers may opt into the ORPP in respect of employees who participate in a comparable workplace pension plan. Transitional rules in section 90 provide that large and medium employers are not required to start contributing before January 1, 2018 and small employers are not required to start contributing before January 1, 2019.

Limits on requirement to contribute (sections 6 to 14): The Act sets out various restrictions and exclusions concerning contributions to the ORPP. The requirement to contribute only applies in respect of employment in Ontario. Federal government employment is excluded. Employees are not permitted to contribute if they are under 18 years of age or 70 years of age or older. Employees are not permitted to contribute if they are receiving a pension from the ORPP, other than a joint and survivor pension being paid to a surviving spouse. Employment where earnings are exempt under a tax treaty is excluded. Tax exempt First Nations employment is excluded, unless the employer and employee have elected otherwise. Persons may be exempted on religious grounds, if the prescribed conditions are satisfied. Other prescribed employment is excluded. Employees who are on a leave under Part XIV of the Employment Standards Act, 2000 are not permitted to contribute, unless they elect otherwise.

Determination of contributions (sections 15 to 18): The amount of an employee's contributions to the ORPP is determined by multiplying the contribution rate by the employee's contributory pensionable earnings. The employee's contributory pensionable earnings are those amounts that are above the minimum earnings threshold for the relevant pay period. The employee's contributions on earnings from an employer will not exceed a maximum for the year, based on the maximum annual earnings threshold. The contribution rate is 1.9 per cent or such other rate provided for in amendments to the text of the ORPP relating to plan sustainability. The amount of an employer's contributions is equal to the amount of the employee's contributions. Transitional rules in section 90 provide that regulations may adjust the contribution rate for transitional purposes.

Employer duties (sections 19 to 22): Employers are required to deduct and remit contributions to the Ontario Retirement Pension Plan Administration Corporation and to keep prescribed records. Rules are provided governing the accrual of contributions and interest payable on unremitted contributions.

ORPP pensions (sections 23 to 36): Members of the ORPP are entitled to be paid a lifetime pension from the ORPP, in equal monthly instalments. The annual amount of the pension is equal to the total of the pension benefits that the member has accrued. The pension benefits a member accrues are 0.375 per cent of the member's pensionable earnings with indexing adjustments. A member's pension is a joint and survivor pension if the member has a spouse on the day the pension begins unless the member and spouse have waived that entitlement. Rules are provided governing when a

pension begins. Pensions are adjusted to provide inflation-related increases. Transitional rules in section 91 provide that no pension or other amount shall be paid from the ORPP before January 1, 2022, except as provided in the regulations.

A number of special cases are provided for. An employee is permitted to suspend the payment of a pension for the purpose of making further contributions to the ORPP. A pension that is not a joint and survivor pension is guaranteed for 120 monthly instalments, so a lump sum is payable if a member dies before having received that number of instalments. The Act provides for lump sums to be paid if a member dies before beginning to be paid a pension, if a member with a shortened life expectancy applies for a lump sum or if a pension is small.

Protection of funds (sections 37 to 40): Refunds of contributions and payments of amounts under the ORPP are not permitted except as provided in the Act. Money payable under the ORPP is protected from creditors, with some exceptions.

Division on relationship breakdown (section 41): Regulations may provide for the division and reallocation of contributions in circumstances where spouses separate, but no division or reallocation is permitted before January 1, 2022.

Plan sustainability (sections 42 to 47): The Administration Corporation must ensure that valuation reports for the ORPP are prepared by a designated actuary every three years to determine if the ORPP is funded on a sustainable basis. Section 45 governs what happens if the ORPP has a funding shortfall and section 46 governs what happens if the ORPP has a funding excess.

Information collection, etc. (sections 49 to 60): The Administration Corporation is authorized to request and collect information, including personal information, that is necessary for the purpose of carrying out the Corporation's objects. Rules are provided relating to the collection, use and disclosure of personal information. The Minister of Finance is authorized to request and collect specified information, including personal information, from employers, public bodies and the federal government for the purpose of the Act and the ORPP. It is an offence not to comply with a request from the Administration Corporation or the Minister or to knowingly give false or misleading information (subsection 75 (4)).

Examinations, etc. (sections 61 to 64): Authorized persons are permitted to conduct examinations, audits and inquiries for the purpose of, among other things, the administration of the Act and the regulations. It is an offence to obstruct or hinder an authorized person who is lawfully carrying out a duty under the Act. Justices of the peace are permitted to issue inspection orders.

Enforcement (sections 65 to 74): The Administration Corporation may enforce the remittance of contributions and the payment of penalties, interest and other amounts by issuing a certificate and by filing it with the court. It may also impose an administrative penalty for the failure to remit contributions or for other specified contraventions. A process is set out for objecting to the Administration Corporation's decision to impose an administrative penalty.

Offences and penalties (sections 75 and 76): Various offences for contraventions under the Act are provided. The maximum penalty is a fine of \$100,000 for the first conviction and a fine of \$200,000 for each subsequent conviction. Directors and officers of corporations are also liable to the same penalties.

Use of penalties (section 77): Administrative penalties and fines must be paid to the Administration Corporation and provision is made for how such amounts are dealt with.

Miscellaneous: The Act includes various miscellaneous provisions, including a restriction concerning payments from the Consolidated Revenue Fund for the purposes of funding the ORPP (section 78); a requirement that employers perform the prescribed duties (section 80); provision for reimbursement of over-contributions and amounts paid in error (section 81); provision for liability of successor employers (section 82); rules governing the service and receipt of documents and concerning the use, provision and acceptance of information under the Act (sections 83 and 84); and a requirement that the Minister review the ORPP (section 85).

Text of the ORPP (section 87): The Lieutenant Governor in Council is authorized to establish and amend the text of the ORPP. The Administration Corporation is permitted to amend the text in accordance with sections 45 and 46. The Administration Corporation is required to apply to register the text of the ORPP as a pension plan under the Income Tax Act (Canada).

Regulations (sections 88 and 89): The Lieutenant Governor in Council is authorized to make regulations governing the ORPP and respecting things required to be done by regulation under the Act. A regulation may incorporate by reference the registered text of the ORPP. The Minister is authorized to make regulations setting out the registered text of the ORPP.

Complementary amendments are made to various statutes, including the Ontario Retirement Pension Plan Administration Corporation Act, 2015. Part III of the Ontario Retirement Pension Plan Administration Corporation Act, 2015, which sets out the Administration Corporation's power to collect information, is repealed.

The Ontario Retirement Pension Plan Act, 2015 is repealed.