

## **Policy Bulletin #40 Pension Jurisdiction**

Issued February 2008

This bulletin, which outlines the application of the various pieces of pension legislation in Canada, is drafted primarily in reference to pension plans registered with the Alberta Superintendent of Pensions (the Superintendent) and related locked-in accounts. This bulletin has no legal authority and the *Employment Pension Plans Act* and *Regulation* (the Act and the Regulation, or the Alberta Legislation) should be used to determine specific legislative requirements.

### **Ongoing Membership**

### **Application of Legislation**

Across Canada, there are a total of 10 pension jurisdictions in Canada. Each province (with the exception of PEI) is its own jurisdiction, and there is a Federal jurisdiction for some employment classifications. A plan administrator is responsible for applying the jurisdiction's legislation with respect to their plan members. The plan administrator is in the best position to determine the applicable jurisdiction because they are privy to the details of their employee's work. To do so, the plan administrator must maintain up-to-date jurisdiction information for each member.

Generally speaking, (and subject to the exceptions detailed below) while participating as an active member of a pension plan, the determination of the jurisdiction whose legislation applies to any given plan member will depend on the province or territory where that person reports for work.

#### **Exception #1 – Multiple Locations or No Locations**

If a person reports to multiple offices / locations OR that person does not report for work at any particular office or location of the employer, then the jurisdiction that applies is based on the province or territory of the location of his employer from which his paycheck is issued.

#### **Exception #2 – Included (Federal) Employment**

Certain employment classifications fall under the Federal Jurisdiction in all provinces. This classification, called “Included Employment”, is formally defined in Sec (4) of the *Pension Benefits Standards Act, 1985* (the Federal PBSA).

*(4) "Included employment" means employment, other than excepted employment, on or in connection with the operation of any work, undertaking or business that is within the legislative authority of the Parliament of Canada, including, without restricting the generality of the foregoing,*

- (a) any work, undertaking or business operated or carried on for or in connection with navigation and shipping, whether inland or maritime, including the operation of a ship and transportation by ship anywhere in Canada;*
- (b) any railway, canal, telegraph or other work or undertaking connecting a province with another province or extending beyond the limits of a province;*
- (c) any line of steam or other ships connecting a province with another province or extending beyond the limits of a province;*
- (d) any ferry between a province and another province or between a province and a country other than Canada;*
- (e) any aerodrome, aircraft or line of air transportation;*
- (f) any radio broadcasting station;*
- (g) any bank or authorized foreign bank within the meaning of section 2 of the Bank Act;*
- (h) any work, undertaking or business that, although wholly situated within a province, is before or after its execution declared by the Parliament of Canada to be for the general advantage of Canada or for the advantage of two or more provinces; and*
- (i) any work, undertaking or business outside the exclusive legislative authority of provincial legislatures, and any work, undertaking or business of a local or private nature in Yukon, the Northwest Territories or Nunavut.*

The most common situation where a provincially registered plan must apply the Federal PBSA occurs when that plan has members working in the territories. However, plan administrators are reminded that there can be other specific situations in which their “provincially based” employees would be subject to the Federal PBSA, for example, most most band council sponsored employment on federal First Nations reservations would be subject to the PBSA.

### **Employment in Another Country**

Occasionally, plan members are transferred to another country. Specific plan provisions will determine if the member is permitted to remain an active member of the plan, and if so, the Canada Revenue Agency (under the *Income Tax Act*) may have an impact on the service for purposes of the benefit accrual while out of country.

Nonetheless, if the member continues membership in the pension plan, and that person was an Alberta member prior to transferring to the other country, then benefit accrual will continue to be subject to the provisions of the Act and Regulation.

## Termination of Membership

### Final Location

Over the course of a career, a pension plan member may work in several different jurisdictions. Upon termination of membership in a pension plan (subject to checker boarding, below), most legislation applies what is commonly referred to as the “*Final Location*” approach to determine the legislation applicable to the member’s termination benefit. On termination of membership, the province of employment in which the member terminated becomes the jurisdiction whose legislation applies for the *entire* pension.

Example: An employee may work for 10 years in Saskatchewan and then spent their last 2 years of employment in Alberta before termination of employment. The *entire* pension will have Alberta legislation applied to it.

### Checkerboard (The Ontario exception)

Ontario does not use **final location** as the determining factor. They use a method commonly referred to as “*Checker Boarding*”. Under checker boarding, the legislation of each of the provinces in which the benefit has been earned will apply. This means that an employee who terminates employment in Alberta with prior service in Ontario will have Ontario legislation applied to benefits accrued as an Ontario member regardless of where the member ultimately terminates membership.

Example: An employee works for two years in Ontario, two years in

Manitoba, and is finally transferred to Alberta for the remaining two years of employment. The pension will have two legislations attached to it; Ontario for the contributions in the first two years and, as Manitoba legislation provides for benefits to be determined in accordance with the “final location” on termination of employment, Alberta legislation for the final four years.

In the converse situation, where a member first has years of employment in one province but ultimately terminates membership in Ontario, if the legislations require that final location apply, the entire pension will be subject to Ontario legislation.

***Pension Benefits Guarantee Fund (PBGF)***

It should be noted that on full or partial wind up of the pension plan, final location for other legislations will not apply to determine benefits covered by the Ontario PBGF.

***Exception to Checker Boarding: Grow-in on Full/Partial Windup***

There is one exception to the Checker Boarding approach described above and that relates to the application of grow-in benefits on full or partial wind-up for pension plan members in Ontario. Plan members who are in Ontario at the time of a wind up, will have the final location approach applied for their entire service in determining grow-in benefits. Members with Ontario service who are in another province at the time of wind up will not be entitled to grow-in for their Ontario service.

For more information concerning the application of final location, please contact the Financial Services Commission of Ontario. FSCO can be reached, via the following:

Financial Services Commission of Ontario (FSCO)

5160 Yonge Street

P.O. Box 85

Toronto, Ontario, M2N 6L9

**Phone:** (416) 250-7250

**Toll free:** 1-800-668-0128

**TTY:** 1-800-387-0584

**Fax:** (416) 590-2040

**E-mail:** [contactcentre@fSCO.gov.on.ca](mailto:contactcentre@fSCO.gov.on.ca)

**Termination of Membership from a Statutory Public Sector**

## **Pension Plan**

In Alberta, members of a statutory municipal/provincial public sector pension plan are subject the provisions of the legislation that applies to their specific pension plan while they are active members of that Plan.

However, an individual who terminates from a statutory public sector pension plan may be eligible to transfer the value of his/her pension entitlement to a locked-in retirement account (LIRA). Once the transfer into a LIRA is complete, the rules of Alberta's Employment Pension Plans Act apply to the funds in the LIRA.

Statutory Alberta public sector pension plans include:

- Local Authorities Pension Plan
- Public Service Pension Plan
- Management Employees Pension Plan
- Special Forces Pension Plan
- Teachers' Pension Plan
- Provincial Judges and Masters in Chambers Pension Plan
- Supplementary Retirement Plan for Public Service Managers

## **Termination from Included Employment / Federal Public Sector Pension Plans**

Any person who terminates their membership in a pension plan while working in Included Employment will be subject to the Federal PBSA.

Certain pension plans covering federal public servants, such as the Federal Public Service Pension Plan and the Canadian Forces Pension Plan, are subject to their own pension legislation and NOT the PBSA.

However, in some cases, the pension legislation covering members of these plans have adopted the transfer options as set out in the Federal PBSA. If these members terminate membership in these plans, they will be entitled to transfer their pension entitlement from that plan to a locked-in account that is subject to the provisions of the Federal PBSA and its Regulations.

## **Termination while employed outside of Canada**

Where a member terminates membership in a pension plan while employed out-of-country, and prior to leaving the country the member had been working in Alberta, then that member is deemed to have terminated membership in Alberta for the purposes of determining the legislation that applies to the termination benefit.

### **Locked-in Accounts**

For individuals who terminate membership in a pension plan and elect a transfer to a locked-in account, the legislation that applies to that account is based on the determination (as per the above).

Once pension benefits have been transferred to a locked-in account, and the appropriate jurisdiction has been established, those rules will continue to apply to that account – regardless of the province or territory of residence of the account holder.

That is, if an Alberta member terminates and transfers to a LIRA and moves to B.C., his account will still be subject to Alberta legislation even though he is now living in B.C.

### **Unclear Jurisdiction - Examples**

From time-to-time, the Superintendent's office is asked to provide guidance on the appropriate legislation to apply to certain plan members. The most common examples – and the legislation to apply based on the current requirements of the Act and Regulation – are described, below.

#### Traveling Salesperson

Salespersons, with a sales region that encompasses multiple jurisdictions, may not necessarily report to work at any one particular sales office or location of their employer. For these types of situations, Exception #1 (above) applies, and that person is subject to the legislation of the jurisdiction from which that person's pay is issued.

#### Work From Home

Individuals in telecommuting arrangements, that perform the majority of employment working from home, do not necessarily report to a location of the employer. Consequently, for these types of situations, Exception #1 (above) applies, and that person is subject to the jurisdiction from which that person's pay is issued.

#### Telus Employees

Telus employees who are currently active members in the various Telus pension plans will be subject to the Federal PBSA.

For former Telus plan members who now have a locked-in account, the date of their termination with the company will affect which rules apply to their locked in account:

- For former Alberta Government Telephones (AGT) which later became Telus, if the date of termination was **prior to** January 1, 1996, their locked-in accounts should be subject to Alberta legislation.
- For former Edmonton Telephones (Ed Tel) employees, which were later purchased by Telus, if the date of termination was **prior to** January 1, 1998, their locked-in accounts should be subject to Alberta legislation.

#### Travel Card Members – Union Pension Plans

In Specified Multi-Employer Pension Plans (SMEPPs), a common situation is that a member from one Union Local (the Home Local) will be issued a travel card that permits that person to work at another Union Local (the Away Local) in another province.

Generally speaking, under a travel card arrangement, contributions made on behalf of the Union member (now working in that other province) are sent back to the Home Local's pension plan\*. If the travel card is intended to permit temporary employment in the Away Local, with the expectation that member will eventually return to his Home Local, the application of the legislative provisions that the member would be subject to if he remained working in his Home Local is appropriate.

\* Note: the specific details of any reciprocal transfer agreement between a Home Local and an Away Local, and the effects on membership and the pension accumulation for the transferred member, can be unique to those plans. It is advised that the specific details of the transfer agreement be reviewed to determine if the treatment described in the base-case applies.

#### Members of Federally Regulated Pension Plans

Occasionally we receive questions on the application of the Federal PBSA to a pension plan or locked in account. The Office of the Superintendent of Financial Institutions (OSFI) is the best resource to determine application of federal legislation. OSFI can be contacted, toll free, at 1-800-385-8647. Alternatively, you can search the list of federally registered pension plans to help determine whether a particular plan was federally registered by accessing the following link:

**[List of Federally Regulated Pension Plans](#)**

\* If you are not viewing this online, go to the OSFI webpage: <http://www.osfi.gc.ca/> and click on “List of Who We Regulate” under the quick links section.

**Dispute of Jurisdiction applied to a Locked-in Account**

Where a locked-in account owner feels that there is an error in the application of the legislation for that account, it is generally suggested that the authority to change the applicable legislation come from the plan administrator, as they would have the appropriate records to determine if such reversal is warranted.

However, if the plan administrator no longer exists, or the records cannot be located, the financial institution holding the locked-in account should only alter the applicable legislation if they are provided with evidence to demonstrate that a change is warranted.

Examples of evidence:

1. Copies of annual pension statements demonstrating the appropriate legislation,
2. Copies of termination option statement indicating the appropriate legislation,
3. Copies of old pay stubs / benefits information that indicate employment in one particular province or territory.
4. If the dispute is between the application of the Federal PBSA (as opposed to any provincial pension legislation), an online search of federally registered pension plans – see above – or contacting OSFI may be sufficient.

**For further information, please contact**

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Alberta Finance  
Room 402, 9515 - 107 Street  
Edmonton, AB T5K 2C3

Telephone: (780) 427-8322  
Fax: (780) 422-4283  
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For toll-free dialling within Alberta, call 310-0000 and then dial 780-427-8322.