

Chapter 12

NORTHERN EMPLOYEE BENEFITS SERVICES PENSION PLAN PROTECTION ACT

(Assented to December 8, 2009)

The Commissioner of Nunavut, by and with the advice and consent of the Legislative Assembly, enacts as follows:

Definitions

1. In this Act,

"cohabit" has the meaning assigned to that term by subsection 1(1) of the *Family Law Act*; (*cohabiter*)

"former member", in relation to a pension plan, means a person who has either ceased membership in the plan or has retired; (*participant ancien*)

"member", in relation to a pension plan, means a person who has become a member of the pension plan and has neither ceased membership in the plan nor retired; (*participant*)

"pension benefit" means a periodic amount to which, under the terms of a pension plan, a member or former member, or his or her spouse, cohabiting partner, survivor or other beneficiary or estate is or may become entitled; (*prestation de pension*)

"pension benefit credit", in relation to any person, means the aggregate value at a particular time of that person's pension benefit and other benefits provided under a pension plan, calculated under the terms of that plan; (*droit à pension*)

"pension plan" means any pension plan

- (a) included in the benefits program as defined in the *Community Employees' Benefits Program Transfer Act*, and
- (b) continued or established by the successor corporation as defined in the *Community Employees' Benefits Program Transfer Act*; (*régime de pension*)

"Year's Maximum Pensionable Earnings" has the meaning assigned to that term by the *Canada Pension Plan*. (*maximum des gains annuels ouvrant droit à pension*)

Void agreements

2. (1) An agreement or arrangement is void if it assigns, charges, anticipates or gives as security

- (a) a pension benefit or another benefit under a pension plan; or
- (b) any money withdrawn from a pension fund which is established under a pension plan.

Exceptions

(2) Subsection (1) does not apply to prevent the assignment of an interest in a pension benefit, or in a life annuity as authorized in a pension plan resulting from a transfer or purchase pursuant to a plan, if the assignment

- (a) is ordered by a court under a provision of the *Family Law Act* which relates to property as defined in section 33 of that Act;
- (b) is ordered by a court
 - (i) pursuant to an order made by a court in a reciprocating jurisdiction as defined under section 1 of the *Interjurisdictional Support Orders Act*, and
 - (ii) under a provision of an Act which relates to property mentioned in paragraph (a); or
- (c) is made under section 3 and by a written agreement.

Surrender or commutation void

(3) Any agreement or arrangement is void if it is inconsistent with a pension plan and is or purports to be

- (a) a surrender or commutation of a pension benefit or another benefit under the plan, or any right or interest in the benefit; or
- (b) a surrender or commutation of a pension benefit or another benefit under the plan payable as a result of a transfer or purchase pursuant to the plan.

Power to assign

3. (1) Despite anything in this section or the *Family Law Act*, a member or former member of a pension plan may assign all or part of his or her pension benefit, pension benefit credit or other benefit under the plan to his or her spouse, former spouse, cohabiting partner or former cohabiting partner, effective as of divorce, annulment, separation, or breakdown of cohabitation, as the case may be, and in the event of such an assignment the assignee is deemed, in respect of the assigned portion of the pension benefit, pension benefit credit or other benefit and for the purposes of this Act,

- (a) to have been a member of that plan; and
- (b) to have ceased to be a member of that plan as of the effective date of the assignment.

Subsequent spouse or cohabiting partner

(2) A subsequent spouse or cohabiting partner of the assignee is not entitled to any pension benefit, pension benefit credit or other benefit under the plan in respect of that assigned portion.

Locking in

4. (1) Subject to sections 3 and 5, a pension plan must provide

- (a) that no benefit under the plan is capable of being assigned, charged or given as security or of conferring on a member or former member, his or her personal representative or dependant or any

- other person, any right or interest in the benefit that is capable of being assigned, charged or given as security;
- (b) that, except in the case of the unexpired period of a guaranteed annuity, no vested benefit under the plan is capable of being surrendered or commuted during the lifetime of the member or former member or that person's spouse or cohabiting partner, or of conferring on a member or former member, his or her personal representative or dependant or other person, any right or interest in the benefit that is capable of being surrendered or commuted during the lifetime of the member or former member or his or her spouse or cohabiting partner; and
 - (c) that, except as permitted by the plan, a person who is entitled to a benefit under the plan or who would be so entitled if he or she retired or ceased membership in the plan, is not permitted to withdraw any part of his or her contributions to the plan.

Exception

(2) Despite subsection (1), a pension plan may provide that, if the annual pension benefit payable is less than 4% of the Year's Maximum Pensionable Earnings for the calendar year in which a member ceases to be a member of the plan or dies, or such other percentage as may be prescribed, the pension benefit credit may be paid to the member or survivor, as the case may be.

Surrender by survivor

5. A pension plan may provide that a survivor may, after the death of a member or former member, surrender in writing the pension benefit or pension benefit credit to which the survivor is entitled under this section, and designate a beneficiary who is a dependant, as defined under subsection 8500(1) of the *Income Tax Regulations* (Canada), of the survivor, member or former member.

Regulations

6. The Minister, on the recommendation of the Financial Management Board established under the *Financial Administration Act*, may make regulations

- (a) prescribing the percentage referred to in subsection 4(2);
- (b) generally for carrying out the purposes and provisions of this Act.

Coming into force

7. This Act is deemed to have come into force March 12, 2009.