

Chapter 6

AN ACT TO AMEND THE LEGISLATIVE ASSEMBLY RETIRING ALLOWANCES ACT

(Assented to March 6, 2002)

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

1. **The *Legislative Assembly Retiring Allowances Act* is amended by this Act.**
2. **(1) Section 1 is amended by striking out the definitions of "child", "common-law spouse", "earnings", and "surviving spouse" and substituting the following in alphabetical order:**

"child" means a natural child or adopted child of a member or former member, and includes a person whom a member has demonstrated a settled intention to treat as his or her child, except under an arrangement where the child is placed for valuable consideration in a foster home by a person having lawful custody, where the child

- (a) is less than the age of majority, or
- (b) has attained the age of majority, but is less than 25 years of age, is not cohabiting, and is in full-time attendance at a school or university, having been in full-time attendance substantially without interruption since he or she reached the age of majority, or since the member or former member died, whichever occurred later; (*enfant*)

"cohabit" means to live together in a conjugal relationship; (*cohabiter*)

"earnings" means the indemnity payable to a person for service in a capacity referred to in section 2 of Schedule C of the *Legislative Assembly and Executive Council Act*; (*indemnité*)

"surviving spouse" means a person who, immediately before the death of a member or former member

- (a) was married to the member or former member and was cohabiting with him or her,
- (b) was married in good faith to the member or former member in a marriage that was voidable or void, had entered that marriage in good faith, and was cohabiting with him or her, or
- (c) was cohabiting outside marriage with the member or former member and was registered in accordance with the regulations as a spouse, if
 - (i) the person and the member or former member had cohabited for a period of at least two years, or

- (ii) the person and the member or former member had cohabited in a relationship of some permanence and were together the natural or adoptive parents of a child. (*conjoint survivant*)

(2) The definition of "pensionable remuneration" in section 1 is amended by striking out "or earnings payable to a Minister".

3. The heading preceding section 5.1 and section 5.1 are repealed.

4. Section 6 is repealed and the following substituted:

Contributions

6. (1) Subject to subsections (2), (3), (5) and (8), a member shall contribute to the Fund in each month $6\frac{1}{2}\%$ of $1/12$ of the lesser of
- (a) the yearly pensionable remuneration and earnings of the member; and
 - (b) the defined benefit limit divided by 2%.

Where member has filed election

- (2) Subject to subsections (4), (5) and (8), if a member has filed an election in accordance with section 7 of the *Supplementary Retiring Allowances Act*, the member shall contribute to the Fund, in each month, 9% of $1/12$ of the lesser of
- (a) the yearly pensionable remuneration and earnings of the member; and
 - (b) the defined benefit limit divided by 2%.

Contributions ceasing under subsection (1)

(3) No member shall contribute under subsection (1) after the member attains $37\frac{1}{2}$ years of service.

Contributions ceasing under subsection (2)

(4) No member shall contribute under subsection (2) after the member attains 15 years of service.

Contributions ceasing at 69 years

(5) No member shall contribute under subsection (1) or (2) after November 30 in the year in which the member attains the age of 69 years.

Contribution prior to coming into force

(6) For the period of service commencing April 1, 1999, and ending immediately before the day this subsection comes into force, a member who files an election under section 7 of the *Supplementary Retiring Allowances Act* shall contribute to the Fund, for each month or portion of a month during the period, 2.5% of the lesser of

- (a) the pensionable remuneration and earnings paid to the member in the month; and

- (b) 1/12 of the defined benefit limit divided by 2%.

Contribution by way of deduction

(7) A contribution under subsection (6) must be made by way of a deduction in accordance with section 6.1 during the duration of the First Legislative Assembly of Nunavut.

Maximum yearly contribution

- (8) A member's yearly contribution shall not exceed the lesser of
- (a) 9% of the member's pensionable remuneration and earnings for the year: and
 - (b) \$1000 plus 70% of the member's pension credit for the year, as calculated under Part LXXXIII of the *Income Tax Regulations* (Canada).

5. Section 7 is amended:

- (a) **by re-numbering it as subsection 7(1); and**
- (b) **by adding the following subsection after subsection (1):**

Return of refund

(2) A person who has received a refund under subsection (1) and who is subsequently re-elected to the Legislative Assembly may return to the Fund the amount of the refund with interest fixed by the Management and Services Board, and where a person has done so, the years in respect of which the refund was made shall be included in calculating his or her years of service.

6. Subsection 10(2) is amended by striking out "Subject to subsection 15(3)" and substituting "Subject to subsections 15(3) and (4)".

7. Section 11 is repealed and the following substituted:

Definition of "qualifying member"

11. (1) In this section, "qualifying member" means a member who ceases to be a member and who
- (a) at the time he or she ceases to be a member has given at least four years of service; or
 - (b) was elected to the Legislative Assembly at a general election and, at the time he or she ceases to be a member, has continued as a member of the Legislative Assembly until it is dissolved.

Formula for annual allowance

- (2) Subject to sections 13, 19, 19.1 and 20, a qualifying member shall be paid, on attaining pensionable age, an annual allowance in an amount equal to
- (a) the number of years of service;
- multiplied by

- (b) where the member has served four or more years, 2% of the average annual pensionable remuneration received by the member during any period selected by him or her or on his or her behalf consisting of non-overlapping periods of service totalling four years; or
- (c) where the member has served less than four years, 2% of the average annual pensionable remuneration received by the member during the period of total service.

Maximum years of service

- (3) The number of years of service referred to in paragraph (2)(a)
 - (a) shall not exceed 15 years if the member has filed an election in accordance with section 7 of the *Supplementary Retiring Allowances Act*;
 - (b) shall not exceed 37 ½ years if the member has not filed an election in accordance with section 7 of the *Supplementary Retiring Allowances Act*; and
 - (c) shall not include any year after November 30 in the year in which the member or former member attains the age of 69 years.

8. (1) Subsection 12(1) is amended:

- (a) **by repealing the definition of "required capacity" and substituting the following:**

"required capacity" means a capacity referred to in section 2 of Schedule C of the *Legislative Assembly and Executive Council Act; (qualité requise)* **and**

- (b) **in the definition of "qualifying member" by repealing paragraph (b) and substituting:**

- (b) has served at least one year in a required capacity.

(2) Subsection 12(2) is repealed.

(3) Paragraph 12(3)(a) is amended by striking out "after December 31, 1991".

(4) Subparagraph 12(3)(b) is amended by adding "any period selected by him or her or on his or her behalf consisting of non-overlapping periods of service in the required capacity totalling four years, or".

(5) Subparagraphs 12(3)(b)(i) and (ii) are repealed.

(6) Subsection 12(4) is repealed and the following substituted:

Maximum years of service

- (4) The number of years of service referred to in paragraph (3)(a)

- (a) shall not exceed 15 years if the member has filed an election in accordance with section 7 of the *Supplementary Retiring Allowances Act*;
- (b) shall not exceed 37 ½ years if the member has not filed an election in accordance with section 7 of the *Supplementary Retiring Allowances Act*; and
- (c) shall not include any year after November 30 in the year in which the member or former member attains the age of 69 years.

9. (1) Subsection 13(1) is amended:

- (a) **by striking out "subsections 11(3) and 12(3)" and substituting "subsections 11(2) and 12(3)";**
- (b) **in paragraph (ii), by striking out "2% of" and substituting "2% of the total of";**
- (c) **in paragraph (ii), by striking out ", including earnings," and substituting "and earnings"; and**
- (d) **by striking out "after December 31, 1991".**

(2) Subsection 13(2) is repealed and the following substituted:

Calculation

(2) The "average annual pensionable remuneration and earnings" referred to in subsection (1)(a)(ii) is the average annual pensionable remuneration and earnings received by the member over the three non-overlapping years of service that have the highest average annual pensionable remuneration and earnings where

- (a) each of those years' pensionable remuneration and earnings;
- is multiplied by
- (b) the ratio obtained by dividing the average wage for the year in which the allowances commence to be paid by the average wage for the year in which the pensionable remuneration and earnings were paid.

10. Section 15 is repealed and the following substituted:

Allowances to surviving spouse and children

15. (1) Where a member or former member dies, on his or her death an annual allowance shall be paid to the surviving spouse and to each child of the member or former member as follows:

- (a) to the surviving spouse, an annual allowance equal to
 - (i) 100% of the basic allowance of the member or former member for the first 60 monthly payments beginning the day on which an allowance under this Act commences to be paid, and
 - (ii) 66 2/3% of the basic allowance of the member or former member after the first 60 monthly payments;

- (b) if the member or former member dies leaving a surviving spouse, to each child of the member or former member, an annual allowance equal to 10% of the basic allowance of the member or former member;
- (c) if the member or former member dies without leaving a surviving spouse, to each child of the member or former member, an annual allowance equal to
 - (i) 100% of the basic allowance of the member or former member, divided by the number of children, for the first 60 monthly payments beginning the day on which an allowance under this Act commences to be paid; and
 - (ii) 25% of the basic allowance of the member or former member after the first 60 monthly payments.

Duration of allowance

(2) An allowance payable under paragraph (1)(a) is payable for the lifetime of the surviving spouse.

Five year guarantee

(3) An allowance payable under clause (1)(c)(i) and, notwithstanding subsection (2), an allowance payable under clause (1)(a)(i) are payable for 60 monthly payments made after the day on which an allowance under this Act commences to be paid to the former member.

Allowance to child

(4) An allowance payable under paragraph (1)(b) or subparagraph (1)(c)(ii) is payable until

- (a) the child attains the age of majority; or
- (b) where the child is a child within the meaning of paragraph (b) of the definition of "child" in section 1, whichever of the following first occurs:
 - (i) the child attains 25 years of age, or
 - (ii) the child begins to cohabit or ceases to be in full-time attendance at a school or university.

Where more than one allowance payable

(5) Where more than one allowance is payable under subsection (1), the total amount of the allowances shall not exceed 100% of the basic allowance of the member or former member.

11. Subsection 17(2) is amended:

- (a) **by striking out "equivalent" and substituting "present value";**
and
- (b) **by striking out "in respect of service after 1989".**

12. The heading preceding section 18 is struck out and "POST-RETIREMENT INCREASES" substituted.

13. Section 18 is amended by striking out "supplementary retirement benefit" wherever it appears, and in each case substituting "post-retirement increase".

14. (1) Subsections 19(2) and (3) are repealed.

(2) Subsection 19(4) is amended by striking out "after December 31, 1991,".

(3) The following subsection is added after subsection 19(5):

Where election not made

(6) A member or former member who fails to make an election before December 1 of the year in which he or she attains the age of 69 years is deemed to have elected to commence receiving an allowance on December 1 of that year.

15. Section 19.1 is amended by re-numbering it as subsection 19.1(1) and by adding the following subsections after subsection (1):

Cessation of allowance

(2) If a former member is receiving an allowance and is elected again to the Legislative Assembly, the allowance shall cease to be paid pursuant to subsection 25(2) of the *Legislative Assembly and Executive Council Act*, and he or she shall not be entitled to receive the allowance until subsection (1) again applies.

Resumption of allowance

(3) When subsection (1) again applies to the former member who becomes a member as described in subsection (2)

- (a) the allowance referred to in subsection (2) shall recommence at the rate at which it was being paid before it ceased, plus any increase that is arrived at by application of the Benefit Index; and
- (b) he or she is entitled to an additional allowance for his or her subsequent service, and that allowance shall be calculated under sections 11 and 12 separately from the allowance referred to in paragraph (a).

Definition of "subsequent service"

(4) For the purposes of paragraph (3)(b), "subsequent service" means service as a result of the election referred to in subsection (2).

16. Subsection 20(1) is amended by striking out "after December 31, 1997".

17. The heading preceding section 20.1 and section 20.1 are repealed.

18. The following section is added before section 21:

Assignment of rights

20.2. (1) No right of any person under this Act is capable of being assigned, charged, anticipated, given as security or surrendered.

Exceptions to assignment

(2) For the purposes of subsection (1), assignment does not include

- (a) assignment pursuant to a decree, order or judgment of a competent tribunal or a written agreement in settlement of rights arising as a consequence of a breakdown of a marriage or other conjugal relationship between a member or former member and his or her spouse or former spouse; or
- (b) assignment by the legal representative of a deceased member or former member on the distribution of his or her estate.

Exception to surrender

(3) For the purposes of subsection (1), surrender does not include a reduction in benefits to avoid the revocation of the registration of this retiring allowances plan under the *Income Tax Act* (Canada).

19. Section 22 is amended by repealing paragraphs (c) to (f) and (k) and substituting the following:

- (c) respecting the funding of allowances and adjustments payable under this Act;
- (d) respecting the manner in which the Fund is to be administered;
- (e) prescribing forms for the purposes of this Act;
- (e.1) respecting the calculation of the following:
 - (i) the actuarial present value of the basic allowance under subsection 17(2);
 - (ii) the actuarial present value of the allowance under section 17.1;
- (e.2) respecting the registration of members and their spouses and any changes to or deletion of a registration;
- (e.3) respecting the designation of a beneficiary under subsection 17(1) and section 17.1 and the revocation of a designation;
- (e.4) respecting elections that may be made by a member under subsection 19(1) or 20(1);
- (e.5) respecting the information to be provided by a member for the purpose of the administration of this Act or the Fund;
- (f) setting out when every allowance and benefit shall be paid and when payment to a recipient shall commence and cease and providing that, if a person ceases to be entitled to the allowance, payment may be made in respect of the full month in which the person ceases to be entitled to the allowance;

20. Sections 23, 24 and 25 are repealed.

21. (1) Subject to subsection (2), this Act comes into force on assent.

(2) The following provisions of the *Legislative Assembly Retiring Allowances Act*, as enacted by this Act, are deemed to have been in force on and from April 1, 1999:

- (a) subsection 6(6);**
- (b) subsection 13(2);**
- (c) subsection 19(6);**
- (d) section 20.2.**