

# Newsletter Express

## Supplemental Pension Plans

21 May 2008

### **Determining Applicable Law for an LIRA or LIF**

This issue of *Newsletter Express* is intended for officers at financial institutions and for consultants. It describes how to determine which law applies to sums transferred to a locked-in retirement account (LIRA) or a life income fund (LIF) by clients who were members of a supplemental pension plan.

The rights of an LIRA or LIF holder vary depending on the applicable law. How the amounts that can be withdrawn from an LIF are calculated as well as the exceptions allowing amounts to be withdrawn from an LIRA can differ widely from one law to the next. This is why it is important to first determine the applicable law for an LIRA or LIF and conserve this information.

The law governing an LIRA or LIF is the law governing the supplemental pension plan (also called a “pension fund”) from which sums were transferred.

The Régie does not collect data enabling it to definitively determine the applicable law for benefits accumulated in a supplemental pension plan. To make this determination, one must first establish whether the plan falls under federal or provincial jurisdiction.

- If it is under federal jurisdiction, federal law applies;
- If it is under provincial jurisdiction, a provincial law applies.

The steps to determine which law applies are described below.

## **Federal or provincial jurisdiction**

**The main activity of the business** determines whether a supplemental pension plan is subject to federal or provincial pension plan legislation.

If benefits were accumulated while the member worked for a business whose main activity was under federal jurisdiction, federal law applies. In this case, the federal *Pension Benefits Standards Act, 1985* applies. Otherwise, provincial law applies.

The following areas fall under federal jurisdiction:

- Banks;
- Interprovincial and international shipping and navigation;
- Interprovincial or international road transport;
- Interprovincial or international railways;
- Air transport;
- Atomic energy;
- Telecommunications (radio broadcasting, television broadcasting, cable television, Internet services, phone services);
- Postal and courier service;
- Interprovincial pipelines;
- Offshore mineral extraction;
- Grain elevators, mills and flour mills;
- Amerindians and Amerindian lands;
- Federal departments and agencies.

Any business that operates in areas under federal jurisdiction or provides related services that are vital and essential to a core federal undertaking will be deemed to fall under federal jurisdiction.

Certain criteria **are not relevant** when determining a pension plan's jurisdiction.

- Whether a business is incorporated under the federal *Canada Business Incorporations Act*;
- The positions the pension plan member held within the business;
- The location of the business's head office;
- Where the pension plan is administered.

## Applicable provincial law

Once the pension plan is known to be under provincial jurisdiction, the applicable provincial law must then be determined.

The **place** of employment of a supplemental pension plan member is used to determine which provincial law applies to his or her benefits.

As a result, the provincial law applicable to the client's benefits is not determined based on the plan or where it is registered, but rather on the **province where the member reported for work when he or she ceased to be a member of his or her pension plan**.

## Tips for determining applicable law

The person who transfers sums (the pension plan administrator or the intermediary financial institution) must inform the financial institution that receives those sums of the law applicable to them.

The T2151 (point 3 of part II) or T2033 (point 5 of part III) tax forms must provide this information.

When a financial institution's representative receives one of these forms, he or she must ensure it is complete. If not, he or she must return the form to the sender and request that the necessary information be provided.

The exact name of the Québec law is the *Supplemental Pension Plans Act*. This is the name that must appear on tax documents. However, this law may be referred to in a number of ways: "the Act", "Bill 116", the "SPP Act" or the "*Act respecting supplemental pension plans*", which is the name of the former law. Sometimes, "Québec" is the only indication given.

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Other documents, such as a cover letter or a statement of the client's cessation of plan membership, may also mention the applicable law.

## In conclusion

The information in this issue of *Newsletter Express* is designed to provide clear guidelines to help consultants and financial officers determine which law applies to the pension benefits of their clients.

The Régie's Web site also provides [information](#) on LIRAs and LIFs—in particular the contact information for other pension plan supervisory agencies in Canada—as well as the applicable laws in each province or territory.

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This document is available on our Web site.

*(Version originale française disponible sur notre site Web.)*

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