

**BILL C-36: AN ACT TO AMEND THE CANADA
PENSION PLAN AND THE OLD AGE SECURITY ACT**

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LEGISLATIVE HISTORY OF BILL C-36

HOUSE OF COMMONS

| Bill Stage | Date |
|-------------------|------------------|
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N.B. Any substantive changes in this Legislative Summary which have been made since the preceding issue are indicated in **bold print**.

Legislative history by Peter Niemczak

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BACKGROUND

The *Canada Pension Plan* and the *Old Age Security Act* provide the basis for government-sponsored social benefit programs that offer a minimum level of supplementary income to senior citizens, retired or disabled individuals, and their dependants following a loss of income. It is expected that the seniors' share of the population will double over the next 25 years. At the same time, there will be decline in the proportion of the working age population and in the number of workers contributing to the financing of Canada Pension Plan (CPP) and Old Age Security (OAS) benefits.⁽¹⁾ In light of this, Bill C-36, *An Act to amend the Canada Pension Plan and the Old Age Security Act*, was introduced in the House of Commons on 27 November 2006. Its purpose is to ensure sustainability of these programs, allow greater access to disability benefits, and simplify the administrative process through the use of modern technologies.

A. Chronology

- 1952 – The *Old Age Security Act* came into force
- 1965 – The *Old Age Security Act* was amended to lower the age of eligibility to 65
- 1966 – The *Canada Pension Plan* came into force
- 1967 – The Guaranteed Income Supplement was established under the *Old Age Security Act*
- 1975 – The Spouses Allowance was introduced under the *Old Age Security Act*

* Notice: For clarity of exposition, the legislative proposals set out in the bill described in this Legislative Summary are stated as if they had already been adopted or were in force. It is important to note, however, that bills may be amended during their consideration by the House of Commons and Senate, and have no force or effect unless and until they are passed by both Houses of Parliament, receive Royal Assent, and come into force.

(1) Statistics Canada, "Population Projections" *The Daily*, 15 December 2005, <http://www.statcan.ca/Daily/English/051215/td051215.htm>.

- The retirement and employment earnings test for the *Canada Pension Plan* was eliminated
- 1977 – Payment of partial benefits under the *Old Age Security Act*, based on years of residency in Canada, was introduced
- 1978 – Child-rearing periods were excluded from the calculation of CPP benefits
- The *Canada Pension Plan* was amended to permit credit splitting between spouses upon marital breakdown
- 1985 – Spousal allowance under the *Old Age Security Act* was extended to all low-income widows and widowers between the ages of 60 and 64
- 1987 – The *Canada Pension Plan* was amended to include:
 - Retirement benefits payable at the age of 60
 - Increased disability benefits
 - Continued survivor benefits if the survivor remarries
 - The ability of spouses and common-law partners to share retirement pensions
 - Expanded credit-splitting provisions to include the separation of common-law partners
- 1989 – The tax-back provisions under the *Old Age Security Act* were introduced
- 1991 – Legislation was passed to assist former spouses who were barred from credit splitting under the *Canada Pension Plan* due to a separation agreement entered into before 4 June 1986
- 1992 – The *Canada Pension Plan* was amended to include:
 - A 25-year schedule for employer-employee contribution rates
 - An increase in children's benefits
 - A provision to aid individuals who were denied disability benefits due to late application
- 1995 – Individuals could request a cancellation of OAS benefits
- Period for retroactive OAS benefits was changed from five years to one year
- 1998 – The *Canada Pension Plan* was amended to include full funding provisions
- The contribution rates under the *Canada Pension Plan* were increased
- A new investment policy for CPP assets was introduced
- 2000 – All OAS and CPP benefits were extended to same-sex, common-law couples.⁽²⁾

(2) Human Resources Development Canada, *Pension Timeline*, 15 March 2004,
http://www.civilization.ca/hist/pensions/cpp-timeline_e.html.

B. Highlights

The highlights of Bill C-36 include:

- The integration of full-funding provisions under the *Canada Pension Plan* into actuarial reporting and contribution rate setting.
- An enhancement of disability benefits under the *Canada Pension Plan* available to long-time contributors.
- A provision allowing former common-law partners to apply for credit splitting under the *Canada Pension Plan*, after the current four-year limitation, if both partners agree in writing.
- A provision allowing individuals to request more than one Statement of Contributions per year under the *Canada Pension Plan*.
- The introduction of ongoing renewal for Guaranteed Income Supplement and allowance benefits under the *Old Age Security Act*, as well as simplified reporting of income for seniors and couples.
- The discontinuation of income-tested benefits under the *Old Age Security Act* payable to estates.
- The limitation of benefits payable to sponsored immigrants based on their sponsorship agreements.
- Provisions authorizing electronic service delivery and transactions under both the *Canada Pension Plan* and the *Old Age Security Act*.
- Provisions providing the authority to set terms and conditions for the charging of interest under both the *Canada Pension Plan* and the *Old Age Security Act*.
- Amendments to update and bring into force the penalty provisions under both the *Canada Pension Plan* and the *Old Age Security Act*.

DESCRIPTION AND ANALYSIS

Bill C-36 amends two separate federal Acts: the *Canada Pension Plan* and the *Old Age Security Act*. This paper describes some of Bill C-36's key provisions and how they differ from those in the legislation currently in force. The Description and Analysis is composed of three main sections: Part A will address amendments to the *Canada Pension Plan*; Part B will summarize the amendments to the *Old Age Security Act*; Part C will discuss the common

amendments proposed for both Acts. In the interest of simplicity, each section will be broken down by topic rather than by clause.

A. Amendments to the *Canada Pension Plan*

The *Canada Pension Plan* is a joint federal-provincial plan that provides retirement, survivor and disability pensions, death benefits, and orphans benefits to contributors and their families.⁽³⁾ Upon its first reading in 1965, the *Canada Pension Plan* was described as a plan “which provides help as of right rather than on a needs or means test, for those who suffer the loss of a loved breadwinner or those who find themselves disabled and unable to carry on work.”⁽⁴⁾ The Plan is funded through compulsory contributions of all working Canadians between the ages of 18 and 70 who are not receiving a retirement or disability pension from the Plan. Contribution rates are based on a percentage of the individual’s earnings. Those who earn above the Year’s Basic Exemption of \$3,500 pay into the fund on all their income up to the Year’s Maximum Pensionable Earnings, which in 2006 was \$42,100; this amount is adjusted annually.⁽⁵⁾

1. Funding and Rate Setting

Section 113.1 of the *Canada Pension Plan* provides for a triennial review of the financial state of the Plan, followed by recommendations to ensure its sustainability. Section 113.1(4) sets out the factors that federal and provincial ministers must consider during the review, including the Plan’s two financing rules. The first is set out in section 113.1(4)(c), which provides that the contribution rate must be set at a level that would ensure a constant ratio of assets of the Plan to its expenditures. This first rule guarantees some pre-funding of existing benefits. The second rule, set out in section 113.1(4)(d), requires that new and enhanced benefits must be fully pre-funded.

Section 115 of the *Canada Pension Plan* provides that the Chief Actuary is responsible for setting the lowest contribution rate that meets the Plan’s financing objectives. The formulas found in section 113.1(11.05) automatically increase the contribution rate and/or freeze benefits if the scheduled contribution rate is insufficient relative to the rate set in the most

(3) Quebec has its own plan.

(4) House of Commons, *Debates*, 9 November 1964, p. 9899 (the Hon. Judy LaMarsh).

(5) Mr. Justice Gordon Killeen and Andrew James, *Annotated Canada Pension Plan and Old Age Security Act*, 6th ed., CCH Canadian Limited, Toronto, 2007.

recent actuarial report. However, if a recommendation is made that declares the contribution rate to be lower than what is considered sufficient, that recommendation will prevail over the contribution rate calculated in these formulas.

As the rules for the automatically adjusted rates are currently written, they do not take into account the contribution rate required to provide full funding of any increased or new benefits in determining whether the scheduled contribution rate is sufficient. Nor do the current rules take the scheduled contribution rate into account in calculating the automatically adjusted rate. Clause 12 of the bill seeks to fix this problem.

Clause 12 ensures that the calculation of when the scheduled contribution rate is insufficient takes into account any increase in the contribution rate necessary to pay for increased or new benefits in the future. Without this amendment, the rules may result in contribution rates that do not actually meet the financial goals and obligations of the Plan. Clause 12 also ensures that the formulas which automatically adjust the contribution rate take into account the rate required to pay for increased or new benefits. Together, these amendments will ensure that automatic adjustment of the rate reflects both of the Plan's financial objectives set out in section 113.1, and that the costs of any increased or new benefits are not passed on to future generations.⁽⁶⁾

2. Disability Benefits

Section 44(2)(a) of the *Canada Pension Plan* currently provides that the minimum qualifying period for disability benefits will be met where the individual has made valid contributions for at least four of the past six calendar years. Clause 2 of Bill C-36 adds a new provision that affects those who have contributed to the Plan for at least twenty-five years. If an individual becomes disabled and meets the twenty-five-year requirement, the minimum qualifying period is reduced to three of the last six years. This benefit enhancement provides greater disability coverage to contributors with a long work history. It is important to note, however, that in order to receive disability benefits the applicant must also satisfy the medical criteria, and not just the minimum qualifying period of contributions.

Pursuant to clause 36 of the bill, this enhancement applies only to applications for a disability pension made on or after the month in which clause 2 (to be section 44(2)(a)(i.1))

(6) Clause 12 also repeals the formulas currently found in s. 113.1(11) to s. 113.1(11.04), because they are specific to a time period that ended in 2003.

comes into force. However, in the case of individuals under the age of 65 whose pension would have been payable at the time they were deemed disabled had their application been received at that time, clause 36(2) provides that the new minimum qualifying period applies if they were deemed disabled no earlier than 15 months before clause 2 comes into force. These specifications will limit the number of applicants who can claim retroactive payments of this enhanced benefit.

3. Credit Splitting for Former Common-Law Partners

Section 55.1 of the *Canada Pension Plan* provides for the division of unadjusted pensionable earnings between spouses and between common-law partners. Currently, section 55.1(1)(c) provides for a division of unadjusted pensionable earnings between former common-law partners so long as the application is made within four years of the date of separation or death.

Clause 3(2) amends section 55.1(1)(c) to provide for a credit split if the application is made within four years of separation, or at any time after that date so long as both partners agree to the credit split in writing. This amendment provides for a more equitable opportunity to gain pensionable earnings during a period where a couple may have made compromises for the purposes of child rearing or maintaining the family home. Where a former common-law partner has not met the four-year deadline, his or her opportunity is no longer barred due to a time lapse; but, as the process then depends on the cooperation of the other party, it may be more difficult than an application made in a timely manner.

4. Statement of Contributions

Section 96 of the *Canada Pension Plan* currently provides that a contributor may request only one statement of his or her pensionable earnings each year. The purpose of such a request is to ensure that the records are accurate; if a record is not accurate, the contributor can request reconsideration by the Minister. Clause 9 of Bill C-36 amends this provision to remove the limit of one statement per year. This amendment will enhance contributors' awareness and sense of security regarding their future pension. Moreover, by allowing individuals to review their own files more frequently, the amendment makes the burden of ensuring accuracy a shared responsibility between the government and individual contributors.

B. Amendments to the *Old Age Security Act*

Unlike the *Canada Pension Plan*, the Old Age Security program is funded from federal tax revenues and provides old age pensions and income-tested benefits. The basic pension is provided to persons over the age of 65 who have resided in Canada for ten or more years while over the age of 18. The amount received is determined based on the number of years the recipient has resided in Canada. Recipients with moderate to high income levels, however, are subject to having their benefits taxed back. In 2006, the income threshold at which the claw back began was \$62,144.⁽⁷⁾

1. Ongoing Renewal and Simplified Reporting

Sections 11(4) and 19(4.1) of the *Old Age Security Act* currently provide that a pensioner who has received the Guaranteed Income Supplement (section 11) or monthly allowance benefits (section 19) in the last month of a period may have the application requirement waived for the following period. Clauses 16(1) and 19(1) amend these sections, and allow for the use of any prior application, not just that from the last payment period.

Section 14(1) currently provides that seniors who apply for income-tested benefits because their income has been reduced as a result of retirement, termination of employment, or a loss of pension income, must file a statement of income with their application. Clause 17 of the bill includes a new provision that allows the Minister to waive the statement of income requirement if that information has already been provided for purposes elsewhere under the Act. These individuals will be required only to report their estimated income.

Section 15 of the *Old Age Security Act* pertains to benefits received by spouses and common-law partners. At present, applicants will not be considered until an application and statement of income is provided by both spouses and common-law partners. Clause 18 amends section 15 to eliminate the requirement that marital and income information that has already been provided by one of the two parties is submitted again.

These amendments will result in fewer applications and make the application system less burdensome both for applicants and for administrative offices. Given Canada's aging population, these changes are an important step in ensuring a more efficient process.

(7) Service Canada, *Old Age Security (OAS) Pension – Frequently Asked Questions*, <http://www.hrsdc.gc.ca/en/isp/pub/oas/oas.shtml>.

2. Withdrawal of Applications

Clause 15 of the bill allows applicants under the *Old Age Security Act* to withdraw an application at any time before pension payments begin. The basic pension paid under the *Old Age Security Act* is taxable income,⁽⁸⁾ and, as previously noted, recipients with a moderate to high income are subject to having their benefits taxed back. Clause 15 allows applicants who have either received some unexpected income after submitting an application, or whose benefits may place them in a higher tax bracket, to minimize the tax effect and maintain greater control over their financial affairs.

3. Federal-Provincial Agreements

Section 39 of the *Old Age Security Act* permits the Minister to enter into federal-provincial agreements. Under these agreements, the provincial benefits that are similar or supplementary to those under the *Old Age Security Act* may be included with the amounts paid out federally. Clause 29 of the bill adds the provision that the federal Minister may also administer the provincial benefits for seniors on behalf of the provincial government, pursuant to the terms of the agreement. All expenses incurred by the federal government pursuant to these agreements will continue to be reimbursed by the appropriate provincial government.

4. Benefits for Estates

Section 29 currently provides for an estate to collect both pension and income-tested supplemental benefits under the *Old Age Security Act*, so long as the application for the benefit is made within one year of the person's death. Clause 23 of the bill provides that an estate will no longer be entitled to any income-tested benefits under the *Old Age Security Act*. An estate will be permitted to apply only for pension benefits. This amendment will reserve more funds for surviving pensioners and beneficiaries who qualify for income-tested benefits.

Pursuant to clause 38, the proposed amendments to section 29 will apply immediately upon Bill C-36 receiving Royal Assent. Any application made by an estate for income-tested benefits after that day will be barred from consideration. Applications submitted before the bill receives Royal Assent, however, will be considered for both pension and income-tested benefits.

(8) *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.), s. 56. The OAS income-tested benefits paid to low-income seniors are not taxable.

5. Benefits for Immigrants

Sections 11(7)(e)(ii), 19(6) (d)(ii), and 21(9)(c)(ii) of the *Old Age Security Act* all set limits on the payment of income-tested benefits (the Guaranteed Income Supplement and Monthly Allowance) to sponsored immigrants. Currently, a permanent resident can collect those benefits only when he or she becomes a Canadian citizen. Clauses 16(2), 19(3) and 20(3) amend each section respectively by replacing the words “permanent resident” with the word “person.” This amendment will create a broader class of individuals who may be excluded from receiving these benefits under the *Old Age Security Act*, by treating all sponsored immigrants the same. Rather than focusing on permanent resident status, the new provisions place the focus on the requirements of the sponsorship undertaking. Until the sponsorship agreement expires, the immigrant, whether a Canadian citizen or not, will not be able to collect income-tested OAS benefits.⁽⁹⁾

Clause 37 ensures that the new rules do not apply to those receiving benefits now, or to those who have made an application prior to the coming into force of the proposed change.

C. Common Amendments

1. Electronic Delivery of Services

Should Bill C-36 pass, the Minister of Social Development and the Minister of National Revenue will be granted the power to use electronic means to communicate, distribute, collect, receive, store and otherwise deal with documents or information under both the *Canada Pension Plan* and the *Old Age Security Act*.

Currently, neither the *Canada Pension Plan* nor the *Old Age Security Act* provide for the use of electronic services. Two clauses in Bill C-36 – clause 1, creating a new section in the *Canada Pension Plan* (section 4.1), and clause 35, adding a new section to the *Old Age Security Act* (section 46.1) – create the necessary authority to modernize the delivery of services, making the process more efficient and accessible in the era of modern communications.

Bill C-36 also authorizes the making of regulations to govern the use of electronic means to distribute, collect and deal with information under the *Canada Pension Plan* and *Old Age Security Act*. These regulations may specifically address the format and technology that

(9) Individuals whose relationship with their sponsor has broken down will continue to be eligible for benefits.

could be used, the place where the electronic document may be made or sent, the time an electronic document would be considered sent and received, and verification procedures. As well, the proposed amendments clarify that where an electronic document or information is delivered pursuant to the regulations, it will satisfy any current requirement in the Act for delivery by non-electronic means. These changes are made by clauses 5(1), 10(1) and 26, amending sections 89(1) and 101 of the *Canada Pension Plan* and section 34 of the *Old Age Security Act* respectively.⁽¹⁰⁾

For the purposes of clarity and consistency in the law, clauses 5(3), 10(2) and 27 of the bill define the terms “electronic document,” “electronic signature” and “secure electronic signature” to be the same as their definitions under the *Personal Information and Protection of Electronic Documents Act*. These clauses amend sections 89 and 101 of the *Canada Pension Plan* and section 34 of the *Old Age Security Act* respectively.

2. Charging of Interest

Sections 66(2) of the *Canada Pension Plan* and 37(2) of the *Old Age Security Act* provide that any CPP or OAS benefits received by an individual in excess of what he or she is entitled to constitute a debt owed to Her Majesty. Clauses 4(1) and 28(1) of Bill C-36 include a new provision following these subsections that similarly makes any interest payable under the *Old Age Security Act* or Part II of the *Canada Pension Plan* (Pensions and Supplementary Benefits) a debt due to Her Majesty, to be recovered in the same manner as overpayments. The rates, terms and conditions regarding the charging of interest are to be determined in the regulations specific to each Act. These regulations are authorized pursuant to clause 5(2) (amending section 89 of the *Canada Pension Plan*) and clause 27 (amending section 34 of the *Old Age Security Act*).

3. Penalty Provisions

Although the provisions are not yet in force, Bill C-36 clarifies the language and intention of the penalty provisions of the *Canada Pension Plan* (section 90.1) and the *Old Age Security Act* (section 44.1). For example, sections 90.1(1)(d) of the *Canada Pension Plan* and

(10) Clause 5(1) affects Part II of the *Canada Pension Plan* – Pensions and Supplementary Benefits; Clause 10(1) affects Part III of the *Canada Pension Plan* – Administration.

44.1(1)(d) of the *Old Age Security Act* currently provide that a person who has received a cheque or benefit to which he or she is not entitled, and who does not return it, may incur a penalty. Clauses 7(2) and 33(2) add the element of intention into these sections; in order to be liable to a penalty, the person must *know* that he or she is not entitled to the benefit received and not returned. This provision ensures that only those who deliberately keep an amount not owed to them will be penalized, rather than penalizing those individuals who made an honest mistake. Moreover, this amendment accurately reflects the statement that the purpose of the penalties is to promote compliance with the Act, not punishment, which is added by clauses 7(4) and 33(4) of the bill. Thus, the monetary penalties, which will also be considered a debt due to Her Majesty⁽¹¹⁾ and collected in the same manner as interest, are intended to deter individuals from making false misrepresentations, protect the funds that are available, and ensure proper distribution among rightful recipients.

4. Information Sharing

Clauses 11 and 25 of the bill expand the class of individuals who may access a contributor's personal information. Sections 104.01(3) of the *Canada Pension Plan* and 33.01(3) of the *Old Age Security Act* currently make information available to the individual, his or her representative or a Member of Parliament inquiring on behalf of the individual. Clauses 11 and 25 amend these provisions to include also, subject to any conditions in the regulations, any other person who has been authorized in writing by the individual whose information is being accessed. This amendment will provide greater personal access to the information in an individual's file, while including safeguards to ensure that access will be given only to those with proper authorization.

5. Clarifying Language and Intentions

Bill C-36 also includes numerous amendments that are intended to clarify and update the use of language in the legislation, making it more readable and user-friendly. For example, clause 23 amends section 29 of the *Old Age Security Act*. Along with the changes to

(11) The amendments declaring monetary penalties as a debt due to Her Majesty are found in clause 4(2), which creates subsection 66(2.01) of the *Canada Pension Plan*, and clause 28(2), which creates subsection 37(2.02) of the *Old Age Security Act*. Both are new sections to the legislation.

the rights of estates under the Act, the clause replaces the word “notwithstanding” with the word “despite.” Similarly, in clause 4(1) the word “if” replaces the word “where” in section 66 of the *Canada Pension Plan*. Moreover, the word “his” has been replaced with the word “their,” making the legislation more gender-neutral. While these proposed amendments are minor, the use of simple language will make the legislation easier to understand.

COMMENTARY

No substantial discussion of Bill C-36 has occurred in the media or academic journals since it received first reading in November 2006.