

Federal Court  
of Appeal



Cour d'appel  
fédérale

**Date: 20100215**

**Docket: A-116-09**

**Citation: 2010 FCA 44**

**CORAM: BLAIS C.J.  
LÉTOURNEAU J.A.  
TRUDEL J.A.**

**BETWEEN:**

**HER MAJESTY THE QUEEN**

**Appellant**

**and**

**MARVYN YUDELSON**

**Respondent**

Heard at Montréal, Quebec, on January 27, 2010.

Judgment delivered at Ottawa, Ontario, on February 15, 2010.

**REASONS FOR JUDGMENT BY:**

**TRUDEL J.A.**

**CONCURRED IN BY:**

**BLAIS C.J.  
LÉTOURNEAU J.A.**

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**REASONS FOR JUDGMENT**

**TRUDEL J.A.**

**Introduction**

[1] This is an appeal from an Order of Bédard J. (the Tax Court Judge) of the Tax Court of Canada dated February 2, 2009 (2009 TCC 80), which allowed Mr. Yudelson's appeals from assessments made under subsection 147.3(10) and paragraph 56(1)(a) of the *Income Tax Act*, R.S.C. 1985, c. 1 (5<sup>th</sup> Supp.) (the Act) for the 2001 taxation year and made under subsection 204.1(2.1) for the 2002, 2003 and 2004 taxation years. This appeal is only concerned with the assessment for the

2001 taxation year. Its outcome will be determinative of Mr. Yudelson's tax liability for the following years.

[2] The respondent was employed by Den Packaging Corporation in Montréal from May 1973 until his retirement in July 2001. Upon retirement, under the terms of the "Den Packaging Corporation Pension Plan" (the Plan), the respondent purchased a non-indexed annuity for the pre-indexation value of the Plan and received a first annuity payment of \$52,934.12. Then, the respondent transferred the remainder of the Plan funds, which were designed to fund payments indexed to cost of living increases, into a Registered Retirement Savings Plan (RRSP). The respondent claimed this amount was exempt from inclusion as income by virtue of the exception in paragraph 147.3(4)(c) of the Act. The appellant maintained that the amount transferred to the RRSP exceeded the amount allowed by the exemption and reassessed the respondent accordingly. The Tax Court Judge ruled that the transfer fell within the exempt amount and ruled that the transfer was exempt from income inclusion.

[3] I disagree. The RRSP and the indexed annuity were different savings vehicles. The former was subject to different tax treatment. Accordingly, for the reasons that follow, I would allow the appeal.

### **Background and Issue on Appeal**

[4] At its core, this appeal is about whether the whole indexation portion of the Plan could be rolled over tax free into an RRSP immediately after the respondent had purchased a non-indexed

annuity with the non-indexation portion of the Plan, and received \$52,934.12 of life retirement benefits (LRBs). To answer that question, it is useful to examine the Plan and the applicable legislative scheme.

***A. The Plan***

[5] The Plan was a Registered Pension Plan (RPP) with defined benefits (DB). The respondent was its sole member. The respondent's benefits under the Plan, as set out in subsection 9.1(a) of the Plan, were basically 2% of the average of the member's three highest consecutive years of earnings, multiplied by the member's years of credited service. Where the pension was purchased from an underwriter, subsection 9.2(b) of the Plan provided for and capped indexation benefits by the lesser of the anticipated annual percentage increases in the Consumer Price Index of Canada (CPI), or 4%.

[6] While pension benefits under the Plan were payable in equal periodic instalments starting on the last day of the month in which the member retired (subsection 10.3 of the Plan), subsection 9.2(b) provided that increases due to indexation could only commence twelve months later.

***B. The relevant legislative scheme***

[7] The legislative scheme governing transfers between retirement vehicles is complex. I intend to limit my review of the statutory rules mainly to those applicable to a transfer from a DB RPP to an RRSP. For ease of reference, the legislative provisions relevant to this case are reproduced in full at Appendix A to this decision.

[8] Subparagraph 56(1)(a)(i) of the Act states that amounts received “on account or in lieu of payment of, or in satisfaction of, a superannuation or pension benefit ...” are included in income. There are exceptions to this general rule. Of relevance to this appeal is section 147.3 of the Act, most particularly, subsection 147.3(4) of the Act, which sets out the rules governing the transfers from a DB RPP to an RRSP. Generally, a transfer of assets from one vehicle to another carried out in accordance with the rules will ensure that such transfer is without any immediate tax consequences. When rules are not adhered to, the transferred amount must be included in the member’s income and the registered plan may become revocable.

[9] The amount transferred from a DB RPP to a money purchase RRSP is limited by the requirement in paragraph 147.3(4)(c) that it “not exceed a prescribed amount” as defined under subsection 8517(1) of the *Income Tax Regulations*, C.R.C., c. 945 (“the Regulations”). This prescribed amount is determined by the formula  $A \times B$ , where A is the amount of the individual’s LRBs commuted in connection with the transfer, as determined by subsection 8517(4), and B is a present value factor listed in the Regulations and corresponding to the individual’s age at the time of the transfer.

[10] Essentially, LRBs are retirement benefits provided to the member until the member’s death (subsection 8500(1) of the Regulations) that must be “payable in equal periodic amounts” (paragraph 8503(2)(a)).

[11] Subparagraph 8503(2)(a)(ii) provides an exception to take indexation increases into consideration: LRBs do not need to be paid in equal periodic amounts where a plan “provides for

periodic cost-of-living adjustments to be made to the benefits”. However, these adjustments cannot exceed increases warranted by the CPI or 4% per annum after the benefits commence to be paid (clauses 8503(2)(a)(ii)(A) and (B)). Already, one can see that the Plan respected these requirements.

[12] In subsection 8517(4), the Regulations provide formulas for calculating the value of commuted LRBs, essentially the amount by which the LRBs are reduced or foregone as a result of the transfer. The calculation differs depending on whether or not retirement benefits have commenced to be paid at the time of the transfer.

[13] When retirement benefits have commenced to be paid, paragraph 8517(4)(a) of the Regulations states that the value of commuted LRBs is equal to “the amount (expressed on an annualized basis) by which the individual’s [LRBs] under the provision are reduced as a result of the transfer.”

[14] Conversely, where retirement benefits have not commenced to be paid, paragraph 8517(4)(b) states that the value of commuted LRBs is equal to “the amount (expressed on an annualized basis) by which the individual’s normalized pension (computed in accordance with subsection (5)) under the provision at the time of the transfer is reduced as a result of the transfer.”

[15] Subsection 8517(5) states that a “normalized pension ... at a particular time is the amount (expressed on an annualized basis) of LRBs that would be payable under the provision at the particular time” if LRBs commenced to be paid at the particular time if certain conditions were

assumed to exist (if the individual had reached the age of 65 at that particular time, and if all benefits to which the individual was entitled at that particular time had fully vested, subject to a few other adjustments).

[16] Paragraphs 8517(4)(a) and (b) are mutually exclusive. Although both paragraphs seek to determine whether, as a result of the transfer, there was a reduction in the accrued LRBs at the time of the transfer, the difference between the two is important. Paragraphs 147.4(1)(f) and (g) of the Act state that where an individual acquires an annuity contract in full or partial satisfaction of an RPP entitlement (and the conditions in paragraphs 147.4 (1) (a) to (e) are met), the individual is deemed not to have received an amount out of or under the RPP as a consequence of acquiring the interest (147.4(1)(f)), and any amount received by the member under the contract is deemed to have been received under the RPP, except for the purposes of sections 147.1 and 147.3 (147.4(1)(g)).

[17] Therefore, the member faces no immediate taxation pursuant to the acquisition of his interest in the annuity contract, and any payment made under the annuity contract is treated as a payment from the Plan. Thus, no amount is included in computing income under paragraph 56(1)(a) until it has been received by the member under the contract. Understandably, and as we shall see later, the parties disagree on the applicable formula.

### ***C. The Relevant Facts***

[18] Between the start of his employment in May 1973 and his retirement in July 2001, the respondent accrued 28.35 years of pensionable service under the Plan. When the respondent retired,

Mr. Fred Thompson, an actuary, undertook a valuation. The accrued pension before indexation was determined to be \$52,934.12. The Plan was valued at \$681,900. The cost of an annuity to fund the pre-indexation benefits of \$52,934.12 per year was \$571,770. Ultimately, the sum of \$572,316.20 was required to purchase the non-indexed annuity. The Plan was wound up on August 31, 2001, and the first annuity payment was issued on September 1, 2001. On September 5, 2001, the respondent transferred the remaining \$108,886.04 into an RRSP to fund indexation payments.

[19] The parties agree that the respondent could have acquired an indexed annuity contract, but did not do so because he did not like the return, as the indexation was capped at what the Plan's assets could provide (appeal book, volume 2, at pages 269-276).

[20] As mentioned earlier, the Minister of National Revenue (the Minister) determined that the full amount transferred to the RRSP (\$108,886.04) was income under subparagraph 56(1)(a)(i) and consequently reassessed the respondent who was successful in having the reassessments vacated. Hence the present appeal.

### **Decision of the Tax Court of Canada**

[21] In allowing the appeal, the Tax Court Judge determined that the transfer was within the limits prescribed by subsection 8517(1) of the Regulations for the purpose of the rules regarding transfers from registered pension plans to RRSPs set out in paragraph 147.3(4)(c) of the Act.



[22] The Tax Court Judge held that subparagraph 8503(2)(a)(ii) of the Regulations clearly contemplates that the indexation provided for in section 9.2 of the Plan forms part of the LRBs, and that subparagraph 8503(2)(a)(iii) of the Regulations allows for indexation benefits to be considered LRBs even in the absence of periodicity and equality of payments (reasons for judgment, at paragraph 18).

[23] This finding led to the Tax Court Judge's acceptance of the actuarial evidence that the amount of LRBs commuted as a result of the transfer to the RRSP of the indexation benefits was \$19,565. Since the first payment under the annuity was made on September 1, and the funds were not transferred to the RRSP until September 5, the Tax Court Judge accepted the actuary's calculations made pursuant to paragraph 8517(4)(a). Mr. Thomson arrived at this figure by subtracting the value of a non-indexed annuity from the value of an indexed annuity and converting the difference into LRBs. This produced a value of \$197,000, or \$19,565 on an annualized basis. Since the Plan allowed the respondent up to \$197,000 of indexation value, Mr. Thomson was of the opinion that the transfer of \$108,886 fell well within the prescribed amount (reasons for judgment, at paragraph 7). The Tax Court Judge agreed.

### **The Parties' Positions**

[24] From the parties' arguments, the analysis can be disaggregated into three sub-issues:

- A. Had benefits "commenced to be paid"?
- B. Did the benefits transferred to the RRSP exceed the "prescribed amount"?
- C. Did the Tax Court Judge err in his valuation of the commuted LRBs?

***A. Had the benefits commenced to be paid?***

[25] The appellant argues that the relevant formula for calculating commuted LRBs is that found in paragraph 8517(4)(b) of the Regulations, and that the relevant time period for calculating commuted LRBs is therefore the moment of the transfer. In support of this position, the appellant relies on paragraph 147.4(1)(g) of the Act: if the benefits were not received from the Plan and are not deemed to have been so received, then payments from the Plan cannot be considered to have commenced for purposes of the transfer rules in subsection 147.3(4) of the Act (appellant's memorandum of fact and law, at paragraph 41).

[26] Under paragraph 8517(4)(b), the value of commuted LRBs is determined by reference to an individual's "normalized pension." The normalized pension is effectively a measure of what benefits would be payable at "a particular time" if certain conditions were to exist. The appellant argues that the phrase "a particular time" emphasizes that the calculation of the value of commuted LRBs must be made as of the time of the transfer. In this case, no indexation benefits were payable at the time of the transfer, and accordingly no indexation benefits should be taken into account in calculating the "prescribed amount." Since the respondent had received the full non-indexed annuity payment of \$52,934 for the taxation year 2001, there were no residual benefits remaining in the Plan that were payable to him for that period. The "prescribed amount" was therefore nil.

[27] The respondent argues that benefits had commenced to be paid and that the proper formula for calculating commuted LRBs is therefore that found in paragraph 8517(4)(a). The respondent submits that paragraph 147.4(1)(g) states that amounts paid from an annuity are deemed to be paid

under the Plan, except for the purpose of sections 147.1 and 147.3, but does not deem amounts that have been paid not to have been paid at all. To the respondent, the purpose of paragraph 147.4(1)(f) is to prevent payments from an RPP to an annuity from being taxed by treating the amount transferred as not having been paid out of the RPP. The purpose of paragraph (g) is then to ensure that amounts subsequently paid out of the annuity to the recipient are taxed. Paragraph (g) exists not intended to determine whether benefits have commenced to be paid, but rather to ensure benefits are not rolled over indefinitely.

***B. Did the transfer exceed the prescribed amount?***

[28] The appellant first argues that indexation payments are not LRBs. While subparagraphs 8503(2)(a)(ii) and (iii) provide exceptions to the periodicity and equality requirements, they suggest that cost of living adjustments are not independent benefits, but rather *features* of the non-indexed benefits.

[29] Second, the appellant maintains that even if the value of commuted benefits were calculated under paragraph 8517(4)(a), their value would still be nil. Since there were no indexation payments owing in the year of the transfer, then no benefits were foregone as a result of the transfer.

[30] Third, the appellant argues that the Tax Court Judge's decision is inconsistent with Parliamentary overall scheme of the Act. RRSPs and RPPs are different savings vehicles and it is therefore consistent to have different rules apply to them. Under a DB RPP, members cannot control the amount and timing of payments: they receive fixed payments at fixed intervals. In an RRSP,

however, individuals have much greater leeway to determine how much they withdraw and when they do it, thereby allowing them to shelter tax for longer than might be possible under a DB RPP.

[31] Finally, the appellant notes that the  $A \times B$  formula in subsection 8517(1) of the Regulations already takes into account benefit growth through indexation, since it requires that the value of commuted LRBs be multiplied by an age-related present value factor. Consequently, if indexation benefits are included in variable A, the effect will be to double count them.

[32] The respondent argues that indexation benefits stand alone as LRBs, noting the opening words of subsection 8503(2): “the following benefits may ... be provided ...” The respondent submits that this phrase indicates that indexation is not an exception to the definition of LRB; rather, the paragraph excepts LRBs from the requirements of equal periodic payment. The respondent also disagrees with the appellant’s contentions regarding the purpose of the Act. The Act specifically contemplates transfers from RPPs to RRSPs and there is no evidence that the respondent sought to transfer funds in excess of what is legally allowed.

### ***C. What is the value of the commuted LRBs?***

[33] The appellant claims that the value of \$19,565, arrived at by Mr. Thompson and accepted by the Tax Court Judge, is wrong. In his calculations, Mr. Thompson subtracted the value of a non-indexed annuity from an annuity indexed at 4%. The appellant notes, however, that the Plan limits indexation increases to CPI increases up to a maximum of 4% and that Mr. Thompson himself concluded that the funds in the Plan could support no more than an increase of 2% per annum.

Furthermore, the appellant claims that if Mr. Thompson's calculations were accurate, the respondent would have been owed \$72,499 (the \$52,934 non-indexed portion plus the \$19,565 4% annual increase), an amount that would have rendered the Plan revocable under paragraphs 8501(1)(a) and 8504(1)(a) and subparagraph 8502(c)(i) of the Regulations.

[34] The respondent submits that the Tax Court Judge did not err in accepting Mr. Thompson's valuation of commuted LRBs at \$19,565. While it is true that the actual value of indexation benefits the respondent received in 2001 was nil, the *annualized* value of indexation benefits is \$19,565. Furthermore, the appellant did not adduce any evidence to counter Mr. Thompson's valuation of \$19,565 or suggest an alternative formula for the valuation of benefits.

## Analysis

### *A. Standard of review*

[35] Neither party makes formal submissions regarding the standard of review of the first two sub-issues. With respect to these sub-issues, there are no facts in dispute. The issues are purely legal and accordingly reviewable on a standard of correctness (*Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235 at paragraph 8). With respect to the third issue, whether the Tax Court Judge erred in his valuation of the commuted LRBs, the appellant makes no submissions, but the respondent argues that this is a question of fact that can only be overturned subject to a "palpable and overriding error" (*Housen* at paragraph 10). As this Court is not in a position to second guess actuarial evidence, I agree.

## ***B. Summary of Conclusions***

[36] The Tax Court Judge erred when he included the annualized value of indexation payments in calculating the value of the respondent's commuted LRBs for the 2001 tax year. With respect, I find the transfer exceeded the prescribed amount. While the Plan included savings to fund future benefits tied to the cost of living, at the time of the transfer no benefits were payable beyond the base amount. Accordingly, the "prescribed amount"—the value of foregone LRBs—for the year 2001 is nil. The respondent is effectively attempting to convert a DB RPP into an RRSP without tax consequences. This is not permitted under the letter or spirit of the Act.

### ***(1) The benefits had commenced to be paid***

[37] I find that benefits had commenced to be paid and that the proper formula for the valuation of commuted LRBs is accordingly found in paragraph 8517(4)(a) of the Regulations. Paragraphs 147.1(f) and (g) of the Act are designed to prevent double taxation where plan members choose to receive retirement benefits out of an annuity. However, as the respondent points out, if only paragraph (f) existed, then plan members who received payments out of an annuity would be able to claim that their payments were not taxable. Paragraph (g) closes this loophole.

[38] This leaves the exception with respect to sections 147.1 and 147.3. Section 147.1 is of little import to this case as it is largely a list of defined terms. The point of the section 147.3 exception is to prevent individuals from taking payments made under an annuity and rolling them over into another savings vehicle to further defer taxation. Since section 147.3 exempts transfers from an RPP

to another savings vehicle and paragraph 147.4(1)(g), but for the exception, deems all amounts received from an annuity to be received under a plan, then an individual could take money from an RPP and put it into an annuity without taxation (through paragraph 147.4(1)(f)) and then engage in an additional rollover by putting annuity payments into an RRSP. The section 147.3 exception is therefore designed to allow individuals one—but only one—rollover. Accordingly, while paragraph 147.4(1)(g) deems amounts paid under an annuity not to have been paid under an RPP for the purpose of preventing double rollovers, it does not imply that benefits were not received.

***(2) The transfer exceeded the prescribed amount***

[39] It is implicit within paragraph 8517(4)(a) that the calculation of commuted LRBs must be made at the time of the transfer. At the time of the transfer, there was obviously no way for the respondent to receive an indexation payment, since under subsection 9.1(a) of the Plan indexation payments only begin a year after retirement. Accordingly, at the time of retirement, the total value of LRBs owed to the respondent was \$52,934.12—the annual non-indexed payment owed under the Plan. Since the respondent received \$52,934.12 in 2001, there were no residual benefits remaining in the Plan that were payable to him for 2001. Therefore, the value of “A” in calculating the prescribed amount, that is the amount of individual’s LRBs commuted in connection with the transfer, is equal to 0, and the prescribed amount (A x B) is also equal to zero.

[40] This interpretation is consistent with the overall scheme of the Act. Sections 9.1 and 9.2 of the Plan contemplate the provision of benefits on a predetermined schedule according to a predetermined rate, which fluctuates only according to the cost of living. The Plan was required to

comply with specific DB RPP regulations that do not apply to other savings plans, including the equality and periodicity requirements of paragraph 8503(2)(a). The regulations are different because RRSP and DB provisions are fundamentally different savings vehicles.

[41] The taxation implications of this difference are significant. Had the respondent purchased an indexed annuity, the amount he would have received in any given year would have been fixed and mandatory. By putting the money in an RRSP, however, the respondent unfixed the timing and amounts he was to receive. The upshot of using an RRSP over a DB RPP or indexed annuity is that taxation can usually be deferred much longer under an RRSP than a DB plan. Accordingly, while the respondent was entitled to receive the full value of his pension, he was not entitled to receive it in a lump sum through an RRSP.

[42] The Canada Revenue Agency appears to work under a similar understanding of the Act and Regulations. The following Technical Notes were issued when section 147.3 was added to the Act:

The purpose of the new transfer provisions in section 147.3 is to accommodate the portability of retirement savings between different plans. However, under certain circumstances inter-plan transfers can provide a means of obtaining tax deferral advantages in excess of the intended limits. (Emphasis added).

[43] Commentators from the profession have also endorsed this interpretation. For example, Marcel Thérout of Mercer Human Resources Consulting writes that one “purpose of these rules is to prevent the reconfiguration of a DB benefit into [a Money Purchase] benefit that would provide a greater annuity amount than allowed under the exporting DB provision” (Marcel Thérout, “Tax Planner Guides, 5—What a Tax Planner Needs to Know about Registered Pension Plan,” online:



Carswell, TaxnetPro). In sum, the reason transfer limits are in place is precisely to prevent the type of tax deferral the respondent presently attempts.

[44] Based on this understanding, it is not necessary for me to decide whether indexation benefits qualify as independent LRBs. Whatever their status, they were not applicable in 2001 and thus do not factor into the determination of commuted LRBs for the purpose of this case.

***(3) The Tax Court Judge erred in calculating the value of the commuted LRBs***

[45] As stated above, the value of the commuted LRBs in this case is nil. This is because future indexation payments are not applicable to the calculation of commuted LRBs under paragraph 8517(4)(a). The actuarial evidence adduced by the respondent was premised on this flawed understanding of the Regulations. Its acceptance by the Tax Court Judge therefore constitutes a palpable and overriding error.

**Conclusion**

[46] I find that the value of the respondent's commuted LRBs was nil. Accordingly, the prescribed amount, calculated by the (AxB) formula in the Regulations, was also nil. Consequently, any funds the respondent transferred in 2001 from the Plan to an RRSP qualify as income under subparagraph 56(1)(a)(i) of the Act.

[47] Therefore, I would allow this appeal with costs to the appellant in this Court and in the Court below, I would set aside the decision of the Tax Court of Canada and rendering the judgment that should have been rendered, I would dismiss the respondent's appeal in the Tax Court of Canada.

"Johanne Trudel"

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J.A.

"I agree  
Pierre Blais C.J."

"I agree  
Gilles Létourneau J.A."



**APPENDIX A: STATUTORY PROVISIONS**

*Income Tax Act*, R.S.C. 1985, c. 1 (5<sup>th</sup> Supp)

**56.** (1) Without restricting the generality of section 3, there shall be included in computing the income of a taxpayer for a taxation year,

Pension benefits, unemployment insurance benefits, etc.

(a) any amount received by the taxpayer in the year as, on account or in lieu of payment of, or in satisfaction of,  
(i) a superannuation or pension benefit including, without limiting the generality of the foregoing,

(A) the amount of any pension, supplement or spouse's or common-law partner's allowance under the *Old Age Security Act* and the amount of any similar payment under a law of a province,

(B) the amount of any benefit under the *Canada Pension Plan* or a provincial pension plan as defined in section 3 of that Act,

(C) the amount of any payment out of or under a prescribed provincial pension plan, and

(C.1) the amount of any payment out of or under a foreign retirement arrangement established under the laws of a country, except to the extent that the amount would not, if the taxpayer were resident in the country, be subject to income taxation in the country,

but not including

(D) the portion of a benefit received out of or under an employee benefit plan that is required by paragraph 6(1)(g) to be included in computing the taxpayer's income for the year, or would be required to be so included if that paragraph were read without reference to subparagraph

**56.** (1) Sans préjudice de la portée générale de l'article 3, sont à inclure dans le calcul du revenu d'un contribuable pour une année d'imposition :

Pensions, prestations d'assurance-chômage, etc.

a) toute somme reçue par le contribuable au cours de l'année au titre, ou en paiement intégral ou partiel :

(i) d'une prestation de retraite ou de pension, y compris, sans préjudice de la portée générale de ce qui précède :

(A) une pension, un supplément et une allocation à l'époux ou conjoint de fait, servis en vertu de la *Loi sur la sécurité de la vieillesse*, et un paiement semblable fait en vertu d'une loi provinciale,

(B) une prestation prévue par le *Régime de pensions du Canada* ou par un régime provincial de pensions au sens de l'article 3 de cette loi,

(C) tout paiement versé dans le cadre d'un régime provincial de pensions visé par règlement,

(C.1) tout paiement fait dans le cadre d'un mécanisme de retraite étranger prévu par la législation d'un pays, sauf dans la mesure où le paiement serait exclu du calcul du revenu du contribuable aux fins de l'impôt sur le revenu dans ce pays s'il y résidait, à l'exclusion toutefois :

(D) de la partie d'une prestation versée dans le cadre d'un régime de prestations aux employés qui doit être incluse dans le calcul du revenu du contribuable pour l'année en vertu de l'alinéa 6(1)(g), compte non tenu du sous-alinéa 6(1)(g)(ii),

6(1)(g)(ii),

(E) the portion of an amount received out of or under a retirement compensation arrangement that is required by paragraph 56(1)(x) or 56(1)(z) to be included in computing the taxpayer's income for the year, and

(F) a benefit received under section 71 of the *Canada Pension Plan* or under a similar provision of a provincial pension plan as defined in section 3 of that Act,

**147.3** (4) An amount is transferred from a registered pension plan in accordance with this subsection if the amount

(a) is a single amount no portion of which relates to an actuarial surplus;

(b) is transferred on behalf of a member in full or partial satisfaction of benefits to which the member is entitled, either absolutely or contingently, under a defined benefit provision of the plan as registered;

(c) does not exceed a prescribed amount; and

(d) is transferred directly to

(i) another registered pension plan and allocated to the member under a money purchase provision of that plan,

(ii) a registered retirement savings plan under which the member is the annuitant (within the meaning assigned by subsection 146(1)), or

(iii) a registered retirement income fund under which the member is the annuitant (within the meaning assigned by subsection 146.3(1)).

Taxation of amount transferred

(9) Where an amount is transferred in accordance with any of subsections 147.3(1) to (8),

(a) the amount shall not, by reason only of

(E) de la partie d'un montant versé dans le cadre d'une convention de retraite qui doit être incluse dans le calcul du revenu du contribuable pour l'année en vertu de l'alinéa x) ou z),

(F) d'une prestation reçue en vertu de l'article 71 du *Régime de pensions du Canada* ou d'une disposition semblable d'un régime provincial de pensions au sens de l'article 3 de cette loi,

**147.3** (4) Un montant est transféré d'un régime de pension agréé conformément au présent paragraphe si les conditions suivantes sont réunies :

a) il s'agit d'un montant unique dont aucune fraction n'est afférente à un surplus actuariel;

b) le montant est transféré pour le compte d'un participant en règlement total ou partiel des prestations, prévues par une disposition à prestations déterminées du régime tel qu'il est agréé, auxquelles le participant a droit conditionnellement ou non;

c) le montant ne dépasse pas le montant prescrit;

d) le montant est transféré directement :

(i) à un autre régime de pension agréé et est attribué au participant aux termes d'une disposition à cotisations déterminées de ce régime,

(ii) à un régime enregistré d'épargne-retraite dont le participant est rentier au sens du paragraphe 146(1),

(iii) à un fonds enregistré de revenu de retraite dont le participant est rentier au sens du paragraphe 146.3(1).

Imposition des transferts

(9) Les montants transférés conformément à l'un des paragraphes (1) à (8) ne peuvent :

a) de ce seul fait, être inclus dans le calcul

that transfer, be included by reason of subparagraph 56(1)(a)(i) in computing the income of any taxpayer; and

(b) no deduction may be made under any provision of this Act in respect of the amount in computing the income of any taxpayer.

**147.4 (1) Where**

(a) at any time an individual acquires, in full or partial satisfaction of the individual's entitlement to benefits under a registered pension plan, an interest in an annuity contract purchased from a licensed annuities provider,

(b) the rights provided for under the contract are not materially different from those provided for under the plan as registered,

(c) the contract does not permit premiums to be paid at or after that time, other than a premium paid at that time out of or under the plan to purchase the contract,

(d) either the plan is not a plan in respect of which the Minister may, under subsection 147.1(11), give a notice of intent to revoke the registration of the plan or the Minister waives the application of this paragraph with respect to the contract and so notifies the administrator of the plan in writing, and

(e) the individual does not acquire the interest as a consequence of a transfer of property from the plan to a registered retirement savings plan or a registered retirement income fund, the following rules apply for the purposes of this Act:

(f) the individual is deemed not to have received an amount out of or under the registered pension plan as a consequence of acquiring the interest, and

(g) other than for the purposes of sections 147.1 and 147.3, any amount received at or after that time by any individual under the contract is deemed to have been received

du revenu d'un contribuable en application du sous-alinéa 56(1)a)(i);

b) faire l'objet d'une déduction selon la présente loi dans le calcul du revenu d'un contribuable.

**147.4 (1) Dans le cas où les conditions suivantes sont réunies :**

a) un particulier acquiert, en règlement total ou partiel de son droit à des prestations prévues par un régime de pension agréé, un droit dans un contrat de rente acheté d'un fournisseur de rentes autorisé,

b) les droits prévus par le contrat ne diffèrent pas sensiblement de ceux prévus par le régime tel qu'il est agréé,

c) la seule prime dont le contrat permet le versement au moment de l'acquisition du droit ou postérieurement est celle qui est versée à ce moment sur le régime ou en vertu du régime en vue d'acheter le contrat,

d) il ne s'agit pas d'un régime à l'égard duquel le ministre peut envoyer, en application du paragraphe 147.1(11), un avis portant qu'il a l'intention de retirer l'agrément du régime, ou le ministre renonce à appliquer le présent alinéa au contrat et en avise l'administrateur du régime par écrit;

e) le particulier n'acquiert pas le droit dans le contrat par suite d'un transfert de biens du régime à un régime enregistré d'épargne-retraite ou à un fonds enregistré de revenu de retraite,

les présomptions suivantes s'appliquent dans le cadre de la présente loi :

f) le particulier est réputé ne pas avoir reçu de montant sur le régime ou en vertu du régime par suite de l'acquisition du droit dans le contrat;

g) sauf pour l'application des articles 147.1 et 147.3, tout montant qu'un particulier reçoit dans le cadre du contrat au moment de l'acquisition du droit ou postérieurement

under the registered pension plan.

*Income Tax Regulations, C.R.C. , c. 945*

**8500.** (1) In this Part,

“lifetime retirement benefits” provided to a member under a benefit provision of a pension plan means

(a) retirement benefits provided to the member under the provision that, after they commence to be paid, are payable to the member until the member’s death, unless the benefits are commuted or payment of the benefits is suspended, and

(b) for greater certainty, retirement benefits provided to the member under the provision in accordance with paragraph 8506(1)(e.1); (*prestation viagère*)

**8501.** (1) For the purposes of section 147.1 of the Act, and subject to sections 8509 and 8510, the prescribed conditions for the registration of a pension plan are  
(a) the conditions set out in paragraphs 8502(a), (c), (e), (f) and (l),

**8502.** For the purposes of section 8501, the following conditions are applicable in respect of a pension plan:

*Permissible Benefits*

(c) the plan does not provide for, and its terms are such that it will not under any circumstances provide for, any benefits other than benefits

(i) that are provided under one or more defined benefit provisions and are in accordance with subsection 8503(2), paragraphs 8503(3)(c) and (e) to (i) and section 8504,

(ii) that are provided under one or more

est réputé avoir été reçu dans le cadre du régime.

**8500.** (1) Les définitions qui suivent s’appliquent à la présente partie.

« prestation viagère »

a) Prestation de retraite prévue pour un participant par la disposition à cotisations ou à prestations déterminées d’un régime de pension qui, une fois le versement commencé, lui est payable jusqu’à son décès, sauf si elle est rachetée ou que son versement est suspendu;

b) il est entendu que les prestations de retraite prévues pour un participant par la disposition à cotisations ou à prestations déterminées d’un régime de pension conformément à l’alinéa 8506(1)e.1) sont des prestations viagères. (*lifetime retirement benefits*)

**8501.** (1) Pour l’application de l’article 147.1 de la Loi et sous réserve des articles 8509 et 8510, les conditions d’agrément d’un régime de pension sont les suivantes

a) les conditions énoncées aux alinéas 8502a), c), e), f) et l),

**8502.** Pour l’application de l’article 8501, les conditions suivantes s’appliquent aux régimes de pension :

*Prestations permises*

c) le régime ne prévoit que les prestations suivantes, et ses modalités sont telles qu’il ne peut en aucun cas en prévoir d’autres :

(i) celles, prévues par une ou plusieurs dispositions à prestations déterminées, qui sont conformes au paragraphe 8503(2), aux alinéas 8503(3)c) et e) à i) et à l’article 8504,

(ii) celles, prévues par une ou plusieurs

money purchase provisions and are in accordance with subsection 8506(1), (iii) that the plan is required to provide by reason of a designated provision of the law of Canada or a province, or that the plan would be required to provide if each such provision were applicable to the plan with respect to all its members, or (iv) that the plan is required to provide to an individual who is a spouse or common-law partner or former spouse or common-law partner of a member of the plan by reason of a provision of the law of Canada or a province applicable in respect of the division of property between the member and the individual, on or after the breakdown of their marriage or common-law partnership, in settlement of rights arising out of their marriage or common-law partnership;

**8503** (2) For the purposes of paragraph 8502(c), the following benefits may, subject to the conditions set out in respect of each benefit, be provided under a defined benefit provision of a pension plan:

*Lifetime Retirement Benefits*

(a) lifetime retirement benefits provided to a member where the benefits are payable in equal periodic amounts, or are not so payable only by reason that

- (i) the benefits payable to a member after the death of the member's spouse or common-law partner are less than the benefits that would be payable to the member were the member's spouse or common-law partner alive,
- (ii) the plan provides for periodic cost-of-living adjustments to be made to the benefits, where the adjustments

(A) are determined in such a manner that they do not exceed cost-of-living adjustments warranted by increases in the Consumer Price Index after the benefits

dispositions à cotisations déterminées, qui sont conformes au paragraphe 8506(1), (iii) celles que le régime est tenu de prévoir aux termes de la disposition déterminée d'une loi fédérale ou provinciale ou celles qu'il serait tenu de prévoir si cette disposition s'appliquait au régime quant à l'ensemble de ses participants, (iv) celles que le régime est tenu de prévoir pour un particulier qui est l'époux ou le conjoint de fait ou l'ex-époux ou l'ancien conjoint de fait d'un participant aux termes d'une disposition d'une loi fédérale ou provinciale concernant le partage de biens entre le participant et le particulier au moment ou après l'échec de leur mariage ou union de fait, en règlement des droits découlant du mariage ou de l'union de fait;

**8503** (2) Pour l'application de l'alinéa 8502c), la disposition à prestations déterminées d'un régime de pension peut prévoir les prestations suivantes, sous réserve des conditions applicables à chaque type de prestation :

*Prestation viagère*

a) des prestations viagères assurées à un participant qui sont payables périodiquement en montants égaux, ou qui ne le sont pas uniquement en raison d'une des circonstances suivantes :

- (i) les prestations qui sont payables au participant après le décès de son époux ou conjoint de fait sont inférieures à celles qui lui seraient payables si son époux ou conjoint de fait était vivant,
- (ii) le régime prévoit des rajustements périodiques de coût de vie des prestations, à condition que ces rajustements, selon le cas :

(A) soient calculés de telle façon qu'ils ne dépassent pas les rajustements de coût de vie justifiés par la hausse de l'indice des prix à la consommation après le début du

commence to be paid,  
 (B) consist of periodic increases at a rate not exceeding 4 per cent per annum after the time the benefits commence to be paid,

(C) are based on the rates of return on a specified pool of assets after the benefits commence to be paid, or  
 (D) consist of any combination of adjustments described in clauses (A) to (C), and, in the case of adjustments described in clauses (C) and (D), the present value (at the time the member's benefits commence to be paid) of additional benefits that can reasonably be expected to be paid as a consequence of the adjustments does not exceed the greater of

(E) the present value (at the time the member's benefits commence to be paid) of additional benefits that could reasonably be expected to be paid as a consequence of adjustments warranted by increases in the Consumer Price Index after the member's benefits commence to be paid, and  
 (F) the present value (at the time the member's benefits commence to be paid) of additional benefits that would be paid as a consequence of adjustments at a fixed rate of 4 per cent per annum after the time the member's benefits commence to be paid,

(iii) where the plan does not provide for periodic cost-of-living adjustments to be made to the benefits, or provides only for such adjustments as are described in clause (ii)(A) or (B), the plan provides for cost-of-living adjustments to be made to the benefits from time to time at the discretion of any person, where the adjustments, together with periodic cost-of-living adjustments, if any, are warranted by increases in the Consumer Price Index after the benefits commence to be paid,

(iv) the amount of the benefits is increased as a consequence of additional lifetime retirement benefits becoming provided to

versement des prestations,  
 (B) consistent en augmentations périodiques ne dépassant pas 4 pour cent par année après le début du versement des prestations,

(C) soient fonction du taux de rendement d'un groupe déterminé de biens après le début du versement des prestations,  
 (D) soient constitués de l'un ou plusieurs des rajustements visés aux divisions (A) à (C),

dans le cas des rajustements visés aux divisions (C) et (D), la valeur actualisée, au moment du début du versement des prestations au participant, des prestations supplémentaires qui seront vraisemblablement versées par suite des rajustements ne dépasse pas la plus élevée des valeurs suivantes :

(E) la valeur actualisée, à ce moment, des prestations supplémentaires qui seront vraisemblablement versées par suite des rajustements justifiés par la hausse de l'indice des prix à la consommation après le début du versement des prestations,

(F) la valeur actualisée, à ce moment, des prestations supplémentaires qui seraient versées par suite d'un rajustement fixe de 4 pour cent par année après le début du versement des prestations,

(iii) si le régime ne prévoit pas de rajustements périodiques de coût de vie des prestations ou ne prévoit que les rajustements visés aux divisions (ii)(A) ou (B), il permet à une personne de choisir d'apporter occasionnellement des rajustements de coût de vie aux prestations, lesquels rajustements, de même que les rajustements périodiques éventuels de coût de vie, sont justifiés par la hausse de l'indice des prix à la consommation après le début du versement des prestations,

(iv) les prestations sont augmentées du fait que des prestations viagères supplémentaires commencent à être



the member under the provision;

(v) the amount of the benefits is determined with a reduction computed by reference to the member's age, duration of service, or both (or with any other similar reduction), and the amount is subsequently adjusted to reduce or eliminate the portion, if any, of the reduction that is not required for the benefits to comply with the conditions in paragraph (3)(c),

(vi) the amount of the benefits is determined with a reduction computed by reference to the following benefits and the amount is subsequently adjusted to reduce or eliminate the reduction:

(A) disability benefits to which the member is entitled under the *Canada Pension Plan* or a provincial pension plan as defined in section 3 of that Act,

(B) benefits to which the member is entitled under an employees' or workers' compensation law of Canada or a province in respect of an injury or disability, or

(C) benefits to which the member is entitled pursuant to a sickness or accident insurance plan or a disability insurance plan,

(vii) the amount of the benefits is determined with a reduction computed by reference to other benefits provided under the provision in respect of the member that are permissible under paragraph (c), (d), (k) or (n), and the amount is subsequently adjusted to reduce or eliminate the reduction,

(viii) the amount of the benefits is reduced as a consequence of benefits that are permissible under paragraph (c), (d), (k) or (n) becoming provided under the provision in respect of the member,

(ix) the amount of the benefits payable to the member while the member is in receipt of remuneration from a participating employer is less than the amount of the benefits that would otherwise be payable to the member if the member were not in

assurées au participant dans le cadre de la disposition,

(v) les prestations font l'objet d'une réduction fondée sur l'âge du participant ou sur la durée de ses services, ou sur les deux, ou d'une réduction semblable, et sont ultérieurement rajustées en vue de réduire ou d'éliminer la partie éventuelle de la réduction qui n'a pas à être opérée pour que les prestations soient conformes à l'alinéa (3)c),

(vi) les prestations font l'objet d'une réduction fondée sur les prestations suivantes et sont ultérieurement rajustées en vue de réduire ou d'éliminer la réduction :

(A) les prestations pour invalidité auxquelles le participant a droit en vertu du *Régime de pensions du Canada* ou d'un régime provincial de pensions au sens de l'article 3 de cette loi,

(B) les prestations auxquelles le participant a droit, pour une blessure ou une invalidité, en vertu d'une loi fédérale ou provinciale sur les accidents du travail,

(C) les prestations auxquelles le participant a droit aux termes d'un régime d'assurance-maladie, d'assurance-accidents ou d'assurance-invalidité,

(vii) les prestations font l'objet d'une réduction fondée sur d'autres prestations prévues pour le participant par la disposition et permises par les alinéas c), d), k) ou n), et sont ultérieurement rajustées en vue de réduire ou d'éliminer la réduction,

(viii) les prestations sont réduites du fait que les prestations permises par les alinéas c), d), k) ou n) commencent à être assurées au participant aux termes de la disposition,

(ix) les prestations payables au participant pendant qu'il reçoit une rémunération d'un employeur participant sont inférieures aux prestations qui lui seraient payables par ailleurs s'il ne recevait pas la rémunération,

receipt of the remuneration, or  
 (x) the amount of the benefits is adjusted in accordance with plan terms that were submitted to the Minister before April 19, 2000, where the benefits have commenced to be paid before 2003 and the adjustment is approved by the Minister;

**8504.** (1) For the purposes of subparagraph 8502(c)(i), the following conditions are applicable in respect of the lifetime retirement benefits provided to a member under a defined benefit provision of a pension plan:

(a) the amount (expressed on an annualized basis) of lifetime retirement benefits payable to the member for the calendar year (in this paragraph referred to as the “year of commencement”) in which the lifetime retirement benefits commence to be paid does not exceed the aggregate of

(i) the aggregate of all amounts each of which is, in respect of a calendar year after 1990 (in this paragraph referred to as a “specified year”) in which the member was, at any time, connected with an employer who participated in the plan in the year for the benefit of the member, the lesser of

(A) the amount determined by the formula  
 $.02 \times A \times (B / C)$

where

A is the aggregate of all amounts each of which is the member’s compensation for the specified year from an employer who participated under the provision in the year for the benefit of the member,

B is the greatest of all amounts each of which is the average wage for a calendar year not before the specified year and not after the year of commencement, and

C is the average wage for the specified year, and

(B) the amount determined by the formula  
 $D \times E$

(x) lorsque le versement des prestations a commencé avant 2003, les prestations font l’objet d’un rajustement, approuvé par le ministre, qui est conforme aux modalités du régime présentées au ministre avant le 19 avril 2000;

**8504.** (1) Pour l’application du sous-alinéa 8502c)(i), les conditions suivantes s’appliquent aux prestations viagères assurées à un participant aux termes de la disposition à prestations déterminées d’un régime de pension :

a) les prestations viagères, calculées sur une année, qui sont payables au participant pour l’année civile où leur versement débute (appelée «année du début» au présent alinéa) ne dépassent pas le total des montants suivants :

(i) le total des montants représentant chacun le moins élevé des montants suivants pour l’année civile postérieure à 1990 (appelée «année déterminée» au présent alinéa) où le participant est, à un moment donné, rattaché à un employeur qui, au cours de cette année, participe au régime au profit du participant :

(A) le montant calculé selon la formule suivante :

$0,02 \times A \times (B / C)$

où

A représente le total des montants correspondant chacun à la rétribution que le participant reçoit pour l’année déterminée d’un employeur qui, au cours de cette année, participe à la disposition au profit du participant;

B le plus élevé des montants représentant chacun le salaire moyen pour une année civile qui n’est ni antérieure à l’année déterminée ni postérieure à l’année du début;

C le salaire moyen pour l’année déterminée;

(B) le montant calculé selon la formule suivante :

where

D is the defined benefit limit for the year of commencement, and

E is the fraction of the specified year that is pensionable service of the member under the provision, and

(ii) the amount determined by the formula

$F \times G$

where

F is the lesser of

(A) 2 per cent of the member's highest average compensation (computed under subsection (2)) for the purpose of the provision, indexed to the year of commencement, and

(B) the defined benefit limit for the year of commencement, and

G is the aggregate of all amounts each of which is the duration (measured in years, including any fraction of a year) of a period that is pensionable service of the member under the provision and no part of which is in a specified year; and

(b) the amount of lifetime retirement benefits payable to the member for a particular calendar year after the year in which the lifetime retirement benefits commence to be paid does not exceed the product of

(i) the aggregate of the amounts determined under subparagraphs (a)(i) and (ii), and

(ii) the greatest of all amounts each of which is the ratio of

(A) the average Consumer Price Index for a calendar year not earlier than the calendar year in which the lifetime retirement benefits commence to be paid and not later than the particular year

to

(B) the average Consumer Price Index for the calendar year in which the lifetime retirement benefits commence to be paid.

$D \times E$

où

D représente le plafond des prestations déterminées pour l'année du début;

E la fraction de l'année déterminée qui est constituée de services validables accomplis par le participant dans le cadre de la disposition :

(ii) le montant calculé selon la formule suivante :

$F \times G$

où

F représente le moins élevé des montants suivants :

(A) 2 pour cent de la rétribution moyenne la plus élevée (calculée selon le paragraphe (2)) du participant dans le cadre de la disposition, indexée à l'année du début,

(B) le plafond des prestations déterminées pour l'année du début;

G le total des nombres représentant chacun la durée (en années et fractions d'année) de la période, ne faisant pas partie de l'année déterminée, qui est constituée de services validables accomplis par le participant dans le cadre de la disposition;

b) les prestations viagères qui sont payables au participant pour une année civile donnée postérieure à l'année du début de leur versement ne dépassent pas le produit des montants suivants :

(i) le total des montants calculés selon les sous-alinéas a)(i) et (ii),

(ii) le plus élevé des montants représentant chacun le rapport entre la moyenne visée à la division (A) et celle visée à la division (B) :

(A) la moyenne de l'indice des prix à la consommation pour une année civile qui n'est ni antérieure à l'année civile où le versement des prestations viagères débute, ni postérieure à l'année donnée,

(B) la moyenne de l'indice des prix à la consommation pour l'année civile où le versement des prestations viagères débute.

**8517.** (1) Subject to subsections (2) to (3.1), for the purpose of applying paragraph 147.3(4)(c) of the Act to the transfer of an amount on behalf of an individual in full or partial satisfaction of the individual's entitlement to benefits under a defined benefit provision of a registered pension plan, the prescribed amount is the amount that is determined by the formula

$$A \times B$$

where

A is the amount of the individual's lifetime retirement benefits under the provision commuted in connection with the transfer, as determined under subsection (4), and B is

(a) the present value factor that corresponds to the age attained by the individual at the time of the transfer, determined pursuant to the table to this subsection, or

(b) where the present value factor referred to in paragraph (a) is less than the present value factor that corresponds to the next higher age, the present value factor determined by interpolation between those two factors on the basis of the age (expressed in years, including any fraction of a year) of the individual.

*Amount of Lifetime Retirement Benefits Commuted*

(4) For the purposes of subsection (1), and subject to subsection (7), the amount of an individual's lifetime retirement benefits under a defined benefit provision of a registered pension plan commuted in connection with the transfer of an amount on behalf of the individual in full or partial satisfaction of the individual's entitlement to benefits under the provision is the aggregate of

(a) where retirement benefits have commenced to be paid under the provision to the individual, the amount (expressed on an annualized basis) by which the individual's lifetime retirement benefits

**8517.** (1) Pour l'application de l'alinéa 147.3(4)c) de la Loi aux transferts de montants pour le compte d'un particulier en règlement total ou partiel de son droit aux prestations prévues par une disposition à prestations déterminées d'un régime de pension agréé, et sous réserve des paragraphes (2) à (3.1), le montant prescrit est calculé selon la formule suivante :

$$A \times B$$

où

A représente le montant, calculé au paragraphe (4), des prestations viagères assurées au particulier par la disposition qui sont rachetées en vue du transfert;

B représente :

a) le facteur de valeur actualisée qui correspond à l'âge du particulier au moment du transfert, établi selon le tableau ci-après;

b) si le facteur de valeur actualisée visée à l'alinéa a) est inférieur à celui qui correspond à l'âge immédiatement supérieur, le facteur de valeur actualisée établi par interpolation entre ces deux facteurs en fonction de l'âge (en années et fractions d'année) du particulier.

*Prestations viagères rachetées*

(4) Pour l'application du paragraphe (1) et sous réserve du paragraphe (7), le montant des prestations viagères assurées à un particulier aux termes de la disposition à prestations déterminées d'un régime de pension agréé qui sont rachetées en vue du transfert d'un montant pour le compte du particulier en règlement total ou partiel de son droit aux prestations prévues par la disposition est égal au total des montants suivants :

a) si des prestations de retraite ont commencé à être versées au particulier aux termes de la disposition, le montant, calculé sur une année, qui est appliqué, par suite du transfert, en réduction des prestations

under the provision are reduced as a result of the transfer,

(b) where retirement benefits have not commenced to be paid under the provision to the individual, the amount (expressed on an annualized basis) by which the individual's normalized pension (computed in accordance with subsection (5)) under the provision at the time of the transfer is reduced as a result of the transfer, and

(c) where, in conjunction with the transfer, any other payment (other than an amount that is transferred in accordance with subsection 147.3(5) of the Act or that is transferred after 1991 in accordance with subsection 147.3(3) of the Act) is made from the plan in partial satisfaction of the individual's entitlement to benefits under the provision, the amount (expressed on an annualized basis) by which

(i) if paragraph (a) is applicable, the individual's lifetime retirement benefits under the provision are reduced, and

(ii) if paragraph (b) is applicable, the individual's normalized pension (computed in accordance with subsection (5)) under the provision at the time of the payment is reduced,

as a result of the payment, except to the extent that such reduction is included in determining, for the purposes of subsection (1), the amount of the individual's lifetime retirement benefits under the provision commuted in connection with the transfer of another amount on behalf of the individual.

#### *Normalized Pensions*

(5) For the purposes of subsection (4), the normalized pension of an individual under a defined benefit provision of a registered pension plan at a particular time is the amount (expressed on an annualized basis) of lifetime retirement benefits that would be payable under the provision at the particular time if

(a) lifetime retirement benefits commenced to be paid to the individual at the particular

viagères prévues pour le particulier par la disposition;

b) sinon, le montant, calculé sur une année, qui est appliqué, par suite du transfert, en réduction de la pension normalisée, déterminée en conformité avec le paragraphe (5), prévue pour le particulier par la disposition au moment du transfert;

c) lorsque, au moment du transfert, un autre montant (sauf un montant transféré en conformité avec le paragraphe 147.3(5) de la Loi ou transféré après 1991 en conformité avec le paragraphe 147.3(3) de la Loi payé sur le régime est versé en règlement partiel du droit du particulier aux prestations prévues par la disposition, le montant, calculé sur une année, qui est appliqué, par suite du versement, en réduction :

(i) en cas d'application de l'alinéa a), des prestations viagères prévues pour le particulier par la disposition,

(ii) en cas d'application de l'alinéa b), de la pension normalisée, déterminée en conformité avec le paragraphe (5), prévue pour le particulier par la disposition au moment du versement, sauf dans la mesure où le montant de la réduction est inclus dans le calcul, pour l'application du paragraphe (1), des prestations viagères prévues pour le particulier par la disposition qui sont rachetées en vue du transfert d'un autre montant pour son compte.

#### *Pension normalisée*

(5) Pour l'application du paragraphe (4), la pension normalisée prévue pour un particulier à un moment donné par la disposition à prestations déterminées d'un régime de pension agréé est égale aux prestations viagères, calculées sur une année, qui seraient payables aux termes de la disposition à ce moment, si les hypothèses suivantes étaient admises :

a) les prestations viagères commencent à

time;

(b) where the individual has not attained 65 years of age before the particular time, the individual attained that age at the particular time;

(c) all benefits to which the individual is entitled under the provision were fully vested;

(d) where the amount of the individual's lifetime retirement benefits would otherwise be determined with a reduction computed by reference to the individual's age, duration of service, or both, or with any other similar reduction, no such reduction were applied;

(e) where the amount of the individual's lifetime retirement benefits depends on the amount of benefits provided under another benefit provision of the plan or under another plan or arrangement, a reasonable estimate were made of those other benefits;

(f) where the individual's lifetime retirement benefits would otherwise include benefits that the plan is required to provide by reason of a designated provision of the law of Canada or a province, or that the plan would be required to provide if each such provision were applicable to the plan with respect to all its members, such benefits were not included; and

(g) except as otherwise provided by subsection (6), where the amount of the individual's lifetime retirement benefits depends on

(i) the form of benefits provided with respect to the individual under the provision (whether or not at the option of the individual), including

(A) the benefits to be provided after the death of the individual,

(B) the amount of retirement benefits, other than lifetime retirement benefits, provided to the individual, or

(C) the extent to which the lifetime retirement benefits will be adjusted to reflect changes in the cost of living, or

(ii) circumstances that are relevant in

être versées au particulier au moment donné;

b) si ce n'est pas déjà fait avant le moment donné, le particulier atteint 65 ans au moment donné;

c) toutes les prestations auxquelles le particulier a droit aux termes de la disposition lui sont acquises intégralement;

d) lorsque les prestations viagères du particulier feraient l'objet par ailleurs d'une réduction fondée sur l'âge du particulier ou sur la durée de ses services, ou sur les deux, ou d'une autre réduction de même nature, aucune réduction de ce type n'est opérée;

e) les prestations viagères du particulier qui sont fonction des prestations prévues par une autre disposition à cotisations ou à prestations déterminées du régime ou par un autre régime ou mécanisme font l'objet d'une estimation raisonnable;

f) il n'est pas tenu compte des prestations viagères du particulier qui comprennent par ailleurs des prestations que le régime doit prévoir en application de la disposition déterminée d'une loi fédérale ou provinciale, ou qu'il devrait prévoir si cette disposition s'appliquait au régime quant à tous ses participants;

g) sauf disposition contraire du paragraphe (6), lorsque les prestations viagères du particulier sont fonction, selon le cas :

(i) du type de prestations assurées au particulier aux termes de la disposition, indépendamment du fait qu'il les a choisies, et notamment :

(A) des prestations à verser après le décès du particulier,

(B) des prestations de retraite, à l'exception des prestations viagères, prévues pour le particulier,

(C) des rajustements de coût de vie dont les prestations viagères feront l'objet,

(ii) des circonstances à prendre en compte

determining the form of benefits,  
the form of benefits and the circumstances  
were such as to maximize the amount of  
the individual's lifetime retirement benefits  
on commencement of payment.

dans la détermination du type de  
prestations,  
le type de prestations et les circonstances  
sont tels qu'ils portent au maximum les  
prestations viagères du particulier au début  
du versement.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-116-09

**(APPEAL FROM AN ORDER OF BÉDARD J. OF THE TAX COURT OF CANADA  
DATED FEBRUARY 2, 2009 (2009TCC80)).**

**STYLE OF CAUSE:** Her Majesty the Queen v. Marvyn  
Yudelson

**PLACE OF HEARING:** Montréal, Quebec

**DATE OF HEARING:** January 27, 2010

**REASONS FOR JUDGMENT BY:** TRUDEL J.A.

**CONCURRED IN BY:** BLAIS C.J.  
LÉTOURNEAU J.A.

**DATED:** February 15, 2010

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