

GROUPE DE TRAVAIL SUR LA QUESTION DES CLAUSES DE DISPARITÉ DE TRAITEMENT DANS LES RÉGIMES DE RETRAITE

Current situation and potential solutions

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Legal deposit – November 2017
Bibliothèque et Archives nationales du Québec
ISBN 978-2-550-80213-6 (PDF)

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INTRODUCTION

Since the early 2000s, the financial situation of some pension plans has deteriorated, mainly as a result of the drop in interest rates, rising life expectancy, and financial crises. This deterioration has pushed up costs for some plans, sparking a reflection on their future. In response to the problem, some pension plans and collective agreements have introduced clauses that create disparity in the treatment of employees based solely on their hiring date. These clauses are also known as “orphan clauses.”

In these cases, a compromise seeking—among other things—not to impose a decrease in compensation on all employees, resulted in revisions that make pension plans less generous for employees hired as of a certain date.

These disparity in treatment clauses have been criticized by various Québec groups and bodies, including union federations¹ and groups that advocate for youth rights,² which are demanding their removal from pension plans on the grounds that such clauses undermine intergenerational equity. Employer organizations³ for their part cite rising labour costs and the need to remain competitive as the main reasons for approving disparity in treatment clauses. They point out that removing these clauses would harm them financially and insist on the fact that many of them were negotiated.

— According to the report of the Expert Committee on the Future of the Québec Retirement System (the “D’Amours report”), the conversion of defined benefit plans to defined contribution plans is a regrettable trend from an intergenerational standpoint.⁴

Union federations and youth groups recently joined forces to ask the government to study the question, pointing out that this trend has increased in recent years.

It is against this backdrop that André Fortin, then Parliamentary Assistant to the Minister of Finance, was tasked with chairing a task force to study the question of disparity in treatment clauses in employers’ pension plans. The task force, comprised of representatives from the Ministère des Finances, the Ministère du Travail, de l’Emploi et de la Solidarité sociale and Retraite Québec, was tasked with analyzing the change in pension plans and describing the scope of the social and economic issues associated with disparity in treatment.⁵

¹ In particular, the Fédération des travailleurs et travailleuses du Québec and the Confédération des syndicats nationaux.

² Force Jeunesse and the Quebec Liberal Party Youth Commission.

³ In particular, the Conseil du patronat du Québec and the Fédération des chambres de commerce du Québec.

⁴ Expert Committee on the Future of the Québec Retirement, *Innovating for a Sustainable Retirement System*, [Report], 2013, page 94.

⁵ http://www.finances.gouv.qc.ca/documents/Communiqués/fr/COMFR_20161209.pdf (French only).

Divided into five chapters, this report describes the problem of disparity in treatment in pension plans based solely on hiring date and proposes potential solutions.

- Chapter 1 describes the government's mandate to the task force and the scope of this analysis.
- Chapter 2 explains the current legislative framework governing disparity in treatment and defines the main types of pension plans.
- Chapter 3 analyzes the scope of the phenomenon of disparity in treatment clauses in pension plans and collective agreements.
- Chapter 4 presents:
 - potential solutions for prohibiting disparity in treatment in pension plans based solely on hiring date;
 - the social and economic issues associated with such a prohibition;
 - things to think about in connection with the proposed solutions.
- Chapter 5 discusses things to consider with regard to disparity in treatment in group insurance.
- Chapter 6 presents the conclusion and recommendations.

1. MANDATE OF THE TASK FORCE

While serving as Parliamentary Assistant to the Minister of Finance, André Fortin, MNA for Pontiac and Minister of Transport, Sustainable Mobility and Transport Electrification, was asked to chair a task force comprised of representatives from the Ministère des Finances, the Secrétariat du travail⁶ and Retraite Québec to study the problem of disparity in treatment based solely on hiring date in pension plans.

To fulfill its mandate, the task force was required to analyze the scope of the phenomenon of disparity in treatment clauses in both collective agreements and pension plan contracts in Québec.

Based on its findings, it then had to study and recommend potential solutions to the government. These recommendations had to, in particular, respect the principle of intergenerational equity while allowing employers to maintain some measure of flexibility in establishing their pension plans.

The task force also examined disparity in treatment clauses in group insurance, which although not as prevalent, are just as important for organizations that lobby against their inclusion in pension plans.

⁶ The Secrétariat du travail, formerly known as the Ministère du Travail, is a part of the Ministère du Travail, de l'Emploi et de la Solidarité sociale.

❑ Scope of the analysis

Although the disparity in treatment problem may affect all pension plans, the analysis performed by Retraite Québec initially focused on pension plans that met two criteria:

- they were under the supervision of Retraite Québec;
- they had two components: defined benefits for employees hired before a certain date and defined contributions for those hired as of that date.

For example, the following plans were excluded from the analysis:

- public sector plans administered by Retraite Québec;
- group retirement savings plans such as registered retirement savings plans (RRSPs) and voluntary retirement savings plans (VRSPs);
- multi-jurisdiction plans in which fewer employees participate in Québec than elsewhere in Canada.⁷

Other plans that might contain disparity in treatment clauses were also excluded, such as defined benefit plans:

- closed to new employees, without being offered any plan under the supervision of Retraite Québec;⁸
- offered to all employees but that contain less generous provisions for new employees.

As regards the collective agreement analysis by the Secrétariat du travail, it covers businesses whose employees are unionized and whose collective agreement provides for a pension plan.

⁷ When the plan has members from more than one province, it is supervised by the authority of the province that has the greatest number of active members.

⁸ According to Retraite Québec, while this applies to about 40 defined benefit plans under its supervision with approximately 2 700 active members, this situation is marginal since it affects only 0.6% of defined benefit plan members.

2. BACKGROUND AND DEFINITIONS

Chapter 2 presents:

- the current legislative framework governing labour standards;
- the means available to employees to state their terms and conditions to employers;
- the prohibition of disparity in treatment in comparable countries;
- the current legislative framework governing pension plans;
- definitions of the main types of pension plans offered in Québec.

2.1 Current legislative framework

2.1.1 Labour standards⁹

In the 1990s, unions and youth groups demanded that disparity in the treatment of workers' wages be prohibited.

In response, Bill 67, *An Act to amend the Act respecting labour standards as regards differences in treatment*,¹⁰ was assented to on December 20, 1999 by the National Assembly. The purpose of the bill was to amend the *Act respecting labour standards* and prohibit disparity in treatment in certain matters covered by labour standards, including wages, duration of work, statutory general holidays with pay, and vacations.

Based on the principle of fairness toward young workers, the provisions of this bill aimed to prevent an employee from being granted, solely on an hiring date basis, a condition of employment that is less advantageous than that granted to other employees performing the same tasks in the same establishment.

These provisions have been in force since March 2000 for unionized employees, since July 2000 for non-unionized employees and since January 2001 for employees subject to collective agreement decrees.¹¹

Section 87.1 of the *Act respecting labour standards*

No agreement or decree may, with respect to a matter covered by a labour standard that is prescribed by Divisions I to V.1, VI and VII of this chapter and is applicable to an employee, operate to apply to the employee, solely on the basis of the employee's hiring date, a condition of employment less advantageous than that which is applicable to other employees performing the same tasks in the same establishment.

The same applies in respect of a matter corresponding to any of the matters referred to in the first paragraph where a labour standard pertaining to that matter has been fixed by regulation.

1999, c. 85, s. 2; 2002, c. 80, s. 55.

During the consultations on Bill 67, employer organizations¹² pointed out the harmful consequences of prohibiting disparities in the treatment of employees, in particular, job insecurity and youth unemployment.¹³

For their part, labour and youth organizations welcomed the legislation but considered that it did not go far enough and would have preferred to see a prohibition of all types of disparity against all employees.

⁹ For more details on disparity in treatment in the *Act respecting labour standards*, see Appendix 1.

¹⁰ Bill No. 67 (1999, chapter 85).

¹¹ A collective agreement decree is a government regulation that allows a collective agreement to be extended and that binds employees and employers in certain sectors.

¹² The Conseil du patronat du Québec and the Canadian Federation of Independent Business.

¹³ From briefs filed during the public hearings held by the Committee on Labour and the Economy from September 21 to October 6, 1999.

❑ Québec: A leader in Canada

According to the analysis of the Secrétariat du travail, Québec is the only province to prohibit, as regards certain matters covered by labour standards, disparity in treatment based solely on hiring date. No other province has such a prohibition.

Like Québec, the governments of the other Canadian provinces do not prohibit disparity in treatment in pension plans based solely on hiring date.

Québec is therefore a leader in Canada in the prohibition of disparity in treatment with respect to certain matters covered by labour standards.

❑ Broadening the scope of the *Act respecting labour standards* to pension plans

Pension plans are not subject to the prohibition of disparity in treatment prescribed by the *Act respecting labour standards* as the benefits they provide are not considered wages.

Some groups are lobbying to have the prohibition of disparity in treatment in the *Act respecting labour standards* expanded to pension and group insurance plans. According to these groups:

- disparity in treatment clauses in pension plans indirectly discriminate based on age and undermine intergenerational equity;
- the disparities in pension plans affect the current and future incomes of younger generations and make it harder for young workers to build a decent retirement income.

The justification for disparity in treatment clauses as regards workers' wages

The briefs¹ submitted during the Bill 67 consultations shed light on the context and reasons justifying the implementation of disparity in treatment clauses by employers. Several factors explain their appearance:

- the arrival of new information and communication technologies, which led to the emergence of the knowledge economy and greater adaptability by labour market players (business mobility, mergers, etc.);
- corporate reorganizations, which create a sense of insecurity and uncertainty;
- the growing importance of the service industry (a closed, almost saturated market with fierce competition and high labour costs);
- business strategies in response to competition and the need to raise productivity, both of which put pressure on unions during negotiations;
- the cost of complying with labour legislation (e.g. *Pay Equity Act*, *Act respecting workforce vocational training and qualification*), which puts pressure on employers and leads them to cut labour costs.

¹ Forty-two briefs were filed and studied by the parliamentary committee during the Bill 67 consultations.

☐ **Means available to employees to state their terms and conditions to employers**

☒ **Unionized employees**

The Québec *Labour Code* governs the collective bargaining process for unionized employees. During the bargaining period, the union submits and negotiates its proposals with the employer. The parties are required to negotiate diligently and in good faith. If an agreement cannot be reached, employees can exert pressure tactics that can go as far as a strike. When there is a collective agreement, it sets out the work conditions for all the employees covered by the agreement.

A collective agreement can be amended during its term by way of a letter of agreement. The union can also file a grievance in the event of a disagreement or to protect employees' rights. The grievance can be submitted to arbitration following the procedure in the collective agreement or, failing that, the procedure in the Québec *Labour Code*.

If a dispute concerns a pension plan not provided for in the collective agreement, the union has no other recourse than negotiation. Only the employer, or the employer and the union, depending on the rules in the pension contract, can make changes to the plan.

☒ **Non-unionized employees**

The work conditions of non-unionized employees depend on their individual negotiating power with their employer. There is no legal recourse if the employer refuses the terms and conditions during the negotiations.

If the employer does not respect the agreed conditions, the employee can turn to the courts. The *Act respecting labour standards* sets out the minimum labour standards to which an employer must adhere.

If it fails to do so, the employee can seek recourse through the Commission des normes, de l'équité, de la santé et de la sécurité du travail (CNESST), for example, in the event of disagreement regarding the payment of wages or termination without just and sufficient cause.

☒ **Disparity in treatment provisions**

The provisions of the *Act respecting labour standards* prohibit disparity in treatment based solely on hiring date for both non-unionized employees and employees covered by a collective agreement.

Employees covered by a collective agreement can either use the grievance procedure or file a complaint with the CNESST. In the second case, they must prove, at the time of filing, that they did not use the recourses provided for by the collective agreement or its governing decree. If they did, they must withdraw the complaint before the CNESST renders a decision.

Non-unionized employees must submit their complaints to the CNESST. If it is deemed admissible, the complaint will be investigated by the CNESST.

If disparities in treatment are discovered in violation of the Act, the CNESST will ask the employer to remedy the situation. The CNESST can turn to the courts if the violations are not corrected.

❑ Prohibition of disparity in treatment in comparable countries

A comparative analysis was performed to find out whether other countries contained provisions in their labour legislation prohibiting disparity in treatment, particularly in pension plans.¹⁴

The countries selected for the analysis were Australia, the United States, France, New Zealand and the United Kingdom.

The findings show that only France prohibits disparity in treatment in pension plans.

TABLE 1

Comparison between Québec and some countries with similar labour legislation

Jurisdiction	Reference legislation	Prohibition in pension plans
France	France's <i>Code du travail</i> defines the concept of equal pay for equal work as follows: the compensation must be based on objective criteria (labour code article L2261-22 states that collective agreements must contain provisions on equal treatment and prevention of discrimination). Case law shows that equal pay assumes that the employer will pay the same wages to employees in the same situation. Pay includes all the benefits and perquisites (article L3221-3). The sole fact that employees were hired before or after the effective date of a collective agreement does not justify a difference in pay between them (ref.: Cour de cassation).	Yes According to labour code article L3221-3, the pension plan is included in the concept of benefits and compensation. Therefore, for equal work, employees cannot have different pension plans solely because of their hiring date. However, different pension plans may be offered to employees based on their occupational group.
United States (federal)	Section 6 of the <i>Fair Labor Standards Act 1938</i> allows employers, in certain cases, to pay a lower minimum wage to young workers. The United States has a two-tier system in which one employee group receives lower benefits than another.	No
Australia	There is no specific legal provision; however, the Fair Work Commission ensures that agreements (modern awards) contain fair and relevant conditions. Section 284 of the <i>Fair Work Act 2009</i> sets a special minimum wage for certain employees, including those with less seniority ("junior employees") and those with a disability.	No
United Kingdom	Section 4 of the <i>National Minimum Wage Regulations 2015</i> sets out minimum wage rates that differ by age.	No
New Zealand	Section 4 of the <i>Minimum Wage Act 1983</i> states that different wage rates can apply depending on the employee's age. Section 104 of the <i>Employment relations Act 2000</i> sets out prohibited grounds of discrimination concerning, in particular, conditions of work and fringe benefits, for example, sex, marital status and religious beliefs.	No

¹⁴ It is important to point out that the findings are based solely on information found by the Secrétariat du travail on the websites of the countries analyzed. The interpretation of this information was not validated with the authorities of the countries concerned.

2.1.2 Pension plans

The *Supplemental Pension Plans Act*¹⁵ governs pension plans in the private, municipal and university sectors for jobs under provincial jurisdiction. This statute, which came into force on January 1, 1990, does not address disparity in treatment clauses in pension plans based solely on hiring date.

In the 1980s, the economic situation led to a surge in unstable, part-time jobs (occasional, temporary and contract work). To ensure these workers have the same opportunities to save for retirement as other workers, section 34 of the *Supplemental Pension Plans Act* stipulates that under certain conditions, workers with unstable employment are entitled to enrol in their employer's pension plan or in a similar plan.

Section 34 of the <i>Supplemental Pension Plans Act</i>
Unless another plan providing similar benefits in which he is eligible for membership is established, an employee is entitled to become a member of a pension plan, on the same conditions as those applicable to other members, if his employment is similar or identical to that of members belonging to the class of employees for whom the plan is established and if, in the calendar year preceding his application for membership, he met either of the following requirements: 1° he received from the employer a remuneration equal to or greater than 35% of the Maximum Pensionable Earnings, established for the reference year in accordance with the <i>Act respecting the Québec Pension Plan</i> (chapter R-9); 2° he completed at least 700 hours of employment with the employer. (...)

❑ Section 34 does not prohibit disparity in treatment in pension plans

Representatives from the labour movement have recently been claiming that section 34 of the *Supplemental Pension Plans Act* prohibits disparity in treatment in pension plans based solely on hiring date.

However, Retraite Québec is not aware of any case where a court has upheld this interpretation of section 34. Retraite Québec has never refused to register a plan provision that creates disparity in treatment based solely on hiring date and has always considered that such a provision does not violate the *Supplemental Pension Plans Act*.¹⁶

Between 1985 and the early 1990s, the federal and other provincial governments¹⁷ introduced a rule in their legislation similar to the one in section 34 of Québec's *Supplemental Pension Plans Act*. Their interpretation of this rule was the same, namely, that it prohibits discrimination between full- and part-time employees and between permanent employees and those without job security but does not prevent disparity in treatment based solely on hiring date.

¹⁵ *Supplemental Pension Plans Act* (chapter R-15.1).

¹⁶ According to Retraite Québec, the prohibition of disparity in treatment in pension plans was never contemplated by section 34 of the *Supplemental Pension Plans Act* since this was not a concern when this section was drafted.

¹⁷ Except for Prince Edward Island, where pension plans are not governed by legislation.

2.2 Main types of pension plans

This section describes the main types of pension plans:

- defined benefit plans;
- defined contribution plans;
- other types of pension plans.

The descriptions of the defined benefit and defined contribution plans are presented based on the following characteristics:

- the way the pension is calculated, for example, based on a set contribution or on an accrual rate based on years of service;
- management of the risks associated with funding sufficiency;
- plan administration, including whether there is a need for an actuarial analysis.

□ Pension plan categories

There are essentially two main pension plan categories:

- defined benefit;
- capital accumulation.

■ Defined benefit plan category

In a defined benefit plan, the amount of the pension is set in advance according to a specific formula that factors in salary and years of membership.

There are various defined benefit plans, including:

- traditional defined benefit plans;
- defined benefit and defined contribution plans;
- member-funded plans;
- target-benefit plans, currently restricted to the pulp and paper industry.

■ Capital accumulation pension plan category

In a capital accumulation pension plan, members accumulate money for retirement and not a specific pension amount based on salary and years of membership.

Capital accumulation plans include:¹⁸

- defined contribution plans, including simplified pension plans;
- registered retirement savings plans;
- voluntary retirement savings plans.

¹⁸ Tax-free savings accounts are not usually considered pension plans.

2.2.1 Defined benefit plans

❑ Pension calculation

A fundamental characteristic of the defined benefit plan is that the pension amount to be received by the member is set in advance. The plan usually sets out a method for calculating the employee's contributions.

It also states that the employer's contributions must be equal to the balance of the plan's cost, in other words, the employer's contributions must be sufficient to pay the promised benefits.

Thus, the employee's contribution is set but the employer's is not.

❑ Risk management

With a defined benefit plan, the employer essentially shoulders the risk. If the plan's assets are insufficient to pay the pensions and other benefits promised, the employer must pay the difference.

With this type of plan, the risk can play either in favour of or against the plan sponsor (the employer). For instance, the risk can be in the employer's favour when the plan's cost is lower due to higher investment returns or when the cost of benefit payments is lower than projected.

❑ Plan administration

The financial situation of defined benefit plans must be periodically evaluated to establish the value of its assets and liabilities in order to determine whether:

- the year's contributions need to be adjusted;
- amortization payments are required (in the event of a deficit).

The special case of member-funded pension plans
A member-funded pension plan is a defined benefit plan with special rules, namely: – plan members, rather than the employer, assume the balance of the plan's cost and are therefore responsible for covering any deficit either by raising the contributions or reducing future benefits; – to limit the financial risk for members, the plan may not provide for the automatic indexation of pensions, but it must be funded as if it did; – members who leave their employer receive their share of the surplus or assume their share of the deficit, as the case may be; – any surplus must first be used to index members' pensions, as needed.

2.2.2 Defined contribution plans

☐ Pension calculation

In a defined contribution plan, the amount of the contribution is set in advance but the retirement income is unknown.

In other words, the exact amount of the pension payment is not guaranteed. The pension will depend on the total amount accumulated in the member's account.

More specifically, the account balance—including the contributions made and interest earned—is generally used to buy an annuity from an insurer or is transferred to a life income fund.

☐ Risk management

The risks associated with a defined contribution plan are different from those associated with a defined benefit plan. More specifically, the risks associated with fluctuations in the performance of the assets will cause variability in members' pensions. These risks are assumed entirely by the plan's members and not by the employer.

☐ Plan administration

A defined contribution plan is easier to administer, mainly because the pension amount does not have to be calculated; it is simply the account balance.

Also, no actuarial valuation is required; the employer's only financial obligation is to make the pre-set contribution.

The special case of simplified pension plans
A simplified pension plan is basically a defined contribution plan with special rules, namely: – it is administered by a financial institution as opposed to a pension committee; – member contributions can be placed in either a locked-in or a not locked-in account; – members who leave their employer must transfer the accumulated funds. They cannot remain in the pension fund; – investments cannot be made collectively. Members individually choose their own investments, and the choice is limited.

❑ **Combination plans: plans with both defined benefit and defined contribution components**

A plan does not have to be either one or the other, namely, defined benefit or defined contribution. A plan can offer more than one type of coverage. The pension benefits in a combination plan typically include:

- a defined contribution component, which provides for a pension based on the amounts deposited in the plan member's account;¹⁹
- a defined benefit component, which provides for a pre-set pension amount.

■ **Disparity in treatment based solely on hiring date**

Combination plans do not necessarily include disparity in treatment clauses based solely on hiring date. Both plan components can be defined based on other criteria. For example:

- a defined benefit component for management personnel and a defined contribution component for the other employees;
- a defined benefit component for years of service before a given date and a defined contribution component for years of service thereafter, for all employees.

Combination plans contain disparity in treatment clauses based solely on hiring date if, for example, the following two conditions are present:

- employees hired before a given date participate in the defined benefit component;
- employees hired after such date participate in the defined contribution component.

Shifting the risk to plan members

Some workers, including those who do not plan to remain with their employer for the long term, might be better served by joining a defined contribution plan rather than a defined benefit plan. However, there is a fundamental difference between the two in terms of risk, which is essentially assumed by the employer in the first case but by the plan members in the second. There are basically two types of risk:

- financial risk, tied to the pension fund's performance;
- longevity risk, which is the probability of individuals outliving their retirement savings.

Thus, if a pension plan contains a defined benefit component for long-standing employees and a defined contribution component, at the same cost, for new employees, the level of risk will be different even if the cost is the same. For the new employees enrolled under the defined contribution component, the risk is then shifted from the employer to the plan members.

The cost of this risk shifting is difficult to quantify. For the same annual contribution, members under the defined contribution component can expect to receive lower pension benefits.

¹⁹ The contributions to the member's account are set in advance.

Defined benefit plans are not always the most advantageous

There is a broad consensus that members of a defined benefit plan are better off than members of a defined contribution plan. At equal cost, this is usually true—but not always, and not for everyone. The two examples that follow confirm this:

Example 1

A plan provides for a contribution that corresponds to 10% of salary for a year.

- In a defined benefit plan, the value of the pension that the member accumulates during the year represents less than this 10% if young and more than 10% if older.¹
- In a defined contribution plan, regardless of age, it is this 10% that accumulates in the member's account.

Accordingly, if only this factor is considered, the younger member accumulates more in the defined contribution plan for the current year. Thus, the defined contribution plan may be more advantageous for someone who participates in the plan at the beginning of their career only.

Example 2

Luce is 65 years of age and has a pension worth \$200 000 from her defined benefit plan. This pension is guaranteed five years. Luce receives an annual amount of \$14 500. Brigitte, also 65 years of age, has \$200 000 in her life income fund. She is allowed a maximum withdrawal of \$14 400 in 2017 and variable withdrawals afterwards, which will depend on the balance of her life income fund. Luce and Brigitte die after five years (at age 70) and do not have a spouse.

- Luce will have received \$72 500, and no death benefit or additional amounts will be paid to her succession.
- Brigitte will have withdrawn approximately \$69 400, and the balance, approximately \$166 600,² will be paid to her succession. Brigitte's heirs therefore benefit.

It can never be affirmed without the shadow of a doubt whether the defined contribution plan or the defined benefit plan is better, for the same contribution level for a given person— at least, not until their death. The answer depends on a host of factors, including future events out of the member's control.³ Remember, however, that at equal cost, the defined benefit plan will often be more advantageous than the defined contribution plan, since:

- investments in the defined benefit plan are made collectively by professional managers. In a defined contribution plan, they are often made individually by the members themselves, and available choices are limited. It is observed that returns obtained are significantly lower for these members;
- when returns do not match expectations, the employer will most often not increase its rate of contribution to the defined contribution plan, but will make additional payments to the defined benefit plan to make up the shortfall;
- in a defined benefit plan, those who die early leave the rest of their savings for those who die later. So there is a mutualization, namely, insurance against the longevity "risk." In a defined contribution plan, members must save more to "self-insure" against this risk.

¹ For a defined benefit plan, the member's rights are recorded in the form of a pension amount and not in the form of capital. The plan administrator must therefore determine the amount of capital required in order to have enough money to pay the pension amount (value of benefits). This amount of capital must be estimated taking into account a series of factors including the member's age. For a pension of the same value, the pension plan needs less capital for younger members, since they have more time to invest this capital to reach the desired pension level.

² Assuming a return of 4% a year.

³ Including age at the beginning of plan membership, at retirement or upon death, the career path in the company, the terms of the plan for departures before retirement, the returns made with the contributions—which depend on investments and fees, plan provisions for the payment of benefits based on the plan's financial situation, the financial position of the company—which influences its ability to make up plan deficits, and methods chosen to generate income upon retirement.

2.2.3 Other types of pension plans

Other types of pension plans are:

- hybrid pension plans;
- defined benefit and defined contribution plans;
- target-benefit pension plans.

☐ Hybrid pension plans

Hybrid pension plans are not very common and often confused with combination plans. In a hybrid plan, the contribution is defined, but the benefits are only partially defined.

Usually, for a single pension, the plan outlines defined contribution provisions, on top of a small pension from the defined benefit component.

☐ Defined benefit and defined contribution plans

A defined benefit and defined contribution plan is a plan where the contribution and the pension are determined in advance. Upon retirement, the defined benefit takes precedence. Members will be entitled to the promised pension amount, regardless of the total contributions with interest accumulated in their account.

Unlike what happens in a regular defined benefit plan, if an actuarial valuation shows that the contributions provided for in the plan are not enough to pay the promised benefits, changes must be made to the plan, for example by increasing contributions or reducing benefits.²⁰

☐ Target-benefit pension plans

Currently, target-benefit pension plans are only allowed in Québec in a limited way, and only in the pulp and paper sector. Like the defined benefit and defined contribution plan, the contribution and pension are determined in advance.

However, in such a plan, if an actuarial valuation shows that contributions are insufficient, the employer is not required to make an additional contribution.

The financial situation will be mended by increasing the salary contribution or reducing the benefits. Accordingly, the risk is supported by the members.

²⁰ If these changes are not made, the employer's contribution must be increased to fund the balance. However, special rules that apply to most of these plans were recently adopted. Under these rules, the employer's contribution is not automatically increased but there is an obligation for a recovery plan.

Findings – Chapter 2

Québec is demonstrating Canadian leadership

Québec is the only province to prohibit disparity in treatment based solely on hiring date in its labour standards. No other province prohibits such disparity in its employment standards.

- The federal government and the governments of other Canadian provinces do not prohibit disparity in treatment in pension plans based solely on hiring date.

And if Québec were to prohibit disparity in treatment in pension plans solely based on hiring date, it would be the only jurisdiction in Canada to do so, which would cause application difficulties in multi-jurisdiction plans.¹

The disparity in treatment in pension plans can be reflected in the transfer of risk to members

There are many types of plans, including defined benefit plans, where the employer bears the risk, and defined contribution plans, where members do. A single plan can combine these two types of operation.

Cases of disparity in treatment based solely on hiring date occur mainly in plans that were originally defined benefit plans only. These plans are amended to add a defined contribution component for new members.

¹ For more details about multi-jurisdiction plans, see chapter 4.

3. ILLUSTRATIONS OF THE PHENOMENON OF DISPARITY IN TREATMENT CLAUSES IN PENSION PLANS AND COLLECTIVE AGREEMENTS

Chapter 3 aims to assess through sampling the scope of the phenomenon of disparity in treatment clauses in pension plans based solely on hiring date. Such disparity often takes the form of adding a defined contribution component to the pension plan for employees hired as of a certain date.

The scope of the phenomenon is presented using a partial analysis,²¹ from these two perspectives:

- that of defined benefit pension plans in the private, municipal and university sectors, which are under the supervision of Retraite Québec and offer two components, including a defined contribution component based solely on hiring date;
- that of the unionized worker environment, based on collective agreements from both the private and public sectors.

²¹ For more details on the methodology used by Retraite Québec and the Secrétariat du travail in the partial analysis, see Appendix 2.

3.1 Partial view of pension plan contracts

❑ Drop in defined benefit plan membership

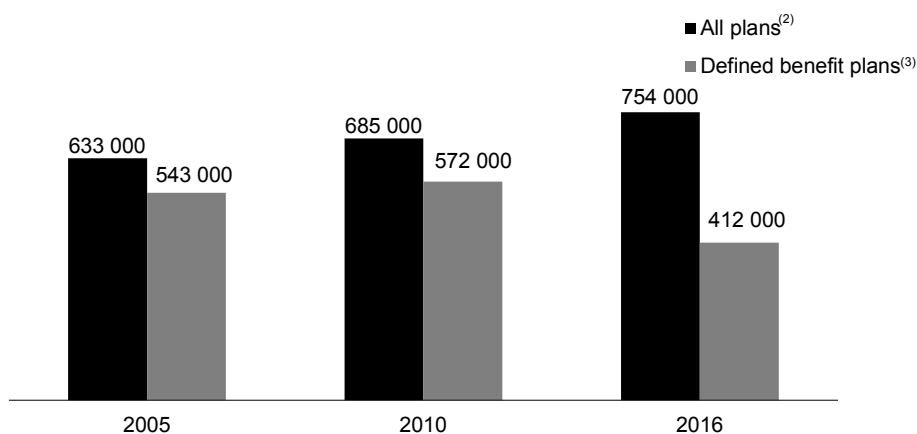
Since 2005, the number of active members of defined benefit pension plans (with or without a defined contribution component) under the supervision of Retraite Québec has decreased.

- The number of members of these plans went from 543 000 in 2005 to 412 000 in 2016, a 24% drop.
- In contrast, over this same period, the number of members for all pension plans under the supervision of Retraite Québec went from 633 000 to 754 000, a 19% increase.

These data show that among all members of pension plans supervised by Retraite Québec, the share of active members of a defined benefit plan has been dropping since 2005.

CHART 1

Change in the number of active members⁽¹⁾ in pension plans under the supervision of Retraite Québec – 2005 to 2016



(1) Includes workers outside Québec who participate in pension plans under the supervision of Retraite Québec.

(2) Includes all types of plans under the supervision of Retraite Québec.

(3) Defined benefit pension plans with or without a defined contribution component under the supervision of Retraite Québec.

Source: Retraite Québec.

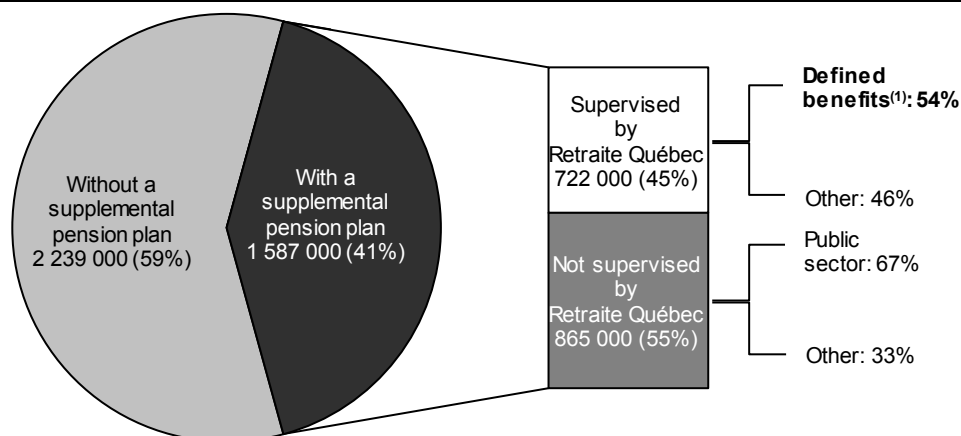
❑ The world of pension plans

As at December 31, 2016, there were 1 587 000 workers (41%) in Québec participating in supplemental pension plans, including defined benefit and defined contribution plans. Of this number, 722 000 workers (45%) participated in a plan under the supervision of Retraite Québec.

Approximately 390 000 of the 722 000 workers participated in a defined benefit plan. It is in this type of plan that disparity in treatment based solely on hiring date potentially appears.

CHART 2

Approximate distribution of Québec workers with or without a supplemental pension plan – December 31, 2016



(1) Defined benefit pension plans with or without a defined contribution component, under the supervision of Retraite Québec.
Source: Retraite Québec.

Pension plans considered in the analysis

The analysis of pension plans presented in this chapter discussed those under the supervision of Retraite Québec, or plans mainly for people working in Québec. As at December 31, 2016, some 925 plans for 722 000 workers were under the supervision of Retraite Québec, of which 668 were defined benefit plans including:

- private, municipal and university sector employer plans;
- a few parapublic sector plans, whose activities fall under provincial jurisdiction.

Accordingly, the following plans are not under the supervision of Retraite Québec and excluded from the analysis:

- provincial public sector plans, such as the Government and Public Employees Retirement Plan (RREGOP);
- federal public sector plans;
- federal private sector plans (such as banking sector plans);
- multi-jurisdiction plans where there are fewer members in Québec than other jurisdictions.¹

¹ When the plan has members from more than one province, it is supervised by the authority of the province that has the greatest number of active members.

□ Overview of pension plans that could have disparity in treatment clauses

As at December 31, 2015, among the 668 defined benefit pension plans under the supervision of Retraite Québec, the main types of plan that could present a disparity were those with the following:

- a defined benefit component for employees hired before a given date;
- a defined contribution component for those hired as of that date.

This situation affects some 97 plans, or 14.5% of defined benefit pension plans.

However, the two aforementioned conditions are not enough to conclude that there is a disparity in treatment. To do so, an analysis of the relative value of the two components is required. In this regard, a more in-depth review of these 97 plans shows that a third of members have not seen a significant decrease in the employer's current service contribution.²² Note, however, that the employer's current service contribution decreased by 3.5% on average in these 97 plans following the introduction of the defined contribution component,

TABLE 2

Number of defined benefit plans as at March 14, 2017, based on type of benefit offered to members and number of members as at December 31, 2015⁽¹⁾

	Number of pension plans		Number of members	
	Number	%	Number	%
Defined benefits for all members ⁽²⁾	460	68.9	305 251	74.0
Defined benefits for past service and defined contribution for future service for all members	61	9.1	9 686	2.3
Defined benefits and defined contribution				
– Defined benefit and defined contribution components for all members	16	2.4	21 252	5.2
– Defined benefit component for some and a defined contribution component for others	34	5.1	36 403	8.9
– Defined benefit and defined contribution components based on hiring date	97	14.5	39 403	9.6
TOTAL	668	100.0	412 495	100.0

(1) The data excludes the pension plan for Québec construction workers for 2015, plans being merged or terminated, and plans administered by Retraite Québec.

(2) Including 43 defined benefit plans closed to workers hired as of a certain date, with these workers not offered any plan under the supervision of Retraite Québec.

Source: Retraite Québec.

²² A decrease in the current service contribution of less than 1% of the total payroll.

These 97 plans have a total of 39 403 members, corresponding to 9.6% of members of defined benefit pension plans under the supervision of Retraite Québec. Note that:

- 22 276 participate in the defined benefit component;
- 17 127 participate in the defined contribution component.

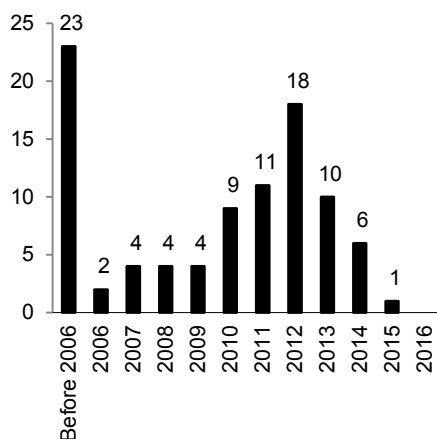
❑ Implementation timeline of disparity in treatment clauses in pension plans: a declining trend

Further to the analysis of 97 plans identified by Retraite Québec, some correlation is observed between the implementation date of disparity in treatment clauses and the financial difficulties of these plans.

- More specifically, the number of disparity in treatment clauses in the pension plans based solely on hiring date increased between 2010 and 2013,²³ following the 2008 financial crisis and the beginning of the drop in bond rates.
 - For instance, 48 plans introduced disparity in treatment clauses for 2010 to 2013.
- Since the adoption in 2015 of the *Act to amend the Supplemental Pension Plans Act mainly with respect to the funding of defined benefit pension plans*, the number of disparity in treatment clauses has gone down sharply.
 - In 2015, only one plan introduced disparity in treatment clauses. No new plan was identified in 2016.

CHART 3

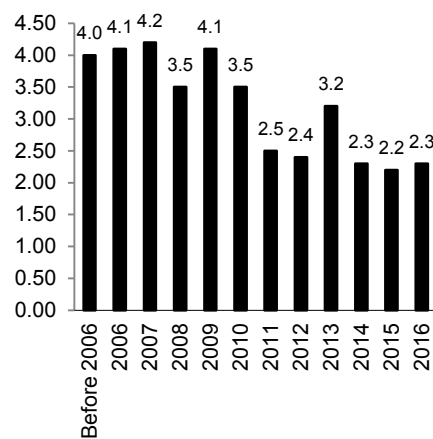
Plans that introduced disparity in treatment clauses per year⁽¹⁾ (number of plans)



(1) Missing information for 5 of the 97 plans under the supervision of Retraite Québec that introduced a disparity in treatment.
Source: Retraite Québec.

CHART 4

Government of Canada benchmark bond yields – Long-term as at December 31 (per cent)



Source: Statistics Canada.

²³ Note that before 2010, pension plans had to be valued every three years. Thus, for a plan that had been valued as at December 31, 2007, the effects of the financial crisis of fall 2008 were only reflected in the valuation as at December 31, 2010.

❑ Sectors of activity affected by disparity in treatment clauses in pension plans

Among the 97 plans identified by Retraite Québec with disparity in treatment clauses in pension plans based solely on hiring date, almost 70% of the plans are concentrated in manufacturing, mainly the pulp and paper, printing, transportation equipment and primary metal manufacturing sectors.

TABLE 3

Distribution of disparity clauses by sector of activity

Sector of activity	Number
Manufacturing	
– Food and beverages	5
– Printing and publishing	9
– Transportation equipment (aircraft, automobiles, trucks, trailers, ships, parts)	10
– Paper and allied industries (pulp and paper)	10
– Chemicals (fertilizer, synthetic resins, medication, paint, cleaning products)	1
– Rubber and plastic products	2
– Tobacco products	1
– Electrical products (lighting, cables)	4
– Primary metal manufacturing (iron and steel, foundry, lamination, moulding)	6
– Other manufacturing sectors	19
Subtotal: manufacturing	67
Professional services	
– Business association, professional corporation, labour organization, and other association of persons	4
– Travel arrangement and reservation services	1
– Business support services	1
– Legal services	3
Subtotal: professional services	9
Finance and insurance	
– Insurance companies	2
– Depository credit intermediation	1
– Other financial investment activities	1
Subtotal: finance and insurance	4
Other sectors⁽¹⁾	17
TOTAL	97

(1) Other sectors include agriculture, forestry, wholesale trade, transportation, management of companies and enterprises, radio and television industries, cultural industries, and retail trade.

Source: Retraite Québec.

Terms used in the context of pension plans

Pensionable service

Pensionable service corresponds to the number of years worked that are taken into account when calculating a member's pension. It generally corresponds to the number of years worked and during which a member contributed to the plan.

Past service

Past service in the context of a pension plan corresponds to the number of past years worked and considered when calculating a member's pension.

Future service

Future service in the context of a pension plan corresponds to future years of work to be considered when calculating a member's pension.

Closed plan

A pension plan is considered closed if new enrolments are no longer possible as of a given date. In such a case, the plan's assets are kept in the pension fund.

The concept of a closed plan should not be confused with that of a wound up plan, which means that the plan's assets are liquidated.

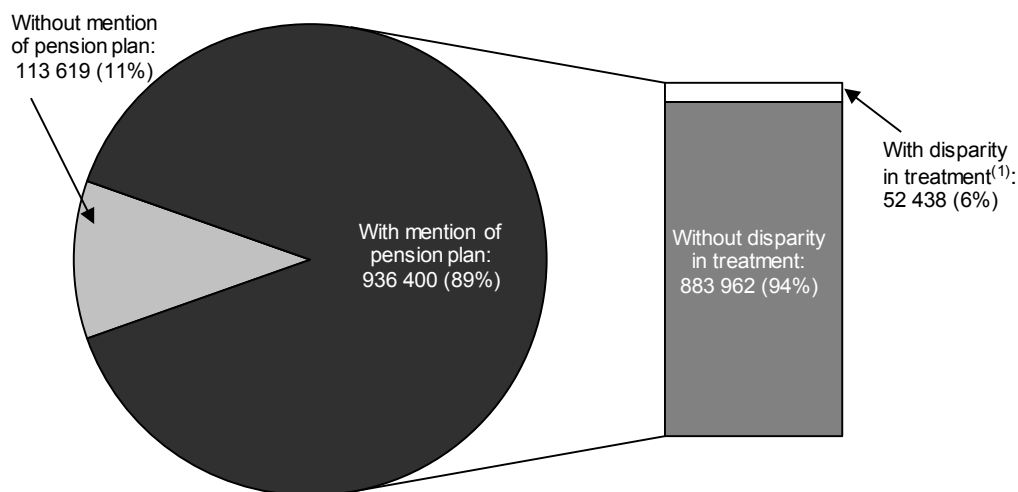
3.2 Partial view of collective agreements

❑ Collective agreements that mention a pension plan

Of the 936 400 workers who are members of a supplemental pension plan and are bound by a public or private collective agreement, 52 438 suffer from some form of disparity in treatment whether or not a pension plan exists. It is possible that a pension plan exists, but the collective agreement does not mention it. An employer can offer a pension plan without indicating it in the collective agreement.

CHART 5

Distribution of workers based on mention or not of a pension plan across collective agreements in Québec



(1) This disparity in treatment based solely on hiring date can take several forms and does not necessarily concern pension plans.
Source: Secrétariat du travail.

Collective agreements analyzed
The analysis of collective agreements presented in this chapter was carried out on 8 420 agreements in force that were filed in accordance with the Québec <i>Labour Code</i>. They come from both the public and private sector. Any agreement that does not constitute a collective agreement within the meaning of the Québec <i>Labour Code</i> was excluded from the analysis, including those that were: – filed under the <i>Act respecting labour relations, vocational training and workforce management in the construction industry</i>; – submitted under the <i>Canada Labour Code</i> (e.g. collective agreements for banks, radio and television broadcasting stations and airlines).

❑ The phenomenon of disparity in treatment in collective agreements

As with the analysis of pension plans, the analysis of collective agreements revealed few cases of disparity in treatment. In fact, of the 8 420 collective agreements in force that were filed in accordance with the Québec *Labour Code*:²⁴

- 6 276 mentioned at least once the existence of a supplementary pension plan;
- 897 contained a disparity in treatment clause based solely on hiring date, including those that did not concern pension plans;
- 450 mentioned the existence of a supplementary pension plan containing a disparity in treatment clause based solely on hiring date.

In addition, of those 450 collective agreements:

- 212 were analyzed by the Secrétariat du travail;
- 35 were designated as containing a disparity in treatment clause based solely on hiring date with regard to the pension plan. These 35 collective agreements represent 0.4% of all collective agreements in force and cover 0.9% of workers.

TABLE 4

Distribution of collective agreements that may contain disparity in treatment clauses regarding pension plans

	Number of collective agreements		Number of workers	
	Number	%	Number	%
Total number of collective agreements in force	8 420	100.0	1 050 019	100.0
Collective agreements that mention a supplementary pension plan	6 276	74.5	936 400	89.2
Collective agreements that contain a disparity in treatment clause	897	10.7	100 920	9.6
Collective agreements that contain a disparity in treatment clause and mention a pension plan	450	5.3	52 438	5.0
Collective agreements that contain a disparity in treatment clause based solely on hiring date with regard to the pension plan				
– Sample analyzed ⁽¹⁾	35	0.4	9 878	0.9
– Extrapolated data	74	0.9	21 963	2.1

(1) Of the 450 collective agreements containing a disparity in treatment clause, 212 were analyzed.

Source: Secrétariat du travail.

By applying this finding to the 450 collective agreements, it is estimated that a maximum of 1% of collective agreements in force contain a form of disparity in treatment based solely on hiring date, which corresponds to 2% of workers.

²⁴ Information as at January 23, 2017.

3.3 Partial view based on the representatives consulted

Information was gathered from the Fédération des travailleurs et travailleuses du Québec, the Confédération des syndicats nationaux, the Centrale des syndicats démocratiques, the Conseil du patronat du Québec and The Association of Canadian Pension Management.

— A summary of their observations is presented in Appendix 3.

According to the representatives, who stated that they did not have credible statistics at their disposal, there are numerous cases of disparity in treatment based solely on hiring date in pension plans, almost all of which are in the non-unionized private sector. In most cases, new employees were offered a defined contribution pension plan. However, in other cases, they were offered a defined benefit pension plan with less generous terms.

Findings – Chapter 3

Drop in defined benefit plan membership

Since 2005, the share of active members of defined benefit pension plans (with or without a defined contribution component) under the supervision of Retraite Québec has fallen.

- The number of members of these plans went from 543 000 in 2005 to 412 000 in 2016, a 24% drop.
- In contrast, the number of members for all pension plans under the supervision of Retraite Québec went from 633 000 in 2005 to 754 000 in 2016, a 19% increase.

Disparity in treatment is not widespread

Retraite Québec's analysis¹ of many pension plans shows that:

- some 97 defined benefit plans, or 14.5%, have provided for a defined contribution component for employees hired as of a certain date;
- these plans have a total 39 403 members, which corresponds to 9.6% of the number of members of defined benefit pension plans under the supervision of Retraite Québec.

A marginal phenomenon in collective agreements

Based on the analysis of collective agreements in force that were filed in accordance with the Québec *Labour Code*, the phenomenon of disparity in treatment based solely on hiring date is marginal and affects at most 1% of collective agreements.

¹ The analysis was carried out on pension plans under its supervision that contain a defined benefit component for employees hired before a certain date and a defined contribution component for employees hired as of that date.

4. THE RELEVANCE OF PROHIBITING DISPARITY IN TREATMENT BASED SOLELY ON HIRING DATE IN PENSION PLANS

Based on the findings presented in chapters 2 and 3, chapter 4 presents potential solutions for prohibiting or limiting disparity in treatment in pension plans based solely on hiring date,²⁵ namely:

- completely prohibiting such cases of disparity;
- permitting disparity on the condition that an equivalent plan is offered.

For each potential solution, this document:

- addresses social and economic issues;
- identifies things to think about.

²⁵ For a detailed description of the pros and cons of the potential solutions analyzed, see Appendix 7.

4.1 Proposed solutions

In order to prevent disparity in treatment based solely on hiring date in pension plans, all employees could be offered the same conditions. This would mean completely prohibiting disparity in treatment based solely on hiring date.

Otherwise, disparity in treatment based on hiring date could be permitted, provided an equivalent plan were to be offered to new employees. In this case, what constitutes an equivalent plan would need to be determined. Four options could be considered:

- the current service contribution paid by the employer is identical to that of a plan in the same pension plan category.²⁶
- the current service contribution paid by the employer is identical, regardless of the pension plan category;
- the current service contribution paid by the employer is higher in a plan in the capital accumulation plan category;
- the total contribution paid by the employer is identical, regardless of the pension plan category.

Current service contribution, amortization payments and the total contribution
Current service contribution The total amount of the employer and employee's contribution, if applicable, required to finance a pension plan's benefits for the current year.
Amortization payments The contributions generally paid by the employer when funds in the pension fund are insufficient to pay the promised accrued benefits.
Total contribution The total amount of current service contributions and amortization payments.

²⁶ For more details on pension plan categories, see chapter 2 of this document.

☐ **Completely prohibiting disparity in treatment based solely on hiring date**

The government could completely prohibit disparity in treatment based solely on hiring date, which would require employers to offer the same pension plan to all of their employees.

The complete prohibition of disparity in treatment based solely on hiring date appears to be the most direct solution to the issue raised by unions and groups advocating for youth rights, as it would help prevent intergenerational inequity.

However, doing so would force employers to offer identical benefits to all of their employees, which could mean converting older employees from a defined benefit plan to a defined contribution plan for their remaining working years.

☐ **Permitting disparity in treatment based solely on hiring date if an equivalent plan is offered**

☒ **Option 1: Equivalent plan if the current service contribution paid by the employer is identical to that of another plan in the same category**

Under option 1, an employer can no longer offer a different pension plan based solely on hiring date unless both of the following situations apply:

- the plan offered as of a given hiring date belongs to the same category as the plan offered to other employees;
- the plan sets out an identical current service contribution.

This option, which offers more flexibility to employers than a complete prohibition, has the advantage of encouraging employers to implement a plan whose features remain comparable for all employees.

Option 1 is also beneficial for employers as they can transfer a portion of the risk to their employees, e.g. by establishing a member-funded pension plan for new employees.

However, the equivalence of plans, even within the same category, can be debatable.

- For example, for some plans in the defined benefit category, the risk is not assumed by the employer, while it is for other plans. This can result in the risk being shifted from the employer to the employees.
- In addition, follow-up and control mechanisms should be established so that the government can ensure that the equivalence requirement is met.

Reminder: pension plan categories¹

Pension plans are grouped into two main categories:

- defined benefit pension plan category, such as defined benefit plans, member-funded pension plans and target-benefit pension plans;
- capital accumulation plan category, such as defined contribution plans, group RRSPs and VRSPs.

¹ For more details about pension plan categories, see chapter 2 of this document.

■ **Option 2: Equivalent plan if the current service contribution paid by the employer is identical, regardless of the pension plan category**

Under option 2, an employer would no longer be able to offer a different pension plan based solely on hiring date, unless it pays an identical current service contribution for the new plan.

This option would offer more flexibility to employers than option 1, as they could offer whatever type of pension plan they see fit to new employees hired as of a given date.

However, option 2 could have undesirable consequences for employees.

- For example, the risk assumed by employers could be shifted to employees if they were to implement a defined contribution plan as of a given hiring date.
- An employer could choose to offer less advantageous conditions to all employees to avoid paying additional contributions.

■ **Option 3: Equivalent plan if the current service contribution paid by the employer is higher for a plan in the capital accumulation plan category**

Option 3 is a variation of option 2. Under option 3, if an employer offers a plan from the defined benefit plan category to current employees and a plan from the capital accumulation plan category to new employees, it should pay more in the latter case to compensate for the increased risk assumed by members. The scope of this additional contribution remains to be determined.

This option would offer the same flexibility to employers as options 1 and 2.

However, as the contributions permitted for a capital accumulation plan are lower, depending on the scope of the additional contribution required, this option could be inapplicable unless there was a reduction in the defined benefit plan.

Example of a situation in which option 3 would be challenging to apply
A company offers a defined benefit plan to all of its employees. The current service contribution is 18% of salary. During negotiations with its employees, the employer wishes to introduce a defined contribution component for new employees only. Under option 3, the government would require the contribution to the defined contribution plan to be 2 percentage points higher for new employees. This would bring the rate for new employees to 20%. However, contributions to a defined contribution plan are limited to 18% of salary. Therefore, in order to comply with the requirements of option 3, the employer would have to reduce the current service contribution for the defined benefit plan for current employees to 16%, which would cause a strong reaction among workers during negotiations.

■ **Option 4: Equivalent plan if the total contribution paid by the employer is identical, regardless of the pension plan category**

Under option 4, an employer would no longer be able to offer a different pension plan based solely on hiring date unless it were to pay an identical total contribution for the new component.

This option would require contributions to be frequently monitored as the financial situation of plans fluctuated. For example, if a defined benefit plan experienced a deficit or surplus, the contribution of the defined contribution plan would need to be adjusted.

Furthermore, the principle behind this option may not always be applicable, which could call into question its relevance. Both pension plan categories have different contribution limits. As a result, the contributions required to make them equivalent to the plan offered to older employees could exceed the taxation limits for the plan offered to new employees.²⁷

Relevance of maintaining equivalent employer contributions between plans
The obligation of maintaining the same employer contribution at all times, particularly between a defined contribution plan and a defined benefit plan that is closed to new employees who are offered a defined contribution plan instead, can be debatable. The contribution rate for the defined benefit plan can vary for several reasons, some of which are beyond the control of parties to the plan. For example, as new members are no longer offered the defined benefit component, the average age will increase, thereby raising the contribution rate and making it unnecessary to adjust the new employees' plan. In such a scenario, it could be difficult to justify maintaining equivalence at all times.

²⁷ The contribution limit for defined benefit plans is expressed as the value of the benefits accrued in the plan by a member. However, this is not the case for capital accumulation plans, which stipulate that contributions cannot exceed 18% of salary, up to a maximum \$26 230 in 2017 for a defined contribution plan.

❑ **Standardizing plans that already contain disparity in treatment**

Some plans contain disparity in treatment based solely on hiring date. In chapter 3, we identified 97 defined benefit plans that offer a defined contribution component to new employees.

If the government decides to prohibit such disparity in treatment or to authorize it if an equivalent plan is offered, it could require these plans to comply with this rule as of a given date with regard to future service.

However, it would not be easy to carry out this standardization, and it would need to take into account the various mechanisms used to determine the conditions offered to employees, including cases in which:

- the employer is responsible for offering a pension plan but has little or no power to negotiate the terms;
- the employer has voluntarily joined a plan but has little or no power to negotiate the terms;
- the employer negotiated the plan with the union(s);
- the employer decides unilaterally which changes it wishes to make to the pension plan.

The changes should also take into account current rules for amending pension plans as well as common-law rules regarding vested benefits. Unless expressly permitted by law, accumulated benefits cannot be modified.

■ **The employer is required to offer a pension plan but has little or no negotiating power**

Under certain legislation, the employer must offer a specific plan to its employees. This is the case for RREGOP members, employees in the construction industry and those working in the network of childcare centres (CPEs).

- According to Retraite Québec, cases of disparity in treatment in this type of plan are rare, but they do exist.²⁸

As the provisions that open the door to disparity in treatment are set out in legislation, a legislative amendment would be required to standardize these plans. It is important to point out that there are few such plans, although they often have many members.

²⁸ According to Retraite Québec, a separate analysis would be necessary to assess their scope. For example, RREGOP members whose employers have moved from the public to the private sector can continue to participate in this plan, whereas new employees are excluded from it.

■ **The employer has voluntarily joined a plan but has little or no negotiating power**

Some plans give the employer a choice as to whether to join or not, but no bargaining power. Examples are “negotiated contribution” plans and “member-funded” pension plans.

- Those plans usually include a large number of employers and are set up by a professional union that keeps control over them.
- Employers usually retain the right to withdraw from the plan if it no longer suits them (which means it is no longer available to their employees).
- Those plans are not likely to contain much disparity in treatment based solely on hiring date.

They will undoubtedly be the hardest to adapt to the new standards.

Those plans often have many employers and many collective agreements, all expiring at different dates, making it hard to impose changes that will apply to all members at the same time.

One way of standardizing things would be to follow the way changes were made to negotiated contribution plans under the *Supplemental Pension Plans Act* in 2015. Provisions could be made that any changes required for complying with the new rules be proposed to the members beforehand. They would be applied if fewer than 30% of the members were opposed.

■ **The employer negotiated the plan with the union(s)**

The terms of several pension plans are negotiated between the employer and the union(s). The resulting plan will not necessarily be a supplemental pension plan. It might be a group RRSP or a voluntary retirement savings plan (VRSP).

For plans like those, the changes required to comply with the new rules will have to be negotiated the usual way, although a deadline should be set for such negotiations. The most conciliatory way of proceeding would be to provide for the changes to be effective upon renewal of the collective agreement.

■ **The employer decides unilaterally which changes it wishes to make to the pension plan**

This happens very often when the employees are not unionized. The resulting plan will not necessarily be a supplemental pension plan. Those are the plans that are most likely to include disparity in treatment based solely on hiring date.

In those cases, the employer could simply be given a reasonable deadline for complying with the new rules, and a default solution should be identified and applied in the event the employer fails to do so.

4.2 Social and economic issues

Legislation completely prohibiting disparity in treatment in pension plans, or authorizing such disparity only if the new employees have access to an equivalent plan, could raise the following social and economic issues:

- difficulty attracting businesses and risk of company relocation;
- drop in defined benefit plan membership;
- application difficulties for pension plans governed by more than one government authority.

❑ Difficulty attracting businesses and risk of company relocation

Prohibiting disparity in treatment could force employers to renegotiate their collective agreements and change the provisions of their pension plans. That could seriously upset employers.

The government's requirements and the substantial costs related to advantages under pension plans, coupled with the absence of prohibition on disparity in all neighbouring jurisdictions, could make it harder to attract or retain businesses in Québec.

Although it might still be possible for companies to opt for defined contribution plans for all of their employees, a prohibition on disparity in treatment for new employees would impose just one more restriction on labour management for businesses in Québec.

And any measure restricting businesses or limiting their ability to manage their costs could make Québec that much less attractive for them.

It should also be noted that Québec businesses already face a higher tax burden than those in the rest of Canada, particularly due to payroll deductions.

It is particularly important for Québec's primary and manufacturing sectors to remain competitive in this matter, since they are primarily exporters and therefore compete directly with businesses outside of Québec.

A prohibition on disparity in treatment that would only apply to Québec would put even more pressure on our businesses and undermine their competitiveness.

Furthermore, it would not be possible to apply such prohibition retroactively to past years for pension plans that did include disparity in treatment based solely on hiring date. To require that kind of retroactivity would raise costs significantly, and could push companies to close their plans or relocate.

■ Potentially negative effects on productivity

By prohibiting disparity in treatment clauses, the government could force some businesses to continue providing a more burdensome pension plan, which would limit their liquidity.

Less liquidity could result in less investment in production equipment or employee training programs.

- Those expenses are essential for maintaining and enhancing the productivity of Québec businesses.

■ An uncertain context: caution is urged

Québec's businesses are in a position of uncertainty right now, due to:

- a possible drop in tax rates for U.S. corporations and the renegotiation of the North American Free Trade Agreement;
- a possible raise in employers' contributions to the Québec Pension Plan (QPP) starting in 2019;
- the impact the new carbon market regulations for 2021-2030 will have on Québec's industrial sector.

The government will have to be very cautious about bringing in any new initiative that could affect the competitiveness of Québec businesses and their investment capacities.

□ Drop in defined benefit plan membership

Prohibiting disparity in treatment in pension plans would primarily ensure intergenerational equity among employees, providing the same conditions for everyone regardless of their hiring date.

To do that, the employer would have to put an end to the defined benefit component of the plan for all employees, replacing it with a new defined contribution component; this would reduce the number of members of defined benefit plans in Québec. Some employers have already initiated the process.

Although disparity in treatment is often seen as a last-resort solution, there are other ways to reduce the risk; providing less generous pension plan conditions to all employees would be one of them. But that could anger the workers and cause a dispute during negotiations.

Resorting to disparity in treatment could be interpreted as a way of gradually closing a defined benefit pension plan, reducing the membership bit by bit until there are no more active members (attrition).

That is one of the easiest solutions to reduce the employer's financial risk, since it offers the current workers, who are in the process of negotiating, the possibility of keeping their present conditions.²⁹

²⁹ See Appendix 5 for more details on pension plan risks.

Reasons given by employers with regard to the use or not of disparity in treatment clauses

According to the Conseil du patronat du Québec and the Association of Canadian Pension Management:

- employers have kept defined benefit plans for their employees for the following reasons:
 - to make negotiations easier,
 - to avoid disputes over constructive dismissals,
 - to keep their promises to their employees;
- employers have offered defined contribution plans to new employees for the following reasons:
 - to reduce their risks,
 - to follow what the competition does throughout the world,
 - to make their employees more accountable,
 - to satisfy their younger employees, who are more mobile than the older ones.

❑ Protecting retirement pensions

In traditional pension plans there is little risk that retirees' benefits will shrink. Members' rights are relatively well protected, including the indexation³⁰ of pensions:

- benefits cannot be reduced unless the company goes bankrupt;
- it is hard to suspend pension indexation for retirees, unless legislation intervenes.

In some problem cases, disparity in treatment may be a way of reducing pressure on the plan and avoiding the need to lower conditions for the pensions of active members at retirement time.

As a general rule, legislation protects already accrued benefits, so the people who are most at risk are those who are still working, not the retirees.

³⁰ See Appendix 4 for a detailed analysis of how pensions are protected.

❑ **Application difficulties for pension plans governed by more than one government authority**

Employers who have establishments in several provinces can create a different plan for each establishment, or a single plan for employees across Canada. Several employers from several different provinces could even join the same plan.

Under agreements between supervisory bodies, only the law of the province where the largest number of members are working will apply to some matters that are hard to split by province, including the rules for becoming members.³¹

Several pension plans are governed by more than one government authority. As at December 31, 2015, 31 072 non-Quebecers were members of plans under the supervision of Retraite Québec and 111 000 Quebecers were members of plans supervised by another province.

Should Québec unilaterally prohibit disparity in treatment based solely on hiring date in the *Supplemental Pension Plans Act*, that prohibition would very likely be considered a rule governing membership. Hence, the prohibition:

- would apply to workers outside Québec participating in plans where the largest number of members are working in Québec;
- would not apply to Québec workers participating in plans where the largest number of members are working outside Québec.

For example, the prohibition would apply to:

- the workers of Industrial Alliance, but not to the workers of Manulife or Sun Life;
- the workers of Rio Tinto Alcan and Bombardier Transportation, but not to the workers of General Electric, Lafarge or Siemens.

This means that a prohibition in the *Supplemental Pension Plans Act* would not apply to all Québec workers, thereby raising the issue of uniformity.

If the prohibition were to be enshrined in the *Act respecting labour standards* instead, the result would be different because agreements between supervisory bodies are not subject to this Act.

A prohibition in the *Act respecting labour standards* would apply to all employees who perform work both inside and outside Québec for an employer whose residence, domicile, undertaking, head office or office is in Québec. However, the definition of “employee” in that Act excludes certain workers such as those in the federal sector governed by the *Canada Labour Code*.

³¹ On the other hand, individual members’ rights—such as the minimum value of their pensions and transfer rights—are governed by the laws of the province where the members work.

It should be noted that reciprocal agreements under the *Act respecting labour standards* allow the CNESST to request that another jurisdiction's authorities execute a decision rendered in Québec ordering the payment of amounts of money under the *Act respecting labour standards*.

— A summary of the pros and cons of potential legislative vehicles is presented in Appendix 8.

However, employers that group together all their employees under in a single Canada-wide plan generally do so to ensure uniformity. So if the financial stakes are high enough and the number of Québec plan members is limited, there is a risk that the employer will make decisions that are harmful to Québec workers, such as excluding them from the plan.

4.3 Things to think about

The different potential solutions for prohibiting disparity in treatment in pension plans have different pros and cons, which may lead to arbitration proceedings. This section sets out some things to think about.

☐ The pros and cons of completely prohibiting disparity in treatment

A complete prohibition of disparity in treatment based solely on hiring date would be the most direct way of addressing the issue. Among other things, it would:

- avoid such disparity and keep intergenerational equity intact;
- eliminate any ambiguity as to the characteristics of pension plans based on hiring date.

However, some definite challenges would come with such a complete prohibition:

- it might speed up the closing of defined benefit plans for companies that already provide a defined contribution component based on hiring date;
- it could limit the chances of adjusting pension plans—already referred to arbitration—during collective agreement negotiations;
- if Québec were to act unilaterally, it would create an additional restriction that could hinder the government's efforts to retain and attract businesses.

☐ The other options would require serious arbitration

Although it would give the employer greater flexibility, an agreement to introduce disparity in treatment clauses based solely on hiring date, conditional on offering an equivalent pension plan to new employees, would require serious arbitration.

- It might speed up the closing of defined benefit plans.
- It could further complicate administration.
- Greater flexibility for the employer would put a burden on the new employees who would bear greater risks with regard to their pension plans.

☐ Retroactivity problems

Pension plans are accounted for annually in tax returns (benefits received are taxed, contributions paid are deducted, RRSP contribution room is calculated). Retroactivity would have significant consequences, especially in terms of taxes. Since workers quit their jobs, retire or die, retroactive adjustments would require considerable administrative work. And the additional contributions some employers might have to make to some plans could bankrupt them. In short, retroactivity would be very hard to implement.

Even though union representatives and youth advocacy groups insist that disparities be abolished, they do not seem to have considered the impact of retroactivity. The real issue is to make sure disparity does not continue and not bring in new disparity clauses. The existing disparity clauses were brought in after considering all working conditions. The benefits received in exchange would not necessarily be recouped.

❑ Discussions with the other Canadian provinces and the federal government

It would therefore be difficult for Québec to act unilaterally without undermining the competitiveness of local businesses. If similar legislation were to be introduced in all the other provinces, that would limit the impact on competitiveness and the ability of Québec businesses to invest, as compared to their competitors in other provinces. It would also remove the application difficulties for pension plans governed by other jurisdictions and multi-jurisdiction plans.

If Québec wants to affirm its position as a Canadian leader on that issue, in connection with both its own legislation and alignment with the other Canadian jurisdictions, it could propose the creation of an interprovincial task force³² so that the provinces could jointly assess the issue of disparity in treatment in pension plans based solely on hiring date.

³² The federal government could also take part in the discussions, with a view to introducing the same rules for businesses under federal jurisdiction.

5. THINGS TO CONSIDER WITH REGARD TO GROUP INSURANCE

Chapter 5 sets out:

- the background and definitions relating to prohibiting disparity in treatment in group insurance contracts;
- the challenges of determining the extent of the phenomenon;
- possible arbitration on the subject of prohibiting disparity in treatment clauses based solely on hiring date in group insurance;
- potential solutions for group insurance.

❑ **Background and definitions**

Group insurance is among the various benefits an employer offers to employees. Group insurance contracts can provide drug coverage, as well as life insurance coverage, and coverage for medical services, vision and dental care.

Usually, it is the employer that sets up group insurance with an insurer and decides on parameters and terms. In general, group insurance contracts are renewed on an annual or bi-annual basis; upon renewal, the contract's terms may be revised, such as terms on plan coverage and parameters (including the premium to be paid), depending on the change in insurance plan costs.

In many cases, to attract workers, the employer will pay part of the employee's insurance premium. However, the employer's share is not generally set out in the insurance contract. If it is stipulated, it is usually in the document that explains the contract. The amount paid by the employer is a taxable benefit in Québec and is included in the employee's income.

■ **Two types of coverage**

In analyzing disparities in treatment based solely on hiring date, it is important to differentiate between two types of coverage a group insurance contract may offer:

- coverage that ceases when the employment relationship ends;
- coverage that extends beyond the employment relationship, which some refer to as “post-retirement benefits.”

■ **Coverage that ceases when employment ends**

It is generally not possible to accrue value over a long period with coverage that ceases when employment ends. When the employer pays a portion of employees' premiums, for example, employer obligations are supported under an insurance contract that is offered during employment.

An employee may face disparity in treatment based solely on hiring date if, for example:

- the insurance contract stipulates that, as of a given date, coverage such as dental care is less generous for new employees;
- the employer pays a smaller portion of the premium for employees hired as of a given date.

■ **Post-retirement coverage**

Unlike coverage that ceases when employment ends, post-retirement coverage provides benefits that persist beyond the employment relationship. It involves longer-term obligations for the employer. For example, an employer can set up group insurance for which it undertakes to pay the insurance premiums of retired employees.

If the employer decided to withdraw post-retirement coverage for employees hired as of a given date, disparity in treatment based solely on hiring date would exist.

❑ Challenges of determining the extent of the disparity in treatment phenomenon in group insurance

Unlike pension plans that are under the supervision of Retraite Québec or labour standards monitored by the CNESST, group insurance contracts and other benefits³³ are not registered with a government body.

As a result, the Québec government has very little data on group insurance plans. It is not possible to illustrate the phenomenon's scope and nature using real cases or analyze the issue based on comprehensive data with the information the government has.

■ Information that differs with the group consulted

The Fédération des chambres de commerce du Québec (FCCQ) surveyed 967 Québec businesses that belonged to the chamber of commerce network; the survey initially showed that some of the businesses surveyed that offered group insurance had at least two separate plans that were differentiated by employment status or start date.³⁴

However, based on discussions with the Canadian Life and Health Insurance Association (CLHIA):

- with respect to coverage that ceases with employment, cases of employees who are treated differently based on their hiring date are rare;
- there are few cases of disparity in treatment based solely on hiring date with respect to post-retirement benefits, which are focused among businesses with a very large number of permanent employees.

Moreover, according to a brief prepared by Force Jeunesse in 2013, the most frequent cases of disparity in treatment in group insurance occur with post-retirement benefits.

For its part, among the companies affiliated with their union, the Fédération des travailleurs et travailleuses du Québec (FTQ) found five examples of group insurance plans that are differentiated based on hiring date and in force in 2017.

³³ Like uninsured employee benefit plans.

³⁴ According to the FCCQ's preliminary findings, 45% of businesses surveyed had at least two separate plans that were differentiated by employment status or start date. Based on the information provided to the task force, the proportion of businesses offering a plan with disparity in treatment based solely on hiring date cannot be isolated.

❑ Possible arbitration on the subject of prohibiting disparity in treatment clauses based solely on hiring date in group insurance

Creating a framework for group insurance so as to prevent the issue of disparity in treatment based solely on hiring date could have some pros and cons.

■ Pros

Prohibiting disparity in treatment based solely on hiring date in group insurance plans would:

- remedy or prevent intergenerational inequity;
- be less financially limiting for employers concerned about disparity in treatment compared to a prohibition for pension plans.

Moreover, prohibiting disparity in treatment in group insurance plans would not raise the same issues as with pension plans.

- It could create fewer issues with multi-jurisdiction plans compared to pension plans, because such a prohibition would reach many more Québec workers and would not apply to workers outside of Québec.³⁵
- The taxable benefit deriving from the amounts paid by the employer to a group insurance plan is added to employees' income in Québec. Here, the benefit is subject to the same tax treatment as salary,³⁶ which is not the case with pension plans. This aspect could justify intervening in terms of labour standards.

³⁵ More specifically, in terms of potential legislative and regulatory amendments, the *Regulation under the Act respecting insurance* would apply to Quebecers who work for a company under federal jurisdiction. However, the *Act respecting labour standards* would not cover these workers.

³⁶ However, according to case law, pension plans and employee benefits do not constitute wages under the *Act respecting labour standards*.

■ Cons

Prohibiting disparity in treatment based solely on hiring date in group insurance plans would place an additional administrative burden on employers offering group insurance should the government require them to submit the content of contracts and require treatment that differs from that of other provinces.

■ Impact of the prohibition on post-retirement coverage

Moreover, prohibiting disparity in treatment with respect to post-retirement benefits could have impacts for employees and employers.

- An employer that decides to withdraw post-retirement benefits from all employees and reduce costs (levelling down) would implicitly be taking away rights agreed to in the old system,³⁷ which could force an employee who is a few years short of retirement to take out a new and expensive policy, or make it impossible for the employee to get insurance.
- On the other hand, employers that extend post-retirement benefits to all employees (levelling up) might face substantial financial pressure.

■ Challenges regarding the various jurisdictions

Moreover, while a prohibition on disparity in treatment in group insurance does not raise the same multi-jurisdiction issues as pension plans, the fact remains that an employer with employees in more than one province could offer a less generous plan to Québec employees to avoid long-term financial pressure. Coverage for Québec employees could be less than for colleagues in another province.

³⁷ This situation would not apply to pension plans, as employees whose defined benefit plans are converted into defined contribution plans retain their rights under the old plan. Therefore, employees whose pension plans change at the end of their careers would not be fully impacted.

■ A prohibition could affect two laws³⁸

The existence of disparity in treatment based solely on hiring date in group insurance could arise from the collective agreement, the employment contract in force, or contracts offered by the insurer involved.

If the government wished to move to prohibit disparity in treatment in group insurance, it would have to do so by amending:

- the *Regulation under the Act respecting insurance*, prohibiting insurers from providing contracts that stipulate disparity in treatment, for example, when a clause states that only employees hired before a given date receive dental coverage;
- the *Act respecting labour standards*, to prohibit rules outside these contracts from creating such disparity, for example, by ensuring that the contract the employer offers or the portion of the premium paid by the employer does not vary depending on the employees' hiring date.

To ensure that the prohibition on disparity in treatment in group insurance contracts applies widely, amendments should be contemplated to both the *Regulation under the Act respecting insurance* and *Act respecting labour standards*.

- For example, if the prohibition only affected the *Regulation under the Act respecting insurance*, an employer could skirt the new insurance contract rules by paying a smaller part of the premium for new employees.

Given that the prohibition on disparity in treatment in group insurance could affect several legislative and regulatory vehicles, the issue of the body responsible for applying and monitoring the new rules must be raised. Moreover, if a prohibition was expanded to pension plans or other benefits, it is unclear that a single body would be able to monitor all plans and ensure compliance with the rules. Thus, if the government wishes to legislate on this matter, it will have to consider which body or bodies could be given such a mandate

³⁸ The government could also prohibit disparity in treatment in group insurance plans with a self-contained law.

6. CONCLUSIONS AND RECOMMENDATIONS

The findings set out in this document paint a brief picture of the issue of disparity in treatment based solely on hiring date in pension plans and group insurance plans.

- On one hand, the snapshots created by Retraite Québec and the Secrétariat du travail have helped assess the scope of the phenomenon in pension plans.
- On the other, the analysis has made it possible to assess potential solutions for prohibiting such disparity in both pension plans and group insurance, as well as the legal and regulatory amendments that could be effected.

Under the current provisions of its *Act respecting labour standards*, Québec is already a leader in the prohibition of disparity in treatment based solely on hiring date. It is the only province to have legislation in this area.

Accordingly, if it wishes to maintain its position as a Canadian leader on this issue, it could choose to prohibit disparity in treatment based solely on hiring date in pension plans, group insurance and other benefits,³⁹ so as to ensure intergenerational equity.

However, the government must first ensure that Québec companies and companies doing business in Québec have a favourable business environment and that the legislative and regulatory framework does not hinder Québec's competitiveness. The issue of competitiveness with respect to multi-jurisdiction plans is so important that it would not be appropriate to act unilaterally in haste.

Benchmarks must therefore be defined to harmonize—between the various jurisdictions—pension plan, group insurance and other benefit provisions that could be implemented, including their effective date. This is why it would be relevant to quickly initiate discussions with the other provinces to assess the possibility of implementing similar legislation across Canada.

Furthermore, applying such a prohibition retroactively appears difficult and undesirable for many workers. The issue is instead to make sure disparity does not continue and not bring in new disparity clauses. If the government wants to prohibit disparity in treatment based solely on hiring date in pension plans, group insurance and other benefits, it should not act retroactively, that is, based on past service for which the plans presented a disparity in treatment based solely on hiring date.

³⁹ The government may wish to legislate to prohibit disparity in treatment for other benefits, such as uninsured employee benefit plans.

❑ **Conclusions of the task force following the study of the phenomenon of disparity clauses**

Further to its analysis of the issue of disparity in treatment clauses based solely on hiring date, the task force has reached the conclusion that if the government wants to prohibit disparity in treatment based solely on hiring date in pension plans, group insurance and other benefits, it must:

- create an interprovincial task force to assess with the other provinces the possibility of enacting legislation with respect to the prohibition of disparity in treatment based solely on hiring date in pension plans, group insurance and other benefits;⁴⁰
- not prohibit disparity in treatment based solely on hiring date in pension plans, group insurance and other benefits as long as other provinces have not gone ahead with a similar prohibition;
- target—via a future framework—only new disparity clauses or existing disparity in treatment, without requiring a retroactive correction for past service prior to the prohibition.

⁴⁰ It could be relevant to expand the scope of the task force's work to other benefits; if such a framework is created for group insurance plans alone, employers could turn to other products that are not controlled, such as uninsured employee benefit plans.

❑ **Recommendations of task force chair André Fortin, MNA for Pontiac and Minister of Transport, Sustainable Mobility and Transport Electrification**

In order to ensure intergenerational equity, the Québec government must continue to act as a Canadian labour standards leader. Furthermore, the government must make sure the business environment is favourable and that the legislative and regulatory framework does not hinder business competitiveness. A healthy economic environment benefits all Quebecers.

Québec can do even more though. It must send a clear signal that intergenerational equity is an issue that it will carry across borders. It must act as a Canadian leader on this issue.

In this context, task force chair André Fortin recommends that the Québec government:

- act quickly to prohibit disparity in treatment based solely on hiring date in pension plans, group insurance and other benefits;
- require, via its Labour Minister, that a discussion on intergenerational equity and labour standards be put on the agenda of the next federal-provincial-territorial meeting of labour ministers so as to propose the creation of an interprovincial task force to jointly assess the possibility of enacting legislation with respect to the prohibition of disparity in treatment based solely on hiring date in pension plans, group insurance and other benefits;⁴¹
- amend, in parallel, the *Act respecting labour standards* so as to prohibit new disparity clauses based solely on hiring date in pension plans, group insurance and other benefits;
- ensure that the proposed amendments to the *Act respecting labour standards* only become effective when all other Canadian jurisdictions adopt similar legislation;
- require that the prohibition on new disparity in treatment clauses based solely on hiring date in pension plans, group insurance and other benefits be applicable only as of the effective date of the section of the Act;
- amend—once the amended section of the *Act respecting labour standards* becomes effective—the *Regulation under the Act respecting insurance* so as to prohibit insurance contracts providing for disparity in treatment clauses based solely on hiring date.

⁴¹ Like uninsured employee benefit plans.

APPENDIX 1: DETAILS OF THE ACT RESPECTING LABOUR STANDARDS

Appendix 1 provides more detail on the *Act respecting labour standards*, addressing the following topics:

- the prohibition on disparity in treatment in the *Act respecting labour standards*;
- disparity in treatment temporarily allowed in the *Act respecting labour standards*;
- current situation in relation to the other provinces.

☐ **The prohibition on disparity in treatment in the *Act respecting labour standards***

The *Act respecting labour standards* prohibits the existence of working conditions that are less advantageous than those of other workers who are performing the same tasks in the same establishment when that difference arises solely from the hiring date for standards set out in legislation. Such conditions may deal with:

- wages;
- duration of work;
- statutory general holidays with pay;
- paid annual leave or vacation;
- weekly and daily breaks;
- time off for family events;
- other standards (e.g. uniform, bonuses, various allowances and indemnities, tools, showers, lockers and rest areas).

Pension plan related benefits are excluded from the prohibition on disparity in treatment in the *Act respecting labour standards*, because they do not correspond to a listed standard and cannot be assimilated with the concept of wages.⁴² Also, the *Act respecting labour standards* does not prohibit disparity in treatment that is based on a factor other than the hiring date (seniority, skill, length of service, performance, productivity, merit, etc.).

⁴² In 2015, the Court of Appeal ruled on the fact that pension plans did not constitute wages within the meaning of the *Act respecting labour standards*, given the limiting scope of section 87.1. The Court also cited parliamentary debate, which demonstrates a will not to expand the protection given in section 87.1 to pension plans and other benefits.

❑ **Disparity in treatment temporarily allowed in the *Act respecting labour standards***

The *Act respecting labour standards* temporarily allows some disparity in treatment subsequent to:

- reclassification or demotion;
- merger or internal restructuring (flagged employees);⁴³
- a change in the magnitude of the pay scale (adding grades or shrinking the scale) applicable to all employees who perform the same tasks at the same establishment, or replacement of a single wage rate with a scale.

Such disparity must be eliminated within a reasonable period, which varies based on several criteria, including company size and the number of employees affected. A disparity in treatment can also be temporarily or permanently allowed subsequent to accommodation for a handicapped person.

❑ **Current situation in relation to the other provinces**

Note that, in addition to pioneering the prohibition of disparity in treatment based solely on hiring date (stipulated in the *Act respecting labour standards*), Québec shines in Canada for some of its legal provisions.

- For example, Québec's *Pay Equity Act*, together with Ontario's, are the only laws in Canada to apply to both the private and public sectors.
- Moreover, some provisions of the *Act respecting labour standards*, particularly with respect to parental leave and leave for parental and family obligations, are more generous than those in other Canadian jurisdictions.

The Québec *Labour Code*, which governs collective labour relations, also contains certain advantageous provisions.

- For example, unlike most jurisdictions, which use a secret ballot, the membership card process for union accreditation protects the certification process from employer intervention.
- Moreover, along with British Columbia's, Québec's anti-strikebreaker provisions are unique in North America.

⁴³ A flagged employee is one who is temporarily classified outside the scale.

Legislation governing the employment relationship in Québec

Several laws govern the employment relationship in Québec in addition to the *Act respecting labour standards*. They include:

- the *Labour Code*;
- the *Act respecting collective agreement decrees*;
- the *Act respecting labour relations, vocational training and workforce management in the construction industry* (c. R-20);
- the *Pay Equity Act*;
- the *Act respecting occupational health and safety*;
- the *Act respecting industrial accidents and occupational diseases*;
- the *Act respecting parental insurance*;
- the *Charter of Human Rights and Freedoms*;
- the *Act respecting workforce vocational training and qualification*.

APPENDIX 2: METHODOLOGICAL DETAILS

Appendix 2 presents:

- the methodology used by the Secrétariat du travail in its analysis of collective agreements;
- the methodology used by Retraite Québec in its analysis of defined benefit pension plans.

☐ **Methodology used by the Secrétariat du travail in its analysis of collective agreements**

☐ **The universe considered**

On January 23, 2017, in Québec, there were 8 420 collective agreements in effect filed under the Québec *Labour Code*, covering approximately 1 050 019 unionized employees. The agreements cover both the public and private sectors. For an agreement to be in force, it must not be expired, and must be the latest version. If an agreement is expired, it cannot have expired more than three years prior to the date the data was extracted. The union must be certified on that date.

Everything that is not a collective agreement within the meaning of the *Labour Code* is therefore excluded, such as agreements filed under the *Act respecting labour relations, vocational training and workforce management in the construction industry* (c. R-20) and all agreements subject to the *Canada Labour Code* (banks, radio and television broadcasting stations, airlines, etc.).

The Secrétariat du travail applied its collective agreement analysis system to this agreement universe. The system includes 142 variables that describe, or at least indicate, a working condition negotiated by the parties.⁴⁴ Of the 8 420 collective agreements, approximately 6 276 agreements contain at least a mention of the existence of a supplemental pension plan.

☐ **Collective agreements reread and verified**

Of the 8 420 agreements, 897 contained a disparity in treatment clause based solely on hiring date (regardless of the nature and subject of the disparity). Based on the collective agreement analysis system, there are 12 possible codes for this variable, depending on the working condition covered by the disparity. Three such codes tell us about a potential disparity in a pension plan:

- 07: decrease in various benefits for new employees;
- 08: elimination of various benefits for new employees;
- 99: other provisions.

Combining the agreements with a pension plan and disparity in treatment, and retaining solely the three codes of interest yielded a total of 450 collective agreements to verify.

⁴⁴ For a statistical picture of all of the variables in the collective agreement analysis system, see <https://www.travail.gouv.qc.ca>.

Of these agreements, 212 were reread and verified. About 35 agreements were acknowledged to have a disparity in treatment based solely on hiring date with respect to pension plans, or 0.42% of the agreements in force.

❑ **Methodology used by Retraite Québec in its analysis of defined benefit pension plans**

■ **Types of members considered**

The defined benefit plans analyzed are offered to unionized and non-unionized employees.

The pension plan may include:

- members from several establishments belonging to the same employer;
- different groups of employees covered by various collective agreements.

■ **Establishing the cost difference between plans**

The cost difference between plans is measured by the variance between the employer's current service contribution to defined benefit plans and the employer's maximum contribution to the defined contribution plan.

- The employer's current service contribution to the defined benefit plan is the contribution from the actuarial valuation closest to the date the defined benefit plan was closed to new members.
- Where employees can select their contribution level and the employer's contribution is stipulated, the latter contribution is the highest allowed by the plan.
- For plans in which the employer's contribution is based on age or service, that contribution is established based on the situation of an average plan member.

Based on the data analyzed, 88% of the combination plans that include a disparity in treatment based solely on hiring date feature a smaller current service contribution for the defined contribution component.

TABLE 5

Difference in employer contribution rate between the defined benefit and defined contribution components – Number of plans as at March 14, 2017 and number of members as at December 31, 2015

Difference in the employer contribution rate	Pension plans		Defined contribution component members	
	Number	%	Number	%
Lower or zero	11	11.3	3 176	18.5
Contributions to the defined benefit component higher than to the defined contribution component				
Up to 2%	25	25.8	3 255	19.2
2% to 5%	36	37.1	7 181	41.9
5% and higher	25	25.8	3 514	20.5
Subtotal	86	88.7	13 951	81.5
TOTAL	97	100.0	17 127	100.0

Source: Retraite Québec.

APPENDIX 3: OBSERVATIONS OF THE REPRESENTATIVES CONSULTED

Appendix 3 presents observations on disparity in treatment based solely on hiring date in pension plans and group insurance.

☐ Pension plans

■ Observations of the Conseil du patronat du Québec

The Conseil du patronat du Québec received member comments that can be summarized as follows:

- Most of the employers likely to amend their defined benefit pension plans based solely on hiring date have already done so. This would affect about 60% of plans, according to statistics compiled from its members.
- Most of the time, the change involves offering employees a defined contribution plan; however, some employers offer less generous benefits.
- Those that offer a defined contribution plan generally did not do so due to cost. Medium- and long-range costs were reduced, but that was not the goal. Rather, they did so to lower their risk, keep pace with global competitors, make their employees more accountable, or even respond to requests from young employees who are more mobile than older employees.
 - These employers retained their defined benefit plans for existing employees to facilitate bargaining and avoid disputes over constructive dismissals, and because they saw it as a promise they had made to their employees—a promise they had to keep.
- Given the labour shortage, employers want to offer equivalent working conditions to new employees, but conditions that are tailored to their needs, so not necessarily involving the pension plan, which young workers do not pay as much attention to. Although it is hard to assess, the defined contribution plan is, from their perspective, frequently equivalent at the start, but not necessarily afterwards.

The Conseil du patronat noted that, according to an October 2016 Léger survey done on its behalf, if employers could not keep their defined benefit plans only for existing employees, 33% would maintain it for everyone, and 28% would close it to everyone.

■ Observations of the Association of Canadian Pension Management (ACPM)

Like the Conseil du patronat, the ACPM noted that the disparity may involve offering a defined contribution plan to new employees, but may also involve lower benefits in a defined benefit plan.

It also noted that employers that have shifted to defined contribution plans frequently kept the defined benefit plans for existing employees. The ACPM's observations were quite similar to those of the Conseil du patronat with respect to the reasons why some employers chose to offer a defined contribution plan (or group RRSP) to new employees while retaining the defined benefit plan for existing employees.

It added that, for the smaller number of employers that aimed for equal costs upon conversion, if over the medium term the defined benefit plan has become more expensive than the defined contribution plan, it is primarily due to external factors, such as the drop in interest rates, ageing of the cohort, and higher life expectancy.

Although it said it did not have accurate, credible statistics, the ACPM thinks the shift toward defined contribution plans for new employees is primarily occurring in non-unionized private sector contexts. The trend does not exist in the public and parapublic sectors, and is much smaller in the unionized private sector given union opposition. It also thinks that the number of new disparity clauses will decline in the future, because those who wanted to adopt such clauses have already done so.

**Caution regarding the observations of the
Association of Canadian Pension Management**

The ACPM's observation regarding the public sector must be nuanced. While there is no trend, disparity based solely on hiring date do exist in the public sector. Employees who belonged to the RREGOP and whose previously public-sector employer was privatized continue to participate in the plan, while new employees are excluded. Such disparity involves 11 corporations and emerged between 1981 and 2010.

Of the 11 corporations:

- six offer capital accumulation plans (defined contribution or group RRSP) to their other employees;
- two offer defined contribution plans, although in one case, the plan was a defined contribution plan for 15 years following the transfer, and then became a defined benefit plan for everyone.

Retraite Québec has no information on the three other corporations.

Despite this, the ACPM believes the trend toward defined contribution plans will persist, that the option of closing the defined benefit plan will be more attractive when plan deficits are smaller, but that new funding rules could slow the process.

Lastly, diverging from the results of the Léger survey cited by the Conseil du patronat, the ACPM believes that since the trend outside Canada is to migrate all employees to defined contribution plans, that is no doubt what will happen here if it is no longer possible to limit the change to new employees.

■ **Observations of the Fédération des travailleurs et travailleuses du Québec**

Like the employer associations, the Fédération des travailleurs et travailleuses du Québec noted that the disparity may involve offering new employees a defined contribution plan, but may also involve smaller benefits in the defined benefit plan; such cases of disparity primarily exist in non-union environments.

However, the Fédération des travailleurs et travailleuses du Québec differs from the Conseil du patronat du Québec, asserting that, after a disparity in treatment is introduced for non-union workers, especially management personnel, such disparity will be broadened to unionized workers.

■ Observations of the Confédération des syndicats nationaux

The Confédération des syndicats nationaux provided a list of 14 companies with 20 pension plans containing a disparity in treatment based solely on hiring date, sometimes for several separate groups of employees.

Essentially, these companies offer combined plans, with existing employees participating in the defined benefit plan and new employees participating in the defined contribution plan. The changes were made between 2007 and 2015, except with respect to the RREGOP (see box above).

The Confédération des syndicats nationaux emphasized the major gap between the employer's contributions to the two components. Its comparison factored in all contributions. It therefore included the contributions required to make up the deficit in the defined benefit component.

□ Group insurance

■ Observations of the Conseil du patronat du Québec

According to the Conseil du patronat du Québec, employers would be reticent about prohibiting disparity in treatment for benefits under the *Act respecting labour standards*, especially if the concept of equivalent conditions was not included. Otherwise, it could lead to levelling down or new labour disputes.

It also stressed that Québec employers attempt to consistently offer the same benefits to all employees, but some employers decide to or have no choice but to make changes to their plan, especially in response to changes in the economic and demographic situation.

— In the vast majority of cases, changes to group insurance involve post-retirement benefits and are done to control costs, which are especially critical with an ageing population.

Moreover, employers that award a given category of employees the benefit of the status quo of the initial plan subsequent to a collective bargaining process are trying to limit the impact of changes on those with a lot of seniority in the company.

Accordingly, the Conseil du patronat du Québec would like the *Act respecting labour standards* to remain a floor, and provide employers with the leeway they need to maintain healthy competition on working conditions, while not prohibiting them from offering equivalent, yet not identical plans.

■ Observations of the Fédération des travailleurs et travailleuses du Québec

According to the Fédération des travailleurs et travailleuses du Québec, the Québec government must prohibit disparity in treatment based solely on hiring date in pension plans and group insurance by clarifying the *Act respecting labour standards*: in their opinion, the phenomenon is growing.

The Fédération des travailleurs et travailleuses du Québec asserted that such disparity in treatment could be a source of labour disputes, increasing inequality and leading to greater poverty by decreasing the next generation's benefits, which is contrary to the principle of intergenerational equity.

APPENDIX 4: PROTECTING RETIREES' PENSIONS

Appendix 4 describes the protection for retirees' pensions.

☐ **Well-protected pension**

The *Supplemental Pension Plans Act* protects members' accrued rights, including retirees' pensions.

Common law also protects vested benefits. It therefore provides employees who have group RRSPs with some protection, but the protection is not as broad as it is with supplemental pension plans. In general, protection for retirees' pensions varies according to the type of plan.

☐ **Capital accumulation plans**

Capital accumulation plans include defined contribution plans, VRSPs and RRSPs and, after retirement, registered retirement income funds (RRIFs).

With these plans, contributions paid for someone are applied to that person's account and henceforth belong to that person. Employers cannot decide to take back their previous contribution, nor can they enter into an agreement with a union to do so. This protection applies to both workers and retirees.

☐ **Defined benefit plans established by law**

These represent most public sector plans, such as the RREGOP.

All of the provisions in such plans are provided for in legislation. Legislation must be amended to change the plan's provisions. However, legislation can go quite far. For example, nothing prevents retirees' pensions from being reduced if sanctioned by the National Assembly.

The protection provided for the rights of active and retired members of such plans is the protection awarded by the National Assembly.

☐ **Other defined benefit plans**

These represent most private-sector, municipal and university defined benefit plans. The *Supplemental Pension Plans Act*, which governs these plans, stipulates that no change to the plans may reduce a pension that was already being paid when members were notified of the change. This protection also applies to pension indexation.

■ Legislative exceptions

In the last few years, legislation has introduced several exceptions to the principle of protecting retirees' pensions provided for in the *Supplemental Pension Plans Act*:

- negotiated contribution plans;
- target-benefit plans;
- the *Act to foster the financial health and sustainability of municipal defined benefit pension plans*;
- the *Act respecting the restructuring of university-sector defined benefit pension plans*.

■ Negotiated contribution plans

These plans include many employers and promise a pension amount, but the employer and employee contributions are fixed and negotiated by collective agreement.

For these plans, which were in force in February 2015, if the contributions are insufficient to pay the benefits, a recovery plan must be instituted. This plan may stipulate that pensions paid can be reduced.

■ Target-benefit plans

Some pulp and paper companies were authorized to institute target-benefit pension plans.

These plans do not promise a pension. It is a target that the employer's pledged contributions attempt to reach. If these amounts are insufficient, active and retired members' pensions could be reduced.

■ *Act to foster the financial health and sustainability of municipal defined benefit pension plans*

Adopted in 2015, the *Act to foster the financial health and sustainability of municipal defined benefit pension plans* requires municipal plans to restructure. Depending on the plan's financial health as at December 31, 2015, most plan employers and members had to agree to reductions in rights before 2017.

- People who were retired or who had applied for their pension before June 13, 2014 could lose just some or all of their pension indexation (if the plan provided for indexation, but not always the case).
- The other members could have pensions reduced, even the vested portions, and even if they applied for their pension between June 13, 2014 and the date on which the reductions were agreed upon.

■ ***Act respecting the restructuring of university-sector defined benefit pension plans***

Adopted in 2016, the *Act respecting the restructuring of university-sector defined benefit pension plans* also forces these plans to restructure. Depending on the plan's financial health as at December 31, 2015, plan employers and members had to agree to reductions in rights before March 31, 2017.

- People who were retired on December 31, 2014 could lose just some or all of their pension indexation (if the plan provided for indexation, but not always the case).
- Other members could have pensions reduced, even the vested portions, and even if they retired between December 31, 2014 and March 31, 2017.

■ **Closure of insolvent plans**

Under the *Supplemental Pension Plans Act*, if a defined benefit plan closes when in a deficit position and the employer is also insolvent, the pension fund is distributed equally among all retired and active members. Their pensions can therefore be reduced if this happens.

However, with negotiated contribution and target-benefit plans, the employer is not required to pay the plan's deficit on termination. Pensions could therefore be reduced even if the employer is solvent.

APPENDIX 5: DETAILS ON PENSION PLAN RISKS

Appendix 5 provides further information on the risks borne in pension plans, namely:

- funding risk;
- longevity risk.

❑ Funding risk

In a defined benefit plan, good or poor performance by the pension fund has no direct impact on members' pensions as long as the employer remains solvent. Over the long term, however, if the plan incurs too much loss, the employer could seek to control its costs by reducing future pension amounts, for example.

In defined contribution plans, good and poor returns hit the member's account immediately.

There are two ways to invest defined contribution plan assets:

- investments may be selected by the pension committee, which will, as with a defined benefit plan, develop an investment policy by calling on portfolio managers who will invest the assets collectively. In this case, all member accounts are credited for the same pension fund performance;
- investments may be selected by individual members, who must choose from an array of investments pre-selected by the pension committee, usually with a single financial institution. The returns posted to members' accounts will then depend on their respective investment choices.

The above applies to the pre-retirement period. Currently, to receive retirement income, members of defined contribution plans must transfer their money to a life income fund or purchase an annuity from an insurer (this option is not popular as the cost is seen as too high). However, the *Supplemental Pension Plans Act* was recently amended to allow defined contribution plans to offer retirement income similar to that of life income funds. (The amendment is not yet in force, as it is dependent on a regulation that has not been passed yet.)

According to a study by the Régie des rentes du Québec (which recently became Retraite Québec), between 1999 and 2005, the average net return on personal retirement savings plans was around 2%, 0.4% below inflation; during the same period, pension funds posted a net median return of 6.0%. According to the study:

"The poor returns seem to be associated with administration charges and individual investor behaviour. In many cases, the choices on investments in registered retirement savings plans, registered retirement savings funds, locked-in retirement accounts and life income funds result from decisions by people who do not have the same training, skills and information as the institutional investors who advise on pension funds. Many individual investors tend to be overly cautious, often investing in products that offer very low returns. Lastly, individual investors do not have access to some types of investments that are available to institutional investors, such as investments in infrastructure or real estate." [our translation]⁴⁵

In the pre-retirement period, when funds are accruing in a defined contribution plan, the management fees are generally lower than in the type of retirement savings covered by the study, as it is a group product. However, the above remarks on investment choices may apply to some extent to defined contribution plans in which the members select their investments. In that type of plan, it is reasonable to think that, while paying the same contribution amount, the member will ultimately have less capital due to the more modest returns. The member's pension will therefore be smaller.

⁴⁵ Régie des rentes du Québec, *Constats et enjeux concernant le système de retraite québécois*, p. 55.

❑ Longevity risk

The D'Amours report explains this risk as follows:

“Defined benefit plans go further and give members the advantage of pooling the longevity risk, that is, of pooling the risk that a person may live longer than the period covered by his or her retirement savings. Pooling of the longevity risk enhances risk distribution and therefore reduces the costs that must be assumed to bear that risk.

We can better illustrate the advantage afforded to the members of defined benefit plans with a concrete example.

- By using a mortality table⁴⁶ and a discount rate of 3.12%,⁴⁷ in the case of a defined benefit plan, a life annuity of \$10,000 a year for a woman aged 60 has a value of around \$169,000.
- If another woman opted for self-management of her retirement income and wanted to accumulate an amount that would allow her (in 90% of situations) to have an annual income of \$10,000, it would cost her around \$220,000.

Pooling is what makes the difference in the two cases. The woman who assumes the entire longevity risk must have enough retirement savings to cover her needs until age 97. In fact, she has a 10% chance of living longer.”⁴⁸

Note that, in a defined benefit plan, members who die at a younger age leave some of their retirement savings in the pension fund, where it helps those that die when older; with a defined contribution plan, because all retirement savings are vested in members, upon their death, the funds go to their spouse or heirs. Here, the D'Amours report states that:

“From 1971 to 2011, life expectancy at age 65 in Québec increased by just over 5 years for women and almost 6 years for men.”⁴⁹

⁴⁶ The UP-1994 generational mortality table was used.

⁴⁷ Rate of return used to determine the value of a retiree's pension according to the standards of the Canadian Institute of Actuaries, September 2012.

⁴⁸ *Innovating for a Sustainable Retirement System*, p. 34.

⁴⁹ *Ibid.*, p. 73.

APPENDIX 6: AVERAGE EMPLOYMENT PERIOD IN CANADA

Appendix 6 sets out the Statistics Canada numbers that show that the average employment period:

- was 8.9 years in 2016 in Québec and 8.6 years in Canada, and had been relatively stable for 20 years;
- varies depending on the productive sector;
- is longer for unionized workers.

☐ The average employment period has been relatively stable in Québec for the last 20 years

The average employment period has been relatively stable for the last 20 years in Québec, while increasingly slightly in Canada.

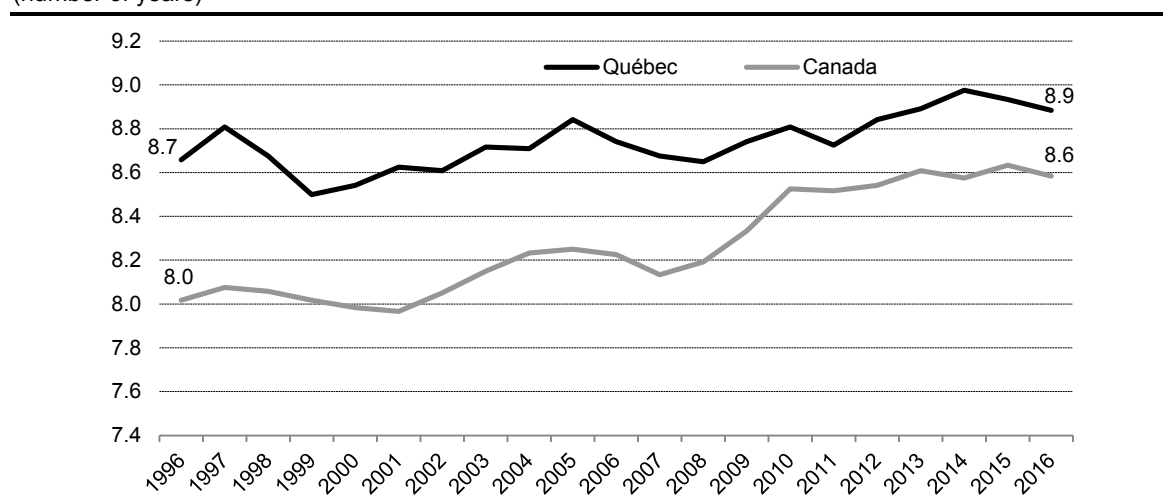
Specifically, the average employment period was:

- 8.7 years in 1996 in Québec compared with 8.9 years in 2016;
- 8.0 years in 1996 in Canada compared with 8.6 years in 2016.

CHART 6

Average employment period – 1996 to 2016

(number of years)



Source: Statistics Canada.

❑ The employment period varies by productive sector

The average employment period varies depending on the productive sector. In 2016, it was:

- 10.2 years in the goods-producing sector;
- 8.6 years in the service sector.

The average employment period is the longest (15.9 years) within the goods-producing sector, specifically agriculture.

In the service sector, the accommodation and food services industry has the shortest average employment period (4.7 years).

Note that manufacturing employees, who generally have access to pension plans, stay in a job an average of nearly 10.6 years.

TABLE 6

Average employment period by sector in Québec – 2016 (number of years)

Sector	Average employment period
Goods-producing sector	10.2
Agriculture	15.9
Forestry, fishing, mining, oil and gas extraction	9.5
Utilities (electricity, gas and water)	13.6
Construction	7.7
Manufacturing	10.6
Service sector	8.6
Wholesale and retail trade	6.9
Transportation and warehousing	10.1
Finance, insurance, real estate, rental and leasing	9.9
Professional, scientific and technical services	8.3
Business, building and other support services	6.3
Educational services	11.1
Health care and social assistance	9.6
Information, culture and recreation	8.5
Accommodation and food services	4.7
Other services (except public administration)	9.4
Public administration	11.0
All industries	8.9

Source: Statistics Canada.

❑ The employment period is longer in unionized sectors

Moreover, unionized workers generally keep their jobs longer. In fact, in 2016, workers with more than 15 years in a job represented:

- 28.2% of unionized workers;
- 18.3% of all workers.

Moreover, workers who stayed in a job less than five years represented:

- 36.2 % of unionized workers;
- 52.8 % of all workers.

TABLE 7

Breakdown of employment period in Canada – 2016 (per cent)

Employment period	Unionized workers	All workers
Less than 5 years	36.2	52.8
5 to 10 years	21.4	18.4
10 to 15 years	14.2	10.5
Over 15 years	28.2	18.3
TOTAL	100.0	100.0

Source: Statistics Canada.

APPENDIX 7: PROS AND CONS OF THE PROPOSED SOLUTIONS

Pros and cons of the proposed solutions for prohibiting disparities in treatment based solely on hiring date in pension plans

Pros	Cons
Completely prohibiting disparity in treatment based solely on hiring date	
– All employees are sure of being treated in the same way regardless of hiring date.	– An employer could choose to offer a defined contribution component to all employees. – Offers less flexibility for the parties in negotiations, as the changes must affect all employees. – Difficult to apply to multi-jurisdiction plans.
Authorizing disparity in treatment based solely on hiring date if there is an equivalent plan	
Option 1: <i>Equivalent plan if the current service contribution paid by the employer is identical to that of another plan in the same category</i>	
– Offers the parties a little more flexibility in negotiations, making it possible to provide for different provisions based on hiring date. – Limits the various plans offered based solely on hiring date to plans in the same category.	– If the employer elects to offer a plan in the defined benefit category that eliminates the employer risk, a disparity will persist. – All in all, even with an equal contribution, the various types of capital accumulation plans are not completely equivalent. A disparity persists. – Equivalence would be hard to maintain between some types of plans. – Difficult to apply to multi-jurisdiction plans.
Option 2: <i>Equivalent plan if the current service contribution paid by the employer is identical, regardless of the pension plan category</i>	
– Offers the parties more flexibility in negotiations than a complete prohibition, making it possible to provide for different provisions based on hiring date.	– If the employer elects to offer a plan that eliminates the employer risk, a disparity will persist. – The employer might find it advantageous to offer the same defined contribution plan to long-standing employees to avoid having to constantly change the contribution rate to maintain equivalence with the defined benefit plan. – It is hard to consistently justify equivalence between contributions to defined benefit and defined contribution plans. – Difficult to apply to multi-jurisdiction plans. –
Option 3: <i>Equivalent plan if the current service contribution paid by the employer is higher for a plan in the capital accumulation plan category</i>	
– More flexibility in negotiations than a complete prohibition, making it possible to provide for different provisions based on hiring date. – If the employer elects to offer a plan that shifts the risk to members, they are compensated.	– The employer might find it advantageous to offer the same defined contribution plan to long-standing employees to avoid constantly changing the contribution rate to maintain equivalence with the defined benefit plan. – Equivalence between a defined contribution plan and defined benefit plan may still require the reduction of future rights in the defined benefit plan. – Hard to consistently justify equivalence between contributions to defined benefit and defined contribution plans. – Difficult to apply to multi-jurisdiction plans.

Pros	Cons
Option 4: <i>Equivalent plan if the total contribution paid by the employer is identical, regardless of pension plan category</i>	
– Offers the parties more flexibility in negotiations than a complete prohibition, making it possible to provide for a different plan based on hiring date.	– If the employer elects to offer a plan that eliminates the employer risk, a disparity will persist. – The employer might find it advantageous to offer the same defined contribution plan to long-standing employees to avoid having to constantly change the contribution rate to maintain equivalence with the defined benefit plan. – Equivalence would be difficult or impossible maintain, especially because of tax rules. – Difficult to apply to multi-jurisdiction plans.

APPENDIX 8: PROS AND CONS OF THE CONTEMPLATED LEGISLATIVE VEHICLES

Appendix 8 presents the pros and cons of three different legislative vehicles that could be used to prohibit disparity in treatment clauses in pension plans, namely:

- the *Supplemental Pension Plans Act*;
- the *Act respecting labour standards*;
- a new act specific to this matter (self-contained law).

☐ ***Supplemental Pension Plans Act***

■ **Pros**

Given its expertise in retirement matters, Retraite Québec is in charge of the *Supplemental Pension Plans Act*. Its expertise would be needed if disparity in treatment was permitted, under some conditions, for example when an equivalent plan is offered.

■ **Cons**

A prohibition on disparity in treatment clauses included in the *Supplemental Pension Plans Act* would not apply to all Quebecers because:

- pension plans where the majority of members do not work in Québec (multi-jurisdiction plans) would not be under Retraite Québec's supervision, and the standard would probably not apply to them;
- this Act does not cover public plans, such as the Government and Public Employees Retirement Plan (RREGOP), group registered retirement savings plans (RRSPs) and voluntary retirement savings plans (VRSPs).

Moreover, Retraite Québec does not have the data required to actively monitor employers.⁵⁰ It has information on the pension plans it supervises, but it is incomplete. For example, it does not always have the contact information for participating employers.

⁵⁰ To provide active supervision, documents are requested and studied to ensure the standard is met. With passive supervision, the monitoring body only acts when it receives a complaint.

Lastly, the *Supplemental Pension Plans Act* is not the appropriate vehicle if an expansion of the prohibition on disparity in treatment clauses to group insurance plans is being contemplated, as this Act only deals with pension plans.

❑ ***Act respecting labour standards***

Provisions could be added to the *Act respecting labour standards* to prohibit disparity in treatment clauses in pension plans or define situations in which they would be allowed.

■ **Pros**

A prohibition on disparity in treatment included in the *Act respecting labour standards* could cover all Quebecers except those working for companies under federal jurisdiction. In fact, the *Act respecting labour standards* could apply to Québec employees, regardless of the province that is overseeing their pension plan.

Moreover, a complete prohibition on disparity in treatment in pension plans could be incorporated into the *Act respecting labour standards*, given that it requires less pension plan expertise than a disparity in treatment that is allowed under certain conditions.

The *Act respecting labour standards* includes a similar mechanism for already prohibited disparity in treatment and provides for a remedy in the event of non-compliance.

A prohibition under the *Act respecting labour standards* would make it possible to add other components, such as group insurance, as requested by the unions, if this orientation is chosen.

■ **Cons**

The *Act respecting labour standards* sets out universal public standards that apply to all employees. This is not the case with pension plans.

A prohibition in the *Act respecting labour standards* would result in an expansion of the role and mandate of the Commission des normes, de l'équité, de la santé et de la sécurité du travail (CNESST), which would then have to oversee pension plans.

The CNESST does not have the expertise on pension plan contents that would be needed if disparity in treatment were allowed under some conditions, such as when an equivalent plan is offered. Additional resources would therefore be required.

A prohibition in the *Act respecting labour standards* would lead to a duplication of government responsibilities for overseeing pension plans—work already being done by Retraite Québec. Moreover, unlike Retraite Québec, the CNESST does not have access to pension plan contracts.

The *Act respecting labour standards* already contains a prohibition on disparity in treatment clauses based solely on hiring date with respect to some of the minimum standards set out, such as wages and duration of work. However, with respect to this Act, pension plans and benefits are not minimum standards.

Moreover, although in practice the prohibitions that could potentially be added to the *Act respecting labour standards* would cover all pension plans, it is not clear that the CNESST would be able to act to have a multi-jurisdiction plan corrected.

☐ **Act specific to this issue (self-contained law)**

■ Pros

A self-contained law would allow more flexibility to determine the scope of the pension plans involved.

A self-contained law could also be entrusted to several bodies that can ensure compliance. For example, Retraite Québec and the CNESST could handle supervision; this could be relevant eventually, if extending the prohibition on disparity in treatment to group insurance plans were being considered.

■ Cons

Adopting a self-contained law on disparity in treatment would make the sources of law on the matter proliferate. The legislative provisions on pension plans (*Supplemental Pension Plans Act*), disparity in treatment in some labour standards (*Act respecting labour standards*) and disparity in pension plans (self-contained law) would each be in different laws.

Also, one or more ministers and one or more oversight bodies would have to be designated for applying the law.

Although a self-contained law is more flexible in terms of its scope, it does not resolve the problem of prohibiting disparity in treatment clauses in multi-jurisdiction plans.