

"And when a worker's not working?"  
Income security (welfare and pensions)  
for mobile workers in Canada

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# 1. "And when a worker's not working?" Income security (welfare and pensions) for mobile workers in Canada

In this paper, we provide a basic overview of the welfare and pension income security options available to workers who are (or have been) on the move (OTM) in Canada. Workers on the move, for the purposes of this paper, include:

- (a) a Canadian or permanent resident worker who is working and living temporarily outside of their usual or current province of residence;
- (b) a Canadian or permanent resident worker who has recently worked and lived temporarily outside of their current province of residence;
- (c) a temporary foreign worker (TFW) who was employed under a valid work permit;
- (d) an undocumented worker who has worked without a valid work permit.

We look at the legislative frameworks and the limited academic literature that address the eligibility for and practical access to income security benefits for such workers. This paper is divided into three parts: access to welfare benefits; access to public pensions (i.e. Old Age Security (OAS), Guaranteed Income Supplement (GIS) and the Canada and Quebec Pension Plans (CPP/QPP); and, finally, access to private pensions. In each section, we summarize eligibility issues for different categories of OTM workers in a table and, when appropriate, offer a breakdown of provincial-specific information for Newfoundland and Labrador, Quebec, Ontario, Alberta and British Columbia. Academic literature on this topic is nearly nonexistent, so our presentation and analysis remains rather technical.

Overall, our conclusions are that, while immigration status makes TFWs and undocumented workers ineligible for some of these income security measures (a fact that may lead them into extreme financial hardship), the fact of a worker being “on the move” does not in and of itself seem to be a significant barrier to access. And while empirical research conducted by other members of the OTM team may uncover examples of mobile workers having difficulty accessing welfare or pensions *in practice* because of their mobile work trajectories or because of their lack of knowledge about their entitlement to these benefits, our research does not suggest that there are significant *policy* barriers related to being on the move.

## 2. Mobile Workers and Access to Welfare Benefits in Different Canadian Provinces

The first section of this paper tries to answer one question: What happens when things turn really bad for a worker on the move in Canada? By “really bad”, we mean that a worker finds him or herself without any type of financial resource, no employment income, ineligible for EI and without any material assets (other than a car or a truck). Do provinces have a duty to provide welfare assistance (social assistance, in government terminology) to such workers?

In order to answer the question we created four (4) archetypal situations:

- (a) a Canadian or permanent resident worker who finds him or herself without financial resources when they were working and living temporarily outside of their usual province of residence;
- (b) a Canadian or permanent resident worker who finds him or herself without financial resources and returns to their home province after having worked and lived temporarily away;
- (c) a temporary foreign worker in need of financial help in the province where he or she was employed under a valid work permit;
- (d) an undocumented worker in need of financial help in the province where he or she worked without a valid work permit.

Summary Table A provides answers to these questions and this section provides legal and technical details for 5 provinces: Alberta; British Columbia; Ontario, Québec and Newfoundland-Labrador.

In order to understand access to welfare for people falling under cases (a) and (b), one has to consider the latest version (as amended in 2014 by 2014, c. 39, s. 173.) of the *Federal-Provincial Fiscal Arrangements Act* (RSC 1985, c F-8). Section 25.1(1), which reads as follows:

25.1 (1) In order that a province may qualify for a full cash contribution under sections 24.5 and 24.51 for a fiscal year, the laws of the province must not, in the case of persons described in subsection (2),

(a) **require or allow a period of residence in the province or Canada to be set as a condition of eligibility for social assistance** or for the receipt or continued receipt of social assistance; or

(b) make or allow the amount, form or manner of social assistance to be contingent on a period of such residence.

Article 25.1(2) goes on to restrict social assistance protection to people fulfilling specific Canadian residency requirements:

(a) Canadian citizens;

(b) permanent residents within the meaning of subsection 2(1) of the Immigration and Refugee Protection Act;

(c) any person who, under section 24 of the Immigration and Refugee Protection Act, has been determined by an officer to be a victim of human trafficking and who holds a temporary resident permit issued under that section; and

(d) protected persons, within the meaning of subsection 95(2) of the Immigration and Refugee Protection Act.

In other words, the Canadian residents listed above should be eligible for welfare in any province across the country, but a province that wishes to provide assistance to any other category of persons (for example, TFWs or undocumented workers) would have to assume the full cost of such assistance. But what happens in practice?

We contacted some professionals in Alberta, BC and Ontario through the PovNet network. In all cases, they were unaware of cases where welfare had been denied to Canadians or permanent residents “on the move” on the sole ground of provincial non residency. In the case of Alberta, our contact even specified (in September 2014) that providing assistance to workers in financial trouble was in the interest of the industry: “Better to keep a poor worker grounded than lose one.” We quote. Considering the economic downturn in Alberta, however, this information is worth rechecking.

Categories (c) and (d) are clearly excluded from welfare protection as non-Canadian or non-residents of Canada. However, most provincial legislations provide for the possibility of some sort of humanitarian assistance, described as the “near deprivation” rule. Sub Section 2.3 of this section will consider this situation. But beforehand, subsection 2.1 describes the legal environment in the five identified provinces and subsection 2.2 addresses the criteria of residency in a province for the purpose of welfare legislations (notwithstanding the *Federal-Provincial Fiscal Arrangements Act*). At the end of this section (subsection 2.3), potential field research questions are identified.

## **2.1 Program Overview in five Provinces: Alberta, BC, Ontario, Québec and Newfoundland-Labrador**

### **2.1.1 Alberta**

Alberta’s social assistance program, *Alberta Works*, is oriented towards “assisting Albertans and their families to participate successfully in the workforce”<sup>1</sup>. In this sense, the program is designed as a *workfare* program rather than a *welfare* program.

Applicants to the *Alberta Works* program are divided in four categories: i) expected to work or working; ii) not expected to work due to barriers to full employment; iii) full-time learners; iv) applicants in need of one-time, emergency assistance<sup>2</sup>.

A participant in the program is not expected to work if they have multiple barriers to full employment beyond his control, or if they have persistent and severe health problems of, or

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<sup>1</sup> Government of Alberta, Human Services, « 01 Income Support Program Principles », at: <<http://humanservices.alberta.ca/AWonline/IS/4754.html>.

<sup>2</sup> *Income and Employment Supports Act*, SA 2003, c. I-0.5, s. 6(1).

expected to be of, more than six months<sup>3</sup> (referred to as Barriers to Full Employment Household Units in the regulation, or BFE). If the participant is not in this situation, and if they do not qualify as a learner as per the regulation, they are then expected to work<sup>4</sup> (ETW).

Section 6(2)(a) of the *Income and Employment Supports Act* (IESA) prescribes that a household unit that is categorized as either ETW or not expected to work (BFE) must be present in Alberta to be eligible for income support. While the Act prescribes that members of the “learner” category are required to be “residents of Alberta determined in accordance with the regulations”<sup>5</sup>, the Act or the regulations are silent on any residency requirement for participants in the ETW and BFE categories; in our opinion, this entails that a person must not necessarily have elected residence in Alberta in order to benefit from the income support program. This has been confirmed by one of our contacts.

However, a person who has been authorized to search for work outside the province is still eligible for income support, according to the *Expected to Work/Barriers to Full Employment Policy & Procedures*<sup>6</sup>.

In general, those without permanent residency in Canada are excluded from income support programs<sup>7</sup>. However, an individual who has been recognized a victim of human trafficking as determined by Citizenship and Immigration Canada<sup>8</sup>, who is a refugee or a refugee claimant<sup>9</sup>, or an individual who holds a temporary resident permit (or Minister’s permit, issued pursuant to s. 24(1) of the *Immigration and Refugee Protection Act*) is eligible for income support if the Government of Alberta has approved them for entry into Canada<sup>10</sup>. As per the *Expected to Work/Barriers to Full Employment Policy & Procedures*, foreign workers or persons illegally in Canada are not eligible for Alberta income support<sup>11</sup>.

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<sup>3</sup> Alta Reg 122/2011, s. 8(2)

<sup>4</sup> Alta Reg 122/2011, s. 9(1)

<sup>5</sup> *Income and Employment Supports Act*, SA 2003, c. I-0.5, s. 6(3)a.

<sup>6</sup> Government of Alberta, Human Services, « Persons Not in Alberta », at: <http://humanservices.alberta.ca/AWonline/IS/4837.html>.

<sup>7</sup> Income Support, Training and Health Benefits Regulation, Alta Reg 122/2011, s. 10(2). Temporary Resident Permits (TRPs) are issued by Citizenship and Immigration Canada officers under subsection 24(1) of the Immigration and Refugee Protection Act to foreign nationals who are otherwise inadmissible for entry to Canada or who do not meet the requirements of the Act.

<sup>8</sup> *Ibid*, s. 10(2)e)

<sup>9</sup> *Ibid*, s. 10(2)d)

<sup>10</sup> *Ibid*, s. 10(2)c)

<sup>11</sup> Human Services GOVERNMENT OF ALBERTA, « Persons with Immigration Status - General Eligibility », at : <http://humanservices.alberta.ca/AWonline/IS/4829.html>.

### 2.1.2 British-Columbia

Under the *Employment and Assistance Act*<sup>12</sup>, a person who wishes to apply for income assistance must go through a two-stage process. The first stage of the process establishes whether or not the applicant has completed a satisfactory work search, is required to complete a work search, or is exempt from it<sup>13</sup>. The second stage aims to orientate the applicant and assess his or her eligibility for income assistance<sup>14</sup>.

In order to be eligible for income assistance, applicants must fulfill certain residency requirements: they must be either a) a Canadian citizen; b) a permanent resident; c) a refugee under the *Immigration and Refugee Protection Act*; d) be in Canada under a temporary resident permit or on a Minister's permit issued under the IRPA or the defunct *Immigration Act*<sup>15</sup>; e) currently waiting for a decision on a claim for refugee protection under the *Immigration and Refugee Protection Act* or f) subject to a removal order under the same Act that cannot be executed<sup>16</sup>.

It is worth noting that the British Columbia income assistance program also requires that at least one applicant in the family unit must have been employed for at least 840 hours in each of the two consecutive years; or have earned at least 7000\$ in each of the two consecutive years in order to be eligible for income assistance<sup>17</sup>. Nothing says that this employment needs to have been held in British Columbia.

Although nowhere in the Act or the regulations is the question of residence addressed, the policy and procedure manual from the Ministry of Social Development and Social Innovation does prescribe that applicants must reside in British Columbia in order to be eligible for income assistance<sup>18</sup>. Unless a recipient obtains prior authorization by the Ministry of Social Development and Social Innovation, he or she (and his family unit) ceases to be eligible for income assistance or hardship assistance after an absence of more than 30 consecutive days<sup>19</sup>. Authorization may be given to allow the recipient to participate in an education program, for medical purposes, or to avoid undue hardship. Policies from the Ministry of Social Development and Social Innovation dictate that a recipient who has been absent for more than thirty days must "re-apply for assistance when they return"<sup>20</sup>, which seems to imply that leaving the province for thirty days does not entail that one is no longer resident of British Columbia.

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<sup>12</sup> SBC 2002, c 40.

<sup>13</sup> *Employment and Assistance Regulation*, BC Reg 263/2002, s. 4.1.

<sup>14</sup> *Ibid.* s. 4.2.

<sup>15</sup> RSC 1985, c. I-2.

<sup>16</sup> Subject to certain exceptions. Those who have had little or no connection to the labour market in the past two years are directed toward different income security program. S. 7, BC Reg 263/2002; see also [http://www.gov.bc.ca/meia/online\\_resource/verification\\_and\\_eligibility/](http://www.gov.bc.ca/meia/online_resource/verification_and_eligibility/)

<sup>17</sup> BCEA, s. 8; BCEAR, s. 18

<sup>18</sup> [http://www.gov.bc.ca/meia/online\\_resource/verification\\_and\\_eligibility/resbc/index.html](http://www.gov.bc.ca/meia/online_resource/verification_and_eligibility/resbc/index.html)

<sup>19</sup> EAA, s. 17

<sup>20</sup> [http://www.gov.bc.ca/meia/online\\_resource/verification\\_and\\_eligibility/resbc/policy.html](http://www.gov.bc.ca/meia/online_resource/verification_and_eligibility/resbc/policy.html)

The Ministry of Social Development and Social Innovation may also provide hardship assistance to families otherwise ineligible for income assistance but who may experience undue hardship. However, hardship assistance can only be given in certain cases – none of which applies to a person who is not resident of British Columbia or who does not qualify under the citizenship requirements<sup>21</sup>.

### 2.1.3 Ontario

The Government of Ontario administers two different social assistance programs for persons in financial need: the Ontario Disability Support Program (ODSP) and Ontario Works, another example of a workfare program. The Ministry of Community and Social Services of Ontario provides the funds for the latter, although local governments administer the program (city, county, district, regional or First Nations governments).

As per s. 7(3) of the *Ontario Works Act*,<sup>22</sup> a person must reside in Ontario in order to be eligible for income assistance. Any absence of more than seven days without authorization by the Administrator leads to the cancellation or reduction of financial assistance<sup>23</sup>.

In order to be eligible for financial assistance under the Ontario Works program, the applicant must also be a Canadian citizen or be legally entitled to reside in Canada permanently<sup>24</sup>. A visitor – a person in Canada for a temporary purpose such as tourism, work, or study – is ineligible for assistance unless he has made a claim for refugee status, for refugee protection, or for permanent residency under the *Immigration and Refugee Protection Act*<sup>25</sup>.

The same goes for a person against whom a deportation order has been made or against whom a removal order has become enforceable<sup>26</sup>. In this case only, a person may otherwise be eligible if he or she is unable to leave the country for reasons wholly beyond his or her control, or if he or she has applied for permanent residency on the grounds of humanitarian or compassionate considerations under the *Immigration and Refugee Protection Act*<sup>27</sup>.

As in British Columbia's social assistance legislation, Ontario's body of legislation regarding last resort aid is silent on any specific residency requirement or on defining residency. It is also worth noting that the *Ontario Works Directives* fail to shed light on this question and provide guidance to caseworkers<sup>28</sup>. We can only expect that, in both provinces, residency is treated on a case-by-case basis. As set out in the tax decision of *Thomson v. Minister of National Revenue*, the Canadian government primarily conceives of residence as:

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<sup>21</sup> s. BCEA, s. 8, s. 17(1)(a).

<sup>22</sup> S.O. 1997, c 25, Sch A

<sup>23</sup> O. Reg 134/98, s. 5 ; *Ontario Works Directives*, 9.2. *Absence from Ontario*

<sup>24</sup> *Ontario Works Directives*, 3.1. Residency Requirements;

<http://www.mcsc.gov.on.ca/documents/en/mcss/social/directives/ow/0601.pdf>

<sup>25</sup> O. Reg 134/98, s. 6(1), par. 2 and 3.

<sup>26</sup> O. Reg 134/98, s. 6(1), par. 1.

<sup>27</sup> S. 6(2).

<sup>28</sup> *Ontario Works Policy Directives*, 3.1. Residency Requirements.

“a matter of the degree to which a person in mind and fact settles into or maintains or centralizes his ordinary mode of living with its accessories in social relations, interests and conveniences at or in the place in question. It may be limited in time from the outset, or it may be indefinite”<sup>29</sup>.

However, Ontario’s welfare Regulation does specify that any absence of more than seven days, unless it has been approved by the administrator for health treatments or for exceptional circumstances, can lead to a termination or reduction of benefits<sup>30</sup>.

In the matter of *Re 1303-03841*<sup>31</sup>, a case before the Social Benefits Tribunal regarding the Ontario Disability Support program, which is in nearly every point similar to Ontario Works, the Court confirms that “the *Act* plainly envisioned allowing income support only to people who are resident in Ontario. Residency is not a defined term [...] but suggests a permanence of habitation”. The Tribunal also finds that, while the Appellant had met the technical requirements of the *Act*, by coming back to Ontario every thirty days, it was not keeping with the intent of the legislation. While the Tribunal ultimately grants the appeal partially, its decision does imply that a mere return every thirty days in Ontario would not be sufficient to maintain residency in the province for the purposes of eligibility for welfare, a consideration for an unemployed worker “on the move” in their search for work.

#### 2.1.4 Québec

Last-resort financial assistance is administered in Québec by the Ministère de l’Emploi et de la Solidarité sociale. The *Individual and Family Assistance Act* creates two programs: the Social Solidarity Program, for individuals who have a severely limited capacity for employment, and social assistance, for individuals who do not have such a limited capacity<sup>32</sup>.

In order to be eligible for financial aid, a person must be a resident of the province of Québec and either be a Canadian citizen, a permanent resident<sup>33</sup> or a refugee under the IRPA<sup>34</sup>. A person who has applied for refugee status, or a person who has seen his application for refugee status declined but is otherwise authorized to stay in the country, as well as the person who has applied for permanent residency for humanitarian reasons under the IRPA and has a selection certificate issued pursuant to s. 3.1 of the *Act respecting immigration to Québec*<sup>35</sup>, can also obtain last-resort financial assistance<sup>36</sup>.

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<sup>29</sup> *Thomson v. Minister of National Revenue*, [1946] S.C.R. 209 at 225.

<sup>30</sup> O. Reg 134/98, s. 5.

<sup>31</sup> 2013 ONSBT 1626 (CanLII).

<sup>32</sup> S. 44 and 67, *Individual and Family Assistance Act*, CQLR c A-13.1.1.

<sup>33</sup> Permanent residents are excluded from receiving welfare in Quebec for the first three months after their arrival, on the basis that they were required to show proof of adequate resources for three months of living expenses in order to have their immigration visa approved:

<http://www.simulaide.emploiquebec.gouv.qc.ca/index.php/728252?newtest=Y&lang=fr>

In reality, many people deplete their savings in the process of travel and settlement.

<sup>34</sup> CQLR c A-13.1.1, s. 26.

<sup>35</sup> CRLQ, c I-0.2.

<sup>36</sup> *Individual and Family Assistance Regulation*, CQLR c A-13.1.1, r 1, s. 47.

Under the regulation, income support ceases after an absence of more than 15 cumulative days in a calendar month or more than 7 consecutive days in that month<sup>37</sup>, unless they are absent to receive prescribed care, to accompany someone who is caring for them for a maximum of six months, to participate in an employment-assistance measure or program, or to work outside of the province while they are a member of a family residing in Québec<sup>38</sup>.

The *Manuel d'interprétation normative des programmes d'aide financière* confirms that a visitor, such as a temporary worker, is not eligible for financial assistance<sup>39</sup>. Under the conditions of their visas, TFWs are expected to be employed while in Quebec and to leave the country if their employment is terminated.

### 2.1.5 Newfoundland and Labrador

The Income Support Program, created under the *Income and Employment Support Act*, ensures last-resort financial assistance in the province of Newfoundland.

Under s. 4 of the *Income and Employment Support Regulations*, a person must live in Newfoundland and Labrador in order to be eligible and to continue receiving income support. Section 4(2) specifies that a recipient of income support may be absent for 60 days with approval by an officer, or more than 60 days if required for medical reasons and approved by officer.

The Act is silent on any citizenship requirement for the applicant to be eligible for income support – however the regulations do provide that:

“an applicant or recipient shall, where required for an assessment of his or her eligibility for income support, provide the following [...]

(b) information regarding his or her citizenship or residency status, including whether an applicant or recipient is a landed immigrant or a refugee claimant;”<sup>40</sup>

However, the *Income and Employment Support Policy and Procedure Manual* do prescribe that refugee protection claimants under the IRPA and accepted refugees are eligible for income support<sup>41</sup>.

Also, the Policy and Procedure Manual is clear that visitors or temporary residents, such as temporary workers, are not eligible for income support. The Manual cites s. 39 of the

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<sup>37</sup> Ibid., s. 20.

<sup>38</sup> Ibid., s. 21.

<sup>39</sup> « Statut - Visiteur et autres résidents temporaires », at : <<http://www.mess.gouv.qc.ca/regles-normatives/a-identification-clientele/02-statuts-particuliers/02.09.10.html>.

<sup>40</sup> *Income and Employment Support Regulations*, NLR 144/04, s. 5(1).

<sup>41</sup> Government of Newfoundland and Labrador, Department of Advanced Education and Skills, *Income and Employment Support Policy and Procedure Manual*, chap. 2(ii) – Determining Eligibility – Non Canadians. [http://www.aes.gov.nl.ca/policymanual/pdf/is/elig\\_non\\_canadians.pdf](http://www.aes.gov.nl.ca/policymanual/pdf/is/elig_non_canadians.pdf)

*Immigration and Refugee Protection Act*, which states that “a foreign national is inadmissible for financial reasons if they are or will be unable or unwilling to support [themselves]<sup>42</sup>, unless the Officer in charge of the file believes extenuating circumstances make it such that benefits should be granted, in which case the file is to be referred to the Provincial Director of Income Support. Furthermore, Newfoundland is the only province to instruct Client Services Officers to report Income Support benefits applications made by temporary residents to Citizenship and Immigration Canada for an assessment of the situation with the Canadian Border Services Agency<sup>43</sup>.

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<sup>42</sup> Ibid, p. 4.

<sup>43</sup> Ibid.

**Summary Table A – Eligibility for Last-Resort Financial Aid by Situation of Worker and Province**

Situation / Province	Alberta	British-Columbia	Ontario	Québec	Newfoundland and Labrador
Canadian mobile worker, who is unable to find work in his province of work	<b>Yes</b> ; if the worker is <u>physically present</u> in Alberta at time of application (IESA, s. 6(1)a); ISTHBR, s. 11).	<b>Yes</b> ; unless the applicant leaves the province for more than thirty days (EAR, s. 17).	<b>Yes, if</b> the applicant is deemed to <u>reside</u> in Ontario (OWA, s. 7(3)a).	<b>Yes</b> , if the applicant is deemed to <u>ordinarily reside</u> in Québec (IFAA, s. 26)	<b>Yes</b> ; if the applicant is deemed to <u>live in Newfoundland</u> and Labrador (IESR, s. 4).
Canadian mobile worker unable to find work in his home province after a return to his province of residence	<b>Yes</b> ; if the worker is physically present in Alberta at time of application (IESA, s. 6(1)a); ISTHBR, s. 11)  May also be eligible for learner programs (IESA, s. 6(3)a).	<b>Yes</b> ; (EAR, s. 17). Cessation of aid if absence of more than thirty days without authorization.	<b>Yes</b> ; (OWA, s. 7(3)), cessation of aid if absence of more than 7 days without prior authorization. (O. Reg 134/98, s. 5)	<b>Yes</b> , if the person is deemed to reside in Québec (IFAA, s. 26) / income support ceases after an absence of more than 15 cumulative days in a calendar month or more than 7 consecutive days in that month (s. 20, <i>Règlement sur l'aide aux personnes et aux familles</i> ).	<b>Yes</b> ; eligibility ceases if leave not approved by an officer or if exceeds sixty days (except medical treatment) (IESR, s. 4).
Foreign national under a work permit (temporary foreign worker) unable to find work in the province of his work contract	<b>No</b> ; unless refugee/ refugee claimant (s. 10(2)d) ISTHBR) or victim of human trafficking (s. 10(2)e) ISTHBR).	<b>No</b> ; unless protected person, holder of a TPR, refugee claimant, or subject to a removal order that has been stayed/cannot be executed.	<b>No</b> ; unless refugee claimant or permanent residency applicant (O Reg 134/98, s. 6(1), par. 2).	<b>No</b> , unless refugee claimant or permanent resident applicant for humanitarian reasons, with a selection certificate from MICC (s. 47 of the Regulation)	<b>No</b> , unless refugee protection claimant ( <i>Income and Employment Support Policy and Procedure Manual, 2(ii)</i> ).
Undocumented worker who has worked without a valid work permit	<b>No</b> .	<b>No</b> .	<b>No</b> (O Reg 134/98, s. 6(1), par. 2 and 3).	<b>No</b> .	<b>No</b> .

## 2.2 The Issue of Residency Requirements

As said earlier and as set out in *Thomson v. Minister of National Revenue*, residence is primarily conceived as

“a matter of the degree to which a person in mind and fact settles into or maintains or centralizes his ordinary mode of living with its accessories in social relations, interests and conveniences at or in the place in question. It may be limited in time from the outset, or it may be indefinite”<sup>44</sup>.

Where a province subordinates the eligibility for income support or assistance to residency in the province, all jurisdictions are silent as to the moment where one becomes a resident. This leads us to believe that, generally speaking, residence is established on a case-by-case basis, with no formal or explicit threshold of residency to meet in order to be eligible for provincial social assistance programs.

When provinces have wanted to put in place strict, formal requirements, they have done so explicitly. For example, Quebec’s *Health Insurance Act*<sup>45</sup> provides that a person becomes a resident of Quebec three months after settling in Quebec<sup>46</sup>, while the *Individual and Family Assistance Act* and its regulations have no such explicit requirement.

Such analysis does not apply to Alberta, as the relevant legislation is totally silent about the residency requirement. And if British Columbia may be seen as having a tougher legal framework, it is because of the “income requirement for previous years” rule<sup>47</sup> and not the residency requirement.

In all cases, the recent amendments to the *Federal-Provincial Fiscal Arrangements Act*, which entered into force in December 2014, seems to solve the matter. A province, in order to get its share of funding from the federal government, cannot delay access to social assistance (providing that other conditions are met) to a transient person, a person residing in the province or a person returning to his or her home-province as long as that person is a Canadian citizen or a permanent resident of Canada. Such conclusions answer the main question of this section for both the category (a) and (b) of workers as we identified them in the Introduction.

It is not the first time in Canada that the federal government and the provinces have struggled over cost-sharing of social assistance for mobile Canadians. This time though, the rationale is very different. In fact, the recent amendments to the *Federal-Provincial Fiscal Arrangements Act* wish to unambiguously exclude from social assistance any non-resident in Canada who is not protected by the international law of refugees, as incorporated in Canadian immigration law. This harsh and unambiguous exclusion follows a similar pattern to that adopted by the federal government in the case of access to health care for refugee claimants through the Interim Federal Health Program

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<sup>44</sup> *Thomson v. Minister of National Revenue*, [1946] S.C.R. 209 at 225.

<sup>45</sup> *Health Insurance Act*, CQLR, c. A-29 and *Regulation respecting eligibility and registration of persons in respect of the Régie de l’assurance maladie du Québec*, CQLR, c. A-29, r. 1, s. 1.2 and 4.

<sup>46</sup> *Ibid.*, s. 5;

<sup>47</sup> *Supra*, note 19.

(IFHP). In introducing subcategories of claimants based on country of origin (arbitrarily deemed to be safe or not), the federal government created in 2012 an incredibly complex system of uncertainty with regard to access to health care. And Hospital administrators were well aware of the fact that providing care to persons belonging to certain categories of claimants (described in the media as bogus refugees) means getting no funding from the federal government. The Federal Court declared such rules to constitute cruel and unusual treatment according the Canadian Charter of Rights.<sup>48</sup> While the Conservative government had pledged to appeal this decision, the newly elected Liberal government dropped the appeal and returned the IFHP to close to its former state.

## **2.3 The Undue Hardship Rule or Near-Total Deprivation and non-Canadian workers in need of assistance: an overview**

### **2.3.1 Alberta**

Considering that the province of Alberta's income support program only requires physical presence in the province<sup>49</sup>, the pertinence of an undue hardship or near-total deprivation for Canadian mobile workers is doubtful. Nonetheless, section 100(1) of the *Income Support, Training and Health Benefits Regulation*<sup>50</sup> provides that a person may receive a one-time, financial aid, to cover emergent needs, although the person may be deemed to have sufficient income to meet his or her basic needs. Our Alberta contacts could not think of any cases where a foreign worker would have been given such compassionate help. However, we do not wish to exclude this possibility without more information.

### **2.3.2 British-Columbia**

In 2008, BC repealed section 42 of the *Regulation*, which provided that hardship assistance could be provided to applicants who did not meet citizenship requirements<sup>51</sup>. At the same time, however, eligibility for income support was extended to holders of temporary resident permits, refugee claimants, and persons subject to a removal order that cannot be enforced<sup>52</sup>. The same Regulation also provided for the possibility of granting hardship assistance to people who were not residents of BC<sup>53</sup>.

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<sup>48</sup> Canadian Doctors for Refugee Care v. Canada (Attorney general), 2014 FC 651.

<sup>49</sup> *Income and Employment Supports Act*, SA 2003, s. 6; *Income Supports, Health and Training Benefits Regulation*, Alta Reg 60/2004, s. 11; see also ALBERTA HUMAN SERVICES, *Alberta Works Policy Manual. Persons Not in Alberta*, <http://humanservices.alberta.ca/AWonline/IS/4837.html>.

<sup>50</sup> Alta Reg 60/2004.

<sup>51</sup> BC Reg 69/2008, s. 1(c).

<sup>52</sup> *Ibid.*, s. 1(a).

<sup>53</sup> *Employment and Assistance Regulation*, BC Reg 263/2002, ss. 39(1)(a), 41-47.1.

### 2.3.3 Ontario

A great deal of latitude and discretion is left to officials in deciding whether or not to provide emergency assistance to an individual. Section 56 of Ontario Regulation 134/98 (General) taken under the *Ontario Works Act* provides that emergency assistance may be provided for one half of a month, after which the person must resort to regular income assistance, if such assistance is still required. Emergency assistance may be provided if the applicant cannot satisfy their basic needs due to lack of assets or an inability to obtain credit and if the failure to obtain emergency assistance endangers the physical health of someone in the benefit unit.

Emergency assistance is classified as a “basic financial assistance” under the Act<sup>54</sup>, which, in turn, is comprised within the general definition of assistance<sup>55</sup>. As the citizenship requirements apply to “assistance”<sup>56</sup>, a foreign national in Ontario would not be able to obtain emergency assistance under *Ontario Works*.

However, emergency assistance may be provided to non-residents, albeit at the discretion of officials. Indeed, section 7(3) of OWA excludes non-residents from *income* assistance. With regard to *emergency* assistance, the Act is silent on any condition – other than those generally applicable to any kind of assistance – and refers to the regulations. Section 56 of O Reg 134/98 contains no residency requirement.

### 2.3.4 Québec

Pursuant to section 28, 49 and 50 of the *Individual and Family Assistance Act*, the Minister may grant assistance to an adult who is not eligible because of his status pursuant to sections 26 and 27 of the Act. This includes residency and citizenship requirements. However, the discretionary power cannot be used to provide financial assistance to a student.

In the exercise of his discretion, the Minister must establish if the adult or the members of the family would otherwise be in circumstances that could endanger their health and safety, or lead to complete destitution. A person may also apply for discretionary benefits after being deemed ineligible following the means test of income assistance<sup>57</sup>.

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<sup>54</sup> *Ontario Works Act*, 1997, SO 1997, c. 25, s. 5(c).

<sup>55</sup> *Ibid.*, s. 2.

<sup>56</sup> O Reg 134/98, s. 6(1).

<sup>57</sup> Ministère de l'Emploi et de la solidarité sociale du Québec, *Manuel d'interprétation normative des programmes d'aide financière. Pouvoir discrétionnaire du Ministre – Admissibilité*, <http://www.mess.gouv.qc.ca/regles-normatives/e-versement-recouvrement/15-versement-aide/15.08.01.html>

### 2.3.5 Newfoundland and Labrador

Under section 16 of the *Income and Employment Support Act*<sup>58</sup> of Newfoundland and section 28 of the *Income and Employment Support Regulations*<sup>59</sup> assistance may be provided in an emergency situation or to ensure the immediate health, safety or well-being, whether because the applicant is ineligible due to sufficient income or assets or due to residency requirements not being met.

As seen earlier, the IESA and the regulations do not explicitly provide for citizenship requirements, other than the fact that citizenship status is information that is required to assess or review eligibility<sup>60</sup>. While the discretionary power to provide emergency assistance does not refer to a possibility to overcome the non-observance of citizenship requirements, the Income and Employment Support Policy and Procedure Manual of the Department of Advanced Education and Skills of Newfoundland seems to imply that emergency assistance may be given to a foreign national in need, as the policy cites that the provincial director of Income Support has the authority to approve “benefits for temporary visitors due to extenuating circumstances”<sup>61</sup>.

In conclusion, «transients», seen as foreign workers or as non-Canadian ones, seem to be put here in the same discretionary situation as Canadian in need of Near-Total Deprivation help. Far from being a right, such help totally depends on administrative decision and can only be applied to urgent needs and offered in cash or in kind. If not impossible, access to such one-time help is not reliable.

## 2.4 Potential for Field Research questions

### 2.4.1 For Canadian-resident mobile workers

- Do Canadian-resident mobile workers who require welfare tend to claim it in their province of work or in their home province? Why?
- Do Canadian-resident mobile workers know that they would generally be eligible for welfare in their province of work? If so, do they exercise this entitlement?
- Do Canadian-resident mobile workers experience difficulties in accessing welfare in their province of work? Are they asked to provide proof of residency (ex. health card, lease, driver’s licence) that they have difficulty producing?
- Are Canadian-resident mobile workers encouraged to return to their home province or home city when they apply for welfare in their province of work? Is there any assistance for people to travel home? Or in contrast, are people discouraged from going home (to be available for work locally)?
- Are Canadian-resident mobile workers who apply for welfare encouraged to travel in order to seek employment? We know some provinces have provisions for this (Alberta) but it is

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<sup>58</sup> SNL 2002, c. i-0.1.

<sup>59</sup> NLR 144/04.

<sup>60</sup> *Income and Employment Support Regulations*, SNL 2002, c i-0.1, s. 5(1)(b).

<sup>61</sup> Department of Advanced Education and Skills of Newfoundland and Labrador, Income and Employment Support Policy and Procedure Manual, “Chapter 2: Eligibility”, [http://www.aes.gov.nl.ca/policymanual/pdf/is/elig\\_non\\_canadians.pdf](http://www.aes.gov.nl.ca/policymanual/pdf/is/elig_non_canadians.pdf), p. 6.

not clear in some others (BC and Ontario provide transportation support for participation in employability programs). What kind of employment-related transportation benefits are available in different provinces and for what purposes?

#### **2.4.2 For foreign mobile workers**

- What are the implications of TFWs and other non-residents being excluded from welfare benefits?
- Are TFWs and other non-residents aware that they may be eligible for emergency assistance? If so, how common is it for these workers to receive emergency assistance?
- Has there been any advocacy for TFWs to be able to access welfare benefits or emergency assistance? What have been the strategies, the rhetoric and the results?

### 3. Mobile workers and public pensions

The pension system in Canada relies on three pillars: basic social security pensions (Old Age Security – OAS and Guaranteed Income Supplement – GIS); employment-based, compulsory and contributory public pension plans (Canada and Quebec Pension Plans – CPP/QPP); and private, voluntary pensions<sup>62</sup>. In this section, we explore the question of whether being a worker “on the move” (between regions, between provinces or as an international migrant) has an impact on one’s access to public pensions. As always, there are social determinants (such as gender, caregiving responsibilities, and earning history) that come into play in influencing workers’ access to or level of public pensions<sup>63</sup>. But specifically in relation to being a mobile worker, temporary immigration status (being a TFW or an undocumented worker) makes one ineligible for certain of the social security-oriented public pension programs or lessens one’s level of benefit but, in theory, immigration status should not interfere with the collection of any CPP/QPP benefits to which one is eligible. Importantly, however, being a mobile worker within Canada does not in itself appear to raise any policy barriers to access to any of the public pensions.

The combination of OAS-CPP is crucial for Canadians’ old age income security and has been lauded for having significantly reduced poverty among seniors<sup>64</sup>. Access to public pensions is essential in old age as, according to the Canadian Labour Congress, over 60% of working Canadians have no private workplace pension. And despite Canadian seniors’ near universal access to some form of public pension, more than a third of all seniors receiving public pensions (OAS-CPP) earn less than 11 000\$ a year<sup>65</sup>.

When it comes to the relationship between immigration status and access to pensions in Canada, the issue is clearly underexplored but we can draw some common sense conclusions. For example, Hum and Simpson (2010) compared native-born retirees with immigrant ones and conclude that immigrant retirees’ pension income is on average 43% less than that of Canadian-born retirees while their access to privately funded pensions is 30% lower than that of Canadian-born retirees<sup>66</sup>. Marier and Skinner looked at the impact of gender and immigration on pension outcomes in

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<sup>62</sup> See *The Reality of Retirement Income in Canada*, p. 3, Fraser Institute, 2014.

<http://www.fraserinstitute.org/content/realty-retirement-income-canada>

<sup>63</sup> Patrick Marier and Suzanne Skinner ‘Orienting the Private/ Public Mix of Pensions.’ in Daniel Béland and Brian Gran (eds.), *Public and Private Social Policy: Health and Pension Policies in a New Era* (New York: Palgrave MacMillan). P. 45-69.; Derek Hum and Wayne Simpson, ‘The Retirement Prospects of Immigrants: Will it Require a New Social Contract?’ *Retirement Policy Issues in Canada*, Michael G. Abbott, Charles M. Beach, Robin W. Boadway and James G. MacKinnon (eds.), 2009, 429-451.

<sup>64</sup> Bob Baldwin, Research Study on the Canadian Retirement Income System Prepared for the Ministry of Finance, Government of Ontario, 2008 at <http://www.fin.gov.on.ca/en/consultations/pension/dec09report.pdf>; John Myles, ‘Income Security for Seniors – System Maintenance and Policy Drift’ in *Inequality and the Fading of Redistributive Politics*, Keith Banting and John Myles (eds), UBC Press 2013, 312-335.

<sup>65</sup> CLC Continues to Push for CPP Improvements, *Facts and Fiction about labour’s plan to Improve CPP benefits*, 2010 at <http://tcr320.org/news/CLC&CPPIImprovements091710.pdf>

<sup>66</sup> Derek Hum and Wayne Simpson, ‘The Declining Retirement Prospects of Immigrant Men’, *Canadian Public Policy / Analyse de Politiques*, Vol. 36, No. 3 (September 2010), pp. 287-305.

Canada<sup>67</sup>. Although the model of the interrupted career explains some degree of the income gap between immigrants and Canadian-born retirees, the size of the gap remains surprising when we consider the existence of social security agreements between Canada and 53 countries, including the Philippines and Mexico. In fact, no literature pays serious attention to those technical, but nevertheless important agreements.

The first pillar, **social security**, is the means by which the federal government ensures a basic income and a certain standard of living for Canadians upon retirement. The federal intervention finds expression mainly in two programs: Old Age Security (OAS) and the Guaranteed Income Supplement (GIS). OAS benefits are almost universal but GIS benefits are based on a means test. While OAS is a flat benefit with a claw-back past a certain income, GIS is a supplement for those with an income below \$17,088 for a single, widowed or divorced person in 2015<sup>68</sup>. The maximum annual income – and the amount of OAS and GIS benefits – are reviewed quarterly and indexed following the Consumer Price Index<sup>69</sup>.

The second pillar is made up of the public **employment-based plans** – the Canada Pension Plan or the Quebec Pension Plan – initially designed and created to overcome the absence of workplace pensions plans. The two plans are designed as compulsory, contributory and saving-based plans, and provide up to 25% of the earnings on which contributions were made (with equal rates of contribution from both the employee and the employer).

The third and final pillar of intervention is **private, voluntary pensions**. They can be individual, such as registered retirement savings plan (RRSPs) or other private savings vehicles (generally subject to tax incentives), or they can be extended to a group, such as workplace-based registered pensions plans (RPPs). The Canada Revenue Agency defines an RPP as an “arrangement by an employer or a union to provide pensions to retired employees in the form of periodic payments”<sup>70</sup>. In the scope of this research, we shall only focus on the latter.

It does not appear very useful as we explore the relation between mobility and pension to categorize mobile workers the way we did for the section about welfare benefits. We ask the reader instead to keep in mind the two eligibility criteria that matter when the time to assess a right to pension comes:

- length of residency in Canada (in the case of OAS, GIS) and;
- contributions (in the case of CPP-RRQ).

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<sup>67</sup> Patrik Marier and Suzanne Skinner, ‘The Impact of Gender and Immigration on Pension Outcomes in Canada’ *Canadian Public Policy / Analyse de Politiques*, Vol. 34, Special Supplement on Private Pensions and Income Security in Old Age: An Uncertain Future (Nov., 2008), pp. 59-78.

<sup>68</sup>Government of Canada, Old Age Security payment amounts, <http://www.servicecanada.gc.ca/eng/services/pensions/oas/payments/index.shtml>

<sup>69</sup> Old Age Security Act [OASA], RSC 1985, c O-9, s. 12(2).

<sup>70</sup> Government of Canada, *About Registered Pension Plans*, <http://www.cra-arc.gc.ca/tx/rgstrd/rpp-rpa/bt-eng.html>

## 3.1 Old Age Security (OAS) and Guaranteed Income Supplement (GIS)

### 3.1.1 Program Overview

The Old Age Security pension is a benefit paid monthly to Canadians and permanent residents who have reached the age of 65<sup>71</sup>. An individual who applies for OAS benefits must have lived at least 10 years in Canada if they reside in the country at the time of their application or 20 years if they are outside of Canada<sup>72</sup>. However, to receive a full OAS pension (\$573.37/month for a single person in July 2016<sup>73</sup>), an individual must have been a resident of Canada for 40 years, whether or not they live in Canada at the time of the application for OAS<sup>74</sup>.

The *Old Age Security Regulations* specify that a person resides in Canada if “he makes his home and ordinarily lives in any part of Canada”<sup>75</sup>. Service Canada specifies that,

If you are living in Canada, you must:

- be 65 years old or older
- be a Canadian citizen or a permanent resident at the time your Old Age Security pension application is approved, and
- have resided in Canada for at least 10 years after turning 18.

If you are living outside Canada, you must:

- be 65 years old or older
- have been a Canadian citizen or a permanent resident of Canada on the day before you left Canada, and
- have resided in Canada for at least 20 years after turning 18.<sup>76</sup>

The amount of the OAS pension is determined by the amount of time one has lived in Canada since the age of 18. The rate of the pension is 1/40<sup>th</sup> of the full OAS pension for every complete year of residence in Canada<sup>77</sup>. However, one’s residence in Canada subsequent to the approval of his OAS pension application does not influence the pension that he or she shall receive<sup>78</sup>.

A grandfather clause exists for persons who, on July 1<sup>st</sup>, 1977, were twenty-five years of age, persons who had resided in Canada after the age of eighteen, and persons who held a valid immigration visa. These persons may obtain a full monthly pension if they have resided in Canada for ten years prior to their OAS application. A person under the grandfather clause who has not been a resident of Canada for ten consecutive years prior to the application may offset any year of

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<sup>71</sup> Starting in 2023, the age of eligibility to OAS will gradually rise from 65 to 67 by January 2029 (*Old Age Security Act*, RSC 1985, c O-9, s. 2.2 (2)).

<sup>72</sup> OASA, s. 3(2)(b).

<sup>73</sup> Supra, note 68.

<sup>74</sup> OASA, s. 3(1)(c).

<sup>75</sup> *Old Age Security Regulations*, C.R.C., c. 1246, s. 21(1)(a).

<sup>76</sup> <http://www.esdc.gc.ca/en/cpp/oas/eligibility.page>

<sup>77</sup> OASA, s. 3(3).

<sup>78</sup> OASA, s. 3(5).

non-residency in the ten years window by any period of three consecutive years of residency prior<sup>79</sup>.

*Old Age Security Regulations* also provide for certain situations where one is deemed to still be a resident of Canada, for example, when a person is abroad for less than a year, to attend a school or a university, or works abroad as a member or representative of a Canadian corporation or firm<sup>80</sup>.

### 3.1.2 “On the Move” workers and OAS/GIS

As mentioned earlier, an individual must have lived in Canada for at least 10 years if he resides in Canada at the time of his application – or 20 years if he lives outside the country at the time of the application – in order to be eligible for OAS benefits. Since GIS is an accessory to the OAS pension, the same goes for this additional benefit<sup>81</sup>. Also, an individual may not receive GIS benefits for any month spent outside of the country after six months of absence or of non-residence in Canada<sup>82</sup>. As such, a Canadian citizen or permanent resident who is currently engaged in migrant work, defined by the United Nations as a “person who is to be engaged, is engaged, or has been engaged in a remunerated activity in a State of which he or she is not a national”, is not eligible for OAS/GIS if he does not meet the applicable residency requirement.

However, section 40 of the *Old Age Security Act* provides that the Government of Canada may enter in reciprocal agreements regarding the administration of OAS/GIS. Such social security agreements “[coordinate] the social security schemes of two or more countries in order to overcome on a reciprocal basis, the barriers that might otherwise prevent migrant workers [...] from receiving benefits under the systems of any of the countries in which they have worked”<sup>83</sup>. Agreements can include provisions regarding one or more of the social security programs of the parties<sup>84</sup> and are aimed at some or all of the five following objectives: equality of treatment, export and portability of benefits, determination of the applicable legislation, totalization of requirements for the acquisition of certain rights or benefits and administrative assistance<sup>85</sup>. We will see more on these agreements later.

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<sup>79</sup> *Ibid*, s. 3(1)b).

<sup>80</sup> *Old Age Security Regulations*, s. 21(4) and (5).

<sup>81</sup> OASA, s. 11.

<sup>82</sup> OASA, s. 11(7)(d) and e).

<sup>83</sup> Kenichi Hirose, Milos Nikac and Edward Tamagno, *Social Security for Migrant Workers: A Rights-based Approach*. ILO Decent Work Technical Support Team and Country Office for Central and Eastern Europe, (2011). [http://www.ilo.org/wcmsp5/groups/public/---europe/---ro-geneva/---sro-budapest/documents/publication/wcms\\_168796.pdf](http://www.ilo.org/wcmsp5/groups/public/---europe/---ro-geneva/---sro-budapest/documents/publication/wcms_168796.pdf)

<sup>84</sup> *Ibid*, p. 23.

<sup>85</sup> *Ibid*, p. 25; see also OASA, s. 40(1).

## 3.2 Employment-based plans – Canada and Quebec Pension Plans (CPP/QPP)

### 3.2.1 Overview

Where OAS/GIS provide a social security net designed to ensure a basic income for seniors, the Canada and Quebec Pension Plans (CPP/QPP) are designed as employment-based plans rather than as social-welfare legislation<sup>86</sup>. As the Fraser Institute notes, the CPP/QPP are not designed to fight poverty like OAS/GIS, but are rather designed as a pension for middle class households, rewarding individuals for their contributions to the workforce<sup>87</sup>. The two plans were created after much discussion and pressure from pensioner groups, labour unions and social organizations in light of the fact that the private market of pensions, essentially created by large corporations and by the public sector, left more than half of Canadians workers without coverage<sup>88</sup>.

### 3.2.2 Canada Pension Plan

The *Canada Pension Plan*<sup>89</sup>, while originally designed to provide benefits upon retirement, has evolved to include a number of other benefits, which include disability benefits, survivor benefits and dependent benefits. However, eligibility remains based on contributions – to receive a benefit from CPP, one must have contributed to the Plan, or be a survivor/dependent of someone who has.

Contributions to the CPP are mandatory to any person who occupies what is called “pensionable employment”<sup>90</sup>. Pensionable employment is defined very broadly, practically including all employment in Canada, except for those rare jobs exempted by virtue of the Act or by regulation. For example, section 6(2) of the *Canada Pension Plan* excludes employment in agriculture, horticulture, fishing, hunting, trapping, forestry, logging or lumbering that pays less than 250\$ in a year or on terms that provides for less than twenty-five working days in a year. Section 6(2) also contains a number of other exceptions, such as employment of a casual nature unrelated to the employer’s trade or business, certain employment in the public sector, etc.

Under the *Canada Pension Plan*, a person is eligible for a retirement benefit if he or she occupied pensionable employment and paid at least one contribution towards the plan<sup>91</sup>. A monthly pension corresponding to 25% of the contributor’s average monthly pensionable earnings is then paid no earlier than at the age of 60<sup>92</sup>.

The average of monthly pensionable earnings is calculated by dividing the total of pensionable earnings by either 120 minus any excluded month (by example, due to disability) or by the number

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<sup>86</sup> Jamie Knight, Carla Nassar and Paula Petit, *Canada and Quebec Pension Plan and Employment Insurance Acts: Quick Reference* - 2015 Edition, Carswell, 2015, p. 13.

<sup>87</sup> *The Reality of Retirement Income in Canada*, Supra note 62, p. 5

<sup>88</sup> Dennis Guest, *The Emergence of Social Security in Canada*, 3rd ed (Vancouver: University of British Columbia Press, 1997) at 142-143.

<sup>89</sup> Canada Pension Plan, RSC 1985, c C-8.

<sup>90</sup> *Ibid*, s. 8.

<sup>91</sup> *Ibid*, s. 44(1).

<sup>92</sup> *Ibid*, s. 44(1)(a) and 46.

of months comprised in the CPP contributory period, whichever is greater<sup>93</sup>. The CPP contributory period<sup>94</sup> extends from January 1<sup>st</sup>, 1966 or when a person reaches the age of 18, whichever is later, to either the age of 70, the month in which the contributor dies, or the month before the month in which the contributor starts receiving a retirement pension, whichever comes first<sup>95</sup>.

The Plan, unlike OAS/GIS, does not impose any residency requirement, whether to contribute to the plan or to apply for a retirement pension; as soon as a person has contributed to CPP at some point during the contributory period, he or she is eligible to obtain a retirement pension from the Plan, however small. But other benefits, such as the disability benefit or the death benefit, require that the contributor must have made contributions for a minimum qualifying period, which varies depending on the benefit in question<sup>96</sup>.

The Plan also establishes that employment outside Canada is pensionable employment in certain situations, such as if the employee ordinarily works for an establishment in Canada of his employer or if he is a resident in Canada and is paid from an establishment from his employer in Canada. Also, workers engaged in international transport outside Canada may be subject to the CPP under specific rules<sup>97</sup>.

### 3.2.3 Québec Pension Plan (Retraite Québec)

By virtue of section 94A of the *Constitution Act, 1867*, both the federal Parliament and the provincial legislatures have a concurrent power to legislate with regard to “old age pensions and supplementary benefits”. At the same time as the federal government was creating the Canada Pension Plan in 1965, the Québec government created a pension plan called *Régime de rentes de retraite du Québec*, identical in almost all points to the federal pension plan<sup>98</sup> due to negotiations between the federal and provincial governments aimed at equivalence between the two programs – as the CPP, the QPP also provides a pension of 25% of average monthly pensionable earnings, no earlier than at the age of 60.

As QPP is administered by Québec’s Retraite Québec<sup>99</sup>, international agreements taken by the federal government for the administration of CPP are inapplicable to QPP, which is subject to specific, independent agreements.

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<sup>93</sup> *Ibid*, s. 48.

<sup>94</sup> *Ibid*, s. 47 and 48.

<sup>95</sup> *Ibid*, s. 49.

<sup>96</sup> *Ibid*, s. 44(1)(b) to (f).

<sup>97</sup> *Canada Pension Plan Regulations*, C.R.C., c. 385, s. 17 to 21.

<sup>98</sup> See *An Act Respecting the Québec Pension Plan*, CQLR c. R-9.

<sup>99</sup> In January 2016, The Government of Québec created Retraite Québec, a merging of the Régie des Rentes and of the CARRA (Commission administrative des régimes de retraite et d’assurances). See <http://www.retraitequebec.gouv.qc.ca/en/Pages/accueil.aspx>

### 3.2.4 Interaction between CPP and QPP

As we have seen, the creation of the Canada Pension Plan came about under the impulse of some provinces, including Ontario and Quebec, to create provincial, employment-based pension plans. Ultimately, Ontario abandoned its plans<sup>100</sup> and rallied to the federal proposal for CPP while Quebec, on the other hand, continued with its ambition to create its equivalent program (QPP).

From the outset, both the federal and Quebec governments recognized the equivalence and similarity of their plans: the federal recognized Quebec as a “province providing a comprehensive pension plan” by virtue of section 3 of the *Canada Pension Plan*<sup>101</sup> while Quebec recognized the CPP as a “similar plan” by virtue of section 1 of the *Quebec Pension Plan*<sup>102</sup>. A number of coordination agreements between the two parties followed, ensuring the exchange of information and the coordination of the two plans.

An individual who has contributed both to the CPP and the QPP must apply to the authority of where he lives or where he last lived, if he is no longer in Canada; thus, if the person lives or last lived in Quebec, he must apply to Retraite Québec - otherwise, he or she must apply to the Canada Pension Plan<sup>103</sup>.

Once a pension becomes payable, it is the pension authority who received the eligible application who will pay the global pension amount due to the applicant, which means a person who has contributed to both plans will only receive one cheque. It is by virtue of coordination agreements between the two plans that the two authorities will compensate each other for the costs incurred, each assuming a part of the pension proportionate to pensionable earnings that were effectively earned in the jurisdiction. For instance, if a dual contributor has earned 40% of his lifetime pensionable earnings in Quebec, Quebec shall reimburse 40% of his pension to the CPP.

Agreements between CPP and QPP also provide for the inclusion of all contribution periods under both plans in the application of international social security agreements providing for the totalization of periods of contribution in which Canada or Quebec is party with another state<sup>104</sup>.

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<sup>100</sup> Although the Wynne Government reactivated it recently. April 21, 2015, Ontario approves bill to create provincial pension plan starting in 2017, <http://www.cbc.ca/news/canada/toronto/ontario-approves-bill-to-create-provincial-pension-plan-starting-in-2017-1.3053923>

<sup>101</sup> *Regulations Prescribing the Province of Quebec as a Province Providing a Comprehensive Pension Plan*, P.C. 1965-1375, (1965) 99 Can. Gaz. II, 1173.

<sup>102</sup> *Order in Council Concerning the Quebec Pension Plan and the Canada Pension Plan*, O.C. 1965-1739, September 8th, 1965.

<sup>103</sup> Government of Canada, *Canada Pension Plan Overview*, <http://www.servicecanada.gc.ca/eng/services/pensions/cpp/retirement/index.shtml>

<sup>104</sup> *Décret concernant la conclusion, entre le Gouvernement du Québec et le Gouvernement du Canada, d'une entente concernant les modalités de coordination pour les fins d'application des ententes internationales relatives aux régimes de pension et de rentes*, O.C. 266-80, February 6th, 1980.

### 3.2.5 CPP/QPP in relation to On the Move workers

As we have seen, eligibility for CPP or QPP pensions is dependent on the fact that one has occupied pensionable employment in Canada. Thus, nothing *technically* impedes the payment of CPP/QPP pensions to foreign workers, even if they have returned to their country of origin. It is worth noting that, as of December 2013, the Canada Pension Plan provided 152,721 retirement pensions to beneficiaries outside of Canada, meaning that these retirees had made sufficient contributions to the CPP to receive a regular pension; 130,720 of those pensions are issued to individuals residing in a country with which Canada has concluded a Social Security Agreement – in those cases, the pension is issued by the Canadian government without the intervention of the agreement<sup>105</sup>. As of December 31<sup>st</sup>, 2012 the Retraite Québec also provided 40,421 retirement pensions out of the country<sup>106</sup>.

As we can see, a large proportion of out-of-country retirement benefits<sup>107</sup> are paid to individuals in countries who have such an agreement with Canada while not paid by virtue of a social security agreement with another state; this means that many workers have made sufficient contributions to the CPP/QPP to qualify for a regular pension without needing to apply the totalization principle provided for under bilateral social security agreements. But things may change with the newest pattern of international labour migration. With the rise of both the TFW Program and the incidence of circular migration (even among those who hold permanent residency or citizenship), workers no longer settle in Canada permanently, the way things were after World War II. Accordingly, one can safely assume growing numbers of workers will contribute to the CPP/QPP without reaching the necessary threshold for a regular pension, making reliance on social security agreements increasingly important in the future.

### 3.3 International social security agreements

The International Labour Organization defines a social security agreement as an agreement that “coordinates the social security schemes of two or more countries in order to overcome, on a reciprocal basis, the barriers that might otherwise prevent migrant workers and the members of their families from receiving benefits under the systems of any of the countries in which they have

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<sup>105</sup> Service Canada, April 2014 Statistical Bulletin:

<http://www.servicecanada.gc.ca/eng/services/pensions/statistics/bulletins/04-14.shtml>; Service Canada, Benefits Paid in Countries with which Canada has concluded a Social Security Agreement:

<http://www.servicecanada.gc.ca/eng/services/pensions/statistics/cdnbenpaid.shtml>

<sup>106</sup> RRQ, Rapport annuel de gestion 2012, p.48.

[http://www.rrq.gouv.qc.ca/SiteCollectionDocuments/www.rrq.gouv.qc/Francais/publications/regie/rapports\\_annuels/RA\\_2013/rapport\\_2012.pdf](http://www.rrq.gouv.qc.ca/SiteCollectionDocuments/www.rrq.gouv.qc/Francais/publications/regie/rapports_annuels/RA_2013/rapport_2012.pdf)

<sup>107</sup> Approximately 87% of out-of-country retirement benefits are paid in countries which have a social security agreement with Canada; see <http://www.servicecanada.gc.ca/eng/services/pensions/statistics/bulletins/12-13.shtml> and <http://www.servicecanada.gc.ca/eng/services/pensions/statistics/cdnbenpaid.shtml>.

worked”<sup>108</sup>. Social security also prevents double-contribution to two different social security schemes for the same work<sup>109</sup>.

Coordination implies that parties to the agreement work together towards common objectives, but does not imply harmonization of the two social security scheme. Each scheme retains its own design and national legislation is left intact by social security agreements<sup>110</sup>.

The ILO further notes that social security agreements are generally articulated around five objectives: “equality of treatment, payment of benefits abroad (export of benefits without penalty based on non-residency), determination of applicable legislation, maintenance of rights in course of acquisition (totalizing) and administrative assistance”<sup>111</sup>. Social security agreements are also founded on the principle of reciprocity, which implies a “reasonable degree of comparison of the obligations a country has under the agreement”, which is “the basis for coordination negotiations”<sup>112</sup>.

Of these objectives or underlying principles of social security agreements, equality of treatment and maintenance of rights are of particular importance, according to Pablo Ortiz, who says they are “key coordination principles, whether through bilateral or multilateral instruments, and can also be found in the evolution of ILO Conventions”<sup>113</sup>.

As of March 31<sup>st</sup>, 2013, Canada had entered in bilateral social security agreements with 53 countries<sup>114</sup>. Agreements were signed with Mexico in 1996 and with the Philippines in 1994. And most recently, a new social security agreement between Canada and Bulgaria has entered in force on March 1<sup>st</sup>, 2014<sup>115</sup>, and agreements have been signed with Serbia, Peru, India and Brazil, although they are not yet in force.

As Québec administers its own comprehensive provincial pension plan, the Quebec Pension Plan is subject to distinct social security agreements. As of August 1<sup>st</sup>, 2014 Quebec is bound to 44

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<sup>108</sup> Kenichi Hirose, Milos Nikac and Edward Tamagno, *Social Security for Migrant Workers: A Rights-based Approach*. Supra, note 83, p. 19. See also International social Security Association, Regional conference for the Americas, Marta Hendrix, *Appropriate social security for migrant workers – Implementation of agreements on social security*, ISSA/MER/RC/BELIZE/06 and World Bank, Social Protection Discussion Paper Series, *Portability Regimes of Pension and Health Care Benefits for International Migrants: An Analysis of Issues and Good Practices*, Robert Holzmann, Johannes Koettl and Taras Chernetsky, May 2005.

<sup>109</sup> See as example: CPT64 Certificate of Coverage Under the Canada Pension Plan Pursuant to Article VI of the Agreement on Social Security Between Canada and the Republic of the Philippines - <http://www.cra-arc.gc.ca/E/pbg/tf/cpt64/cpt64-13b.pdf>

<sup>110</sup> *Ibid.*, p. 24.

<sup>111</sup> *Ibid.*, p. 25.

<sup>112</sup> Pablo Arellano ORTIZ, ‘**Social Security Protection for Migrants: A Need for Legal Intervention**’, in Roger Blanpain, Pablo Arellano, Marius Olivier & Gisjbert Vonk (eds.), *Bulletin of Comparative Labour Relations* Vol. 84, “Social Security and Migrant Workers, Selected Studies of Cross-Border Social Security Mechanisms”, Kluwer, 2013, pp. 31- 45, 40.

<sup>113</sup> *Ibid.*

<sup>114</sup> Government of Canada, *International Social Security Agreements*, <http://www.esdc.gc.ca/eng/retirement/agreements/index.shtml>

<sup>115</sup> *Agreement on Social Security between Canada and the Republic of Bulgaria*, October 5th, 2012, [2014] CTS no. 7.

social security agreements. Three additional agreements with Brazil, Romania and India have been signed between October 2011 and November 2013 but are not yet in force. Quebec's social security agreements have a slightly broader reach than Canada's agreements, as Quebec's agreements can also cover questions such as workplace injuries and public health insurance.

In the scope of this research, we have selected for analysis certain social security agreements to which Canada or Quebec is a party with countries who provided among the most temporary foreign workers to Canada in 2013<sup>116</sup> - the United States, Mexico, and the Philippines<sup>117</sup>.

In the agreements studied, equality of treatment is set forth as a cardinal principle, mentioned in the first articles of the text. For instance, the Agreement on Social Security between Canada and Mexico states that "any person who is or who has been subject to the legislation of a Party [...] shall be eligible for benefit, and subject to the obligations, of the legislation of the other Party under the same conditions as national of the latter Party"<sup>118</sup>. The agreement with the United States does, however, restrict equality of treatment to nationals, refugees, stateless persons, or other persons with respect to the rights they derive from any of these persons<sup>119</sup>. The agreements also guarantee, to varying degrees, the payment of benefits abroad, even if an individual is outside the territories of both contracting states<sup>120</sup>.

All agreements also provide for the determination of applicable legislation for social security, generally in order to prevent situations where a person would be obligated to contribute to two social security schemes. Generally, an employed person who works in a territory shall "in respect of that work, be subject solely and in its entirety to the legislation of that Party"<sup>121</sup>. The agreements also provide for specific rules for certain situations, such as government employees of either Party, detached workers, seamen, etc. Due to inevitable fact that grey areas arise in the determination of applicable legislation, agreements also provide for what is called a "saving provision" which allows the competent authorities of the Parties to determine, by common agreement, the applicable legislation with regard to a person or a category of persons. Determination of the applicable legislation is not limited to the financial contributions to social security schemes of a State; it also prevents a period of time from being calculated twice, once in each social security scheme.

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<sup>116</sup> See <http://www.edsc.gc.ca/fr/rapports/pension/accords.page>.

<sup>117</sup> The Philippine seeks cooperation with its main receiving migrant countries but at the same time also tries to foster transnational ties between its overseas communities and the home one. Accordingly, the Philippine provides continuous coverage under its own social security scheme while staying abroad. See Robert Holzmann, Johannes Koettl and Taras Chernetsky, *Portability Regimes of Pension and Health Care Benefits for International Migrants: An Analysis of Issues and Good Practices*, World Bank, Social Protection, Sp Discussion Paper 0519, 2005, p. 13. [http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2011/06/21/000333038\\_20110621005640/Rend ered/PDF/627250NWP00111000PUBLIC00BOX361489B.pdf](http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2011/06/21/000333038_20110621005640/Rend ered/PDF/627250NWP00111000PUBLIC00BOX361489B.pdf)

<sup>118</sup> *Agreement on Social Security Between Canada and the United Mexican States*, CTS 1996 no. 17, art. 4

<sup>119</sup> *Agreement on Social Security Between the United States and Canada*, CTS 1984 no. 38, art. 3 and 4(1); under art. 4(4), presumably because of the equality rights enshrined at article 15 of the *Charter of Rights and Freedoms*, Canada extends equality of treatment under the laws of Canada to non-nationals of either contracting states, whether or not they are a refugee, stateless, or if they derive their rights from someone else.

<sup>120</sup> The *Agreement on Social Security Between Canada and the United Mexican States* guarantees payment of benefits abroad to any person who has been or is subject to the legislation of either State (art. 5), whereas the *Agreement on Social Security Between the United States and Canada* restricts this guarantee to nationals (art. 4(2)).

<sup>121</sup> *Agreement on Social Security Between Canada and the United Mexican States*, *supra* note 118, art. 6.

Due to the nature of economic and commercial relations between Canada and the United States, the social security agreement between the two countries is much more specific with regard to determination of the applicable legislation.

Agreements then provide for treatment of benefits. Generally, agreements will provide for the maintenance of rights in the process of acquisition, which require the fulfillment of a qualification period. This process, called totalization, essentially recognizes periods of residence, contributions or coverage under the legislation of the other Party for eligibility for benefits under the legislation of the first Party. Each agreement is unique as to how periods under a certain legislation is calculated: for instance, a period of contributions under Mexican legislation is considered a period of residence in Canada for Old Age Security, whereas at least thirteen weeks of contributions in Mexico are required to recognize a year for CPP purposes. While the rules for OAS are the same for the agreement with the Philippines, the totalization for CPP purposes is different, requiring at least 3 months of contributions under the legislation of the Philippines to recognize a year under CPP.

It is important to understand that totalization does not entail that the benefits become integrated; totalization only affects the **eligibility for** benefits under legislation of either Party. Once eligibility is confirmed, different provisions provide for the calculation of the benefits under each scheme. For instance, under the *Old Age Security Act*, a person may receive a pension, full or partial, if they have resided in Canada for at least twenty years. Imagine a Mexican national, Daniel, who has lived and worked for five years in Canada (whether consecutively or intermittently) and has contributed to Mexico's social security scheme for fifteen years; the fifteen years of contributions in Mexico are recognized for his eligibility for OAS, but they don't affect how much that person will receive from Canada.

Indeed, Canada does not go as far as integrating benefits. If benefits were integrated, one country, usually the one where a specific event occurs (retirement, maternity leave, work-related injury), assumes all financial obligations with regard to social security programs towards a person and the other countries where this person may have worked, parties to the agreement, pay nothing.

Rather, Canada's social security agreements provide that each country remains responsible for the payment of the benefits under its legislation. Different methods of calculation can be used depending on the benefit in question and on the social security scheme of the other Party.

For instance, Canada's benefits under social security agreements are calculated using two different methods. As Old Age Security benefits are accrued at a uniform rate (1/40<sup>th</sup> of a full pension for every year of residence), benefits are calculated directly – in our earlier example, Daniel, who lived five years in Canada, would receive 1/8<sup>th</sup> (5/40<sup>th</sup>) of the full OAS pension from the Canadian government. The same goes for the earnings-related portion of benefits under the Canada Pension Plan<sup>122</sup>.

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<sup>122</sup> It is worth noting that the retirement benefit under the Canada Pension Plan is in no way affected by the social security agreements studied. Only benefits that require a minimum qualifying period, such as the death benefit or the spousal allowance, may be affected by the provisions of a social security agreement.

On the other hand, the flat-rate portion of benefits under the Canada Pension Plan is prorated,<sup>123</sup> multiplied by the fraction that represents the ratio of the periods of contributions to the Canada Pension Plan in relation to the minimum qualifying period required under the Plan to establish entitlement to the benefit.

### **Example**

Using our earlier example, if Daniel (who emigrated from Mexico 5 years ago) dies, his wife may be eligible for a survivor's pension if he made contributions for at least one third of the years included within his contributory period, in no case less than three years; or for at least ten years<sup>124</sup>. Normally, if Daniel died at 45, he must have at least contributed to CPP for nine years<sup>125</sup> in order for his wife to receive a survivor's pension. However, Daniel has only lived in Canada and contributed to the CPP for 5 years.

Now, because of totalization, Daniel's wife would be eligible for a survivor's pension, as Daniel's fifteen years of contribution to the social security scheme of Mexico are recognized for eligibility for CPP benefits.

As survivor's pensions are comprised of a flat rate benefit and a portion of contributor's retirement pension, only the flat rate benefit will be prorated – as Daniel only contributed five years to the CPP, Daniel's wife will receive 5/9<sup>th</sup> of the flat rate benefit, along with the earnings-related portion of the benefit.

However, if one is entitled to the payment of a benefit without recourse to the totalization provision, benefits are calculated solely on the basis of Canadian legislation<sup>126</sup>.

Finally, social security agreements provide for administrative assistance between the parties. Administrative assistance not only includes exchange of information and mutual assistance, but also clauses for the submission and transmission of documents. For instance, when a person applies for benefits in a country with which Canada has a social security agreement, the institution or the liaison agency has a responsibility to forward the applicant's claim and information to Canada if the applicant requests it explicitly, or if information indicating that creditable periods have been completed under Canadian legislation, and vice versa.

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<sup>123</sup> *Agreement on Social Security between Canada and the United Mexican States*, supra note 118, art. 16.

<sup>124</sup> Canada Pension Plan, Supra, note 89, s. 57.

<sup>125</sup> Contributory period = (45 years old at time of death – 18 years old) = 27 years. One third of Daniel's contributory period would therefore be 9 years.

<sup>126</sup> See Human Resources Development Canada, *Agreement on Social Security between Canada and Mexico - Qualifying for Canadian and Mexican benefits* - for a subtle presentation of the Agreement and notice the difference between the portability of contributions and the sovereign determination both by Canada and Mexico of the payable benefits (the pro rata principle).

### 3.4 Public pension-related questions for empirical researchers

For Canadian residents:

- Do Canadian-resident mobile workers have any concerns about accessing public pensions upon retirement? Have concerns about public pensions played into any of their decisions about work or place of residence?
- Are Canadian residents who have worked abroad, especially those who may have immigrated as adults, aware of the international social security agreements? Do they plan to apply to the foreign country where they've contributed?
- Are immigrants to Canada aware that they can hasten their OAS/GIS eligibility by counting time worked in another country with which Canada has a social security agreement?

For TFWs and undocumented workers:

- Are TFWs aware that, in some cases, they will be able to claim CPP/QPP from their country of origin when they reach the age of 60? Does this factor into their planning?
- Do we know if TFWs are claiming these benefits systematically? Are there significant CPP/QPP contributions that are never claimed by foreign workers?
- Are undocumented migrants living in Canada able to claim a CPP/QPP pension from contributions made at a time when they were able to work legally (ex. refused refugee claimant who had a work permit while they were a claimant; former student who had a work permit)? Are they willing to take the risk of being identified to immigration authorities?

## 4. Occupational Pension Plans (OPP) and Mobile Canadian workers

### 4.1 Overview

Over 60% of working Canadians do not have private pensions sponsored by their employer<sup>127</sup>. As of January 1<sup>st</sup>, 2012, only 6.1 million Canadian workers participated in some 18,631 registered pensions plans<sup>128</sup>. This section is not an introductory course to Occupational Pension Plans regulations in Canada<sup>129</sup>. Nevertheless, the issue of mobile workers is intimately connected to the Canadian «pension tangle» described by the CD Howe Institute in its 2009 publication; it is something of concern that today's labour market, with growing short-term or atypical employment, leaves many workers with an accumulation of bits and pieces of private pensions. Just keep in mind that pension regulations fall under the matter of “property and civil rights” as established in section 92(13) of the *Constitution Act, 1867*, like most matters of labour relations or labour conditions<sup>130</sup>. Each province, except Prince Edward Island, has legislation establishing minimum standards for registered pension plans in the province. Likewise, the federal government also adopted the *Pension Benefits Standards Act*<sup>131</sup>, which applies to any work, undertaking or business under the legislative authority of Parliament, as well as any employment in Yukon, the Northwest Territories and Nunavut<sup>132</sup>. Table B illustrates the lack of harmonization across provincial pension regulations in Canada. This Table has to be read as expressing provincial minimum standards with regard to OPPs.

Not surprisingly, the lean literature that addresses the issue of OPP harmonization in Canada describes the lack of integration between OPPs<sup>133</sup>! And it praises the Canadian Association of

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<sup>127</sup> Gretchen Van Riesen, C.D. Howe Institute, *The pensions tangle: Achieving Greater Uniformity of Pension Legislation and Regulation in Canada*, August 2009.

<sup>128</sup> Statistics Canada. *Table 280-0016 - Registered pension plans (RPPs), members and market value of assets, by type of plan, sector and contributory status, annual*, CANSIM (database).

<sup>129</sup> To that effect, see Ari Kaplan and Mitch Frazer, *Pension Law*, 2<sup>nd</sup> Edition, Irwin Law, 2013.

<sup>130</sup> See generally: *Toronto Electric Commissioners v Snider*, [1925] AC 396.

<sup>131</sup> *Pension Benefits Standards Act*, RSC 1985, c 32 (2<sup>nd</sup> Supp).

<sup>132</sup> *Ibid.*, s 4.

<sup>133</sup> Court cases mostly explore the issue of determining which provincial authority is deemed to be the «majority» authority or the one who decides with regard to the management of the employee's OPP. Cases mostly concern plans where surpluses to be distributed. They contemplate the appropriate rules. In some cases, it has been determined that the parties cannot elect by contract the legislative authority that would regulate such contract or part of the contract. In others, the choice of the rules of the «majority» authority was seen as an incidental issue to the plan and the regulation of the majority was seen as appropriate. Such complexity convincingly makes the case for a better integration of OPP regulations. Integration is different from reciprocal agreements that already exist between provinces. Under such agreements, minimum standards as provided for in provincial legislation supersede the reciprocal agreement which is mostly designed to attribute authority to a Superintendent of pensions and to regulate the registration of a plan. See for example, Martin Hering and Michael Kpressa, 'The Integration of Occupational Pension Policies: Lessons from Canada', *Canadian Public Policy / Analyse de Politiques*, Vol. 34, Special Supplement on Private Pensions and Income Security in Old Age: An Uncertain Future (Nov., 2008), pp. 137-153.

Pension Supervisory Authorities' (CAPSA) 2011 initiative proposing a Framework Agreement for Multi Jurisdictional Pension Plans<sup>134</sup>.

In this section, we explore the extent to which being a worker on the move might influence one's access to private pensions. For Canadian residents, is it difficult to access a private pension earned in a province different from the one in which you've retired? How easy is it for Canadian residents or for people were in Canada as a foreign worker to claim a private pension from another country? And does immigration status play into one's ability to claim a private pension? We begin with an overview of the definition and characteristics of an OPP, before comparing the provisions governing them in different Canadian provinces. We conclude with some potential questions for empirical researchers.

#### 4.2 What is in an OPP?

As illustrated in Table B, vesting and locking-in<sup>135</sup> pension rights are major features of an OPP. Minimum pension standards legislation is usually aimed at "securing employee pensions from discretionary revocation and preserve the financial integrity of earned pension entitlements"<sup>136</sup>, and does so by guaranteeing "the triad of original pension standards"<sup>137</sup>: minimum vesting rights; the portability of pensions; and requiring the locking-in of benefits until retirement. But are such rights portable for the mobile workers?

Table B<sup>138</sup> is up-to-date as of July 1<sup>st</sup>, 2016, and includes the new *Employment Pension Plans Act* of Alberta and of British-Columbia.

The policy reform in Alberta and British-Columbia has been heavily influenced by the 2008 Report of the Joint Expert Panel on Pension Standards, established by the Finance Ministers of Alberta and British Columbia in 2007. As such, the new BC *Pension Plans Act* is very similar to the new *Employment Pensions Plans Act* of Alberta. Amongst relevant changes to BC's pension legislation, the new Act provides for the immediate vesting and locking-in of benefits, which is consistent with Alberta's pension legislation.

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<sup>134</sup> Text of the proposed agreement available at [http://www.capsa-acor.org/en/init/mulit\\_juris\\_plans/AgreementByQuebecAndOntarioMay2011.Eng.pdf](http://www.capsa-acor.org/en/init/mulit_juris_plans/AgreementByQuebecAndOntarioMay2011.Eng.pdf)

<sup>135</sup> Vesting: "Benefits to which an employee is entitled upon cessation of membership under a pension plan by satisfying age and/or service requirements." Locking-in: "A legislative requirement whereby pension benefits cannot be used for any purpose other than to provide a retirement pension."

<sup>136</sup> *Pension Law*, Supra, note 129, p. 10.

<sup>137</sup> *Ibid*, p. 234.

<sup>138</sup> As per our OTM mandate, we have limited the scope of this summary to the provinces of Alberta, British-Columbia, Ontario, Québec and Newfoundland & Labrador, and to questions pertaining to employment-related geographic mobility. The tables are in no ways an extensive overview of pension legislation. An extensive comparison of all pension legislation in Canada is available through the Standard Life Financial Group at [https://advisors.standardlife.ca/en/gsr/pension\\_legislation/index.html](https://advisors.standardlife.ca/en/gsr/pension_legislation/index.html).

The portability of an OPP is, after the security of vested rights, the second main feature of an OPP. Portability is described as the ability for an employee to «take» their pension credits with them when they change jobs. In all cases, pension legislation provides that if termination of employment occurs before early or normal retirement age, the worker will stop contributing to the plan. The member – or rather former member – can then elect to wait for deferred pension benefits, based on their period of employment and salary, to transfer their benefit credit to another plan, to a prescribed retirement savings plan (ex.: an RRSP or similar account), or to use the benefit credit to purchase a life annuity contract<sup>139</sup>. The possibility of transferring credits to another registered plan is often based on the existence of reciprocal arrangements between employers<sup>140</sup>. Accordingly, it cannot be said that true portability has been achieved, by legislation or framework agreements. Table C summarises how and when such credits can be transferred, according to different legislations in Canada. And Table D shows circumstances under which a cash-out of the commuted value of credits is possible. Note that Alberta and Québec provide for some scenarios where the member or the spouse of the member is a non-resident in Canada.

We propose the following attempt to organise the reality of mobile workers in relation to OPPs: some workers are members of an OPP Plan and, although they live or work outside the territory of the «majority» provincial authority where the employer has established residence, will easily claim their OPP upon retirement; some mobile workers will leave behind credits in one province and eventually cash in small and cumulated benefits at retirement age; some workers, teachers as example, will probably be in a position to evaluate, when they move from one province to the other, the opportunity to transfer vested rights to a new plan belonging to the same professional sector. Finally, some workers, having been employed for a short period, will cash out credits and move on. In all cases, workers who move from one job to another (including within the same province or even the same municipality) as well as trans-provincial workers have to live with a high level of uncertainty. Accordingly, the case of foreign workers is not an exception to this rule unless we assume that short term stay on the worksite will lead to more cases of cashing out credits. The lump sum in pocket then becomes a case of tax law, either in the home or host country.

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<sup>139</sup> A life annuity is a financial contract in the form of an insurance product according to which a seller (issuer) — typically a financial institution such as a life insurance company — makes a series of future payments to a buyer (annuitant) in exchange for the immediate payment of a lump sum (single-payment annuity) or a series of regular payments (regular-payment annuity), prior to the onset of the annuity.

<sup>140</sup> See as example the case of provincial federations of teachers that concluded many transfer agreements between provinces. Such transfer is not always desirable, as one has to consider, even when there is an agreement, the value of service as estimated in the home and host province. Buying back credits is allowed but can be expensive.

**TABLE B: OPP and Provincial Minimal Standards?**

<b>Jurisdiction</b>	<b>Eligibility</b>	<b>Vesting</b>	<b>Locking-in</b>
Canada (federal) <i>Pension Benefits Standards Act, 1985, R.S.C. 1985, c. 32 (2<sup>nd</sup> Supp.)</i>	After two years of continuous service (and 35% of YMPE in each of the two calendar years preceding membership for part-time employees).	Immediate.	After two years of continuous plan membership.
Alberta <i>Employment Pensions Plans Act (2012)</i>	After two years of continuous service and 35% of YMPE in each of the two calendar years preceding membership.	Immediate (including benefits under the previous <i>Employment Pensions Plans Act</i> )	Immediate, subject to unlocking if accrued credits are under a certain threshold.
British-Columbia <i>Pension Benefits Standards Act</i>		Immediate.	Immediate. Plans may continue to require up to two years of employment before an employee becomes eligible to join the plan.
Ontario <i>Pensions Benefits Act</i>	Same as federal; part-time employees also eligible if they have worked 700 hours in the two calendar years preceding membership.	Full and immediate vesting and locking-in of all accrued benefits.	
Québec <i>Supplemental Pensions Plans Act, CQLR c R-15.1.</i>	In the calendar year preceding membership, earnings of at least 35% of YMPE, or 700 hours worked. Membership for part-time employees may be optional.	Full and immediate vesting and locking-in of all accrued benefits.	
Newfoundland <i>Pension Benefits Act, 1997</i>	Same as federal.	Benefits accrued from 1985 to 1996: at age 45 and 10 years of continuous service. Since 1996: two years of continuous plan membership.	

**Glossary of terms**<sup>141</sup>

Vesting: “Benefits to which an employee is entitled upon cessation of membership under a pension plan by satisfying age and/or service requirements.”

Locking-in: “A legislative requirement whereby pension benefits cannot be used for any purpose other than to provide a retirement pension.”

YMPE, or Year’s Maximum Pensionable Earnings: "earnings on which Canada Pension Plan / Quebec Pension Plan contributions and benefits are calculated. The YMPE changes each year according to a formula using average wage levels. The YMPE is set annually by the Canada Revenue Agency and is available on the CRA Web site at <http://news.gc.ca/web/article-en.do?nid=899339>.

<sup>141</sup> Office of the Superintendent of Financial Institutions, *Glossary of Pensions Plans Terms*, <http://www.osfi-bsif.gc.ca/eng/pp-rr/pages/gls.aspx>

<b>TABLE C: Portability of OPP credits in Canada</b>	
<b>Jurisdiction</b>	<b>Portability</b>
Canada (federal) <i>Pension Benefits Standards Act, 1985, R.S.C. 1985, c. 32 (2<sup>nd</sup> Supp.)</i>	If employment ends more than 10 years before normal retirement date, the funds can be transferred to another plan; certain locked-in retirement accounts, or used to purchase a life annuity.
Alberta <i>Employment Pensions Plans Act, SA 2012, c. E-8.1.</i>	Credits may be transferred to another plan or to a locked-in retirement account. In case of a defined benefit plan, transfers may be restricted if termination occurs less than ten years before pension eligibility (normal retirement date).  Credits may also be used to purchase a life annuity, if the original plan so provides.
British-Columbia <i>Pension Benefits Standards Act,</i>	Plans may now require members to take an immediate payment of small benefits on termination. Plans with benefit formula provisions may require portability on termination. In addition, plans may require a member who is entitled to receive only a DC benefit to transfer his or her full entitlement from the plan, regardless of the benefit amount or when the member joined the plan.
Ontario <i>Pensions Benefits Act, RSO 1990, c P.8</i>	If termination occurs more than 10 years before normal retirement date, credits may be transferred to another plan or a locked-in retirement account.  If the plan so provides, credits can be transferred to a life income fund, if the member has reached early retirement age, or used to purchase a deferred life annuity.
Québec <i>Supplemental Pensions Plans Act, CQLR c. R-15.1</i>	At any time for <u>defined contributions plans</u> , or ten years before normal retirement date for <u>defined benefit plans</u> , credits may be transferred to another plan, a locked-in retirement account, a life income fund, or used to purchase a deferred life annuity.
Newfoundland <i>Pension Benefits Act, 1997</i>	Before being entitled to early retirement, the member can transfer to another plan, a locked-in retirement account, a life income fund, or use the credits to purchase a deferred life annuity.

**Glossary of terms**<sup>142</sup>

Commutated value: “The amount of an immediate lump-sum payment estimated to be equal in value to a future series of payments. The value is based on current market conditions and other assumptions prescribed by the Canadian Institute of Actuaries.”

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<sup>142</sup> *Ibid.*

<b>TABLE D: Cashing out commuted value of OPP credits: an overview</b>	
<b>Jurisdiction</b>	<b>Cash-out at termination of employment<sup>143</sup></b>
Canada (federal) <i>Pension Benefits Standards Act, 1985, R.S.C. 1985, c. 32 (2<sup>nd</sup> Supp.)</i>	Plan <u>may</u> provide for the refund of commuted value if pension benefit credit is less than 20% of YMPE or the commutation of locked-in funds if member who has ceased employment or if the member ceased to be resident of Canada for at least two calendar years.
Alberta <i>Employment Pensions Plans Act, SA 2012, c. E-8.1.</i>	Plan <u>must</u> provide refund of commuted value of pension to non-resident members or non-resident spouses upon member's death.  Plan <u>must</u> provide for refund of commuted value if the commuted value does not exceed 20% of YMPE.
British-Columbia <i>Pension Benefits Standards Act,</i>	Plan <u>may</u> provide for refund of commuted value if the commuted value does not exceed 20% of YMPE.
Ontario <i>Pensions Benefits Act, RSO 1990, c P.8</i>	Plan <u>may</u> provide for refund if the annual benefit at the normal retirement date is not more than 4% of YMPE or if commuted value of benefit is less than 20% of the YMPE.
Québec <i>Supplemental Pensions Plans Act, CQLR c. R-15.1</i>	Plan <u>must</u> provide for refund of value of benefits if it is less than 20% of YMPE or if the member is no longer an active member and ceases to live in Canada for two years or more.
Newfoundland <i>Pension Benefits Act, 1997</i>	Plan <u>may</u> provide for refund if the annual pension is less than 4% of YMPE or if commuted value of pension is less than 10% of the YMPE.

<sup>143</sup> A number of scenarios are likely to give rise to a right to cash-out funds at termination. Again, we have only retained scenarios that are more likely to apply to a mobile worker.

### 4.3 International and interprovincial portability

As said earlier, the portability of pension benefits completes the two other basic rights of pension legislation, vesting and locking-in. Portability of pension is a response to the increase in labour mobility, “a recognition that an employee may not necessarily remain employed with only one employer during his or her working life”<sup>144</sup>.

As we have seen, former pension plan members are generally entitled to transfer the funds from one pension plan to another, but only if the importing plan accepts the transfer from the exporting plan. There is no obligation for the importing plan to accept the transfer and even when it does, the portion of the commuted value that is imported is at the discretion of the plan. Transfers may also be regulated by reciprocal transfer agreements between two or more plans.

Federal and provincial pension legislation also permits transfers between plans under different Canadian jurisdictions. For example, section 26 of the federal *Pension Benefits Standards Act*, regarding portability of pension benefits, explicitly provides that, with regard to portability, the definition of “pension plan” is expanded to include plans under provincial jurisdiction, plans providing benefits to employees employed in excepted employment and pooled registered pension plans<sup>145</sup>.

While this allows for a broader scope of transfer rights under federal pension legislation, the definition of “pension plan” for portability benefits remains restrictive, as it is obvious that transfers to plans registered outside of Canada are not allowed.

Likewise, the *Pension Benefits Act* of Ontario provides that transfers can be made towards pension plans governed by or registered under a statute in a designated jurisdiction<sup>146</sup>, which includes Canada and all the provinces that currently have pension legislation in force<sup>147</sup>. We can thereby conclude that we are headed toward an enriched OPP portability regime in Canada in the near future.

Bulletin 4/2 of the Financial Services Commission of Ontario explicitly addresses the question of out-of-country transfers:

Subsection 20(3) of the Regulation provides that an administrator shall not transfer the commuted value of a pension or deferred pension unless the transferee has agreed to administer the amount transferred in accordance with the PBA and Regulation.

Furthermore subsection 21(1) of the Regulation requires that in order for an RRSP to qualify as a prescribed retirement savings arrangement pursuant to section 42 of the PBA, it must be established in accordance with the Income Tax Act (Canada) (the "ITA"). Clause 21(2)(a)(iii) of the Regulation states that if a deferred or immediate annuity is purchased,

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<sup>144</sup> *Pension Law*, Supra, note 129, p. 235.

<sup>145</sup> *Pension Benefits Standards Act*, s. 26(5).

<sup>146</sup> *Ibid*, s. 42(1.1), as amended by the *Securing Pension Benefits Now and for the Future Act, 2010*, S.O. 2010, c. 24, ss. 15(2).

<sup>147</sup> *General*, O. Reg 909, s. 1.4.

it must be provided by a person authorized under the laws of Canada to sell annuities as defined by the ITA under an insurance contract that meets the requirements of section 22 of the Regulation.

A financial institution or a pension fund based outside Canada is most unlikely to be able to meet these requirements, and therefore, a plan administrator could not be satisfied that the requirement of subsection 20(3) can be met.<sup>148</sup>

Other provinces seem more permissible with regard to international transfers. For example, Alberta allows transfers to “another pension plan, if the plain text of the other plan allows the transfer and requires that the transferred money be paid out of that other plan in the form of a pension that is required or allowed by this Act”<sup>149</sup>; a formula that is also used in pension legislation in British-Columbia<sup>150</sup>. Meanwhile, pension regulation in Quebec allows transfers to be made to plans governed under “a supplemental pension plan governed by an act emanating from a legislative authority other than the Parliament of Québec and granting entitlement to a deferred pension”. *Retraite Québec* further notes that it could include foreign, non-Canadian pension plans, so long as the act in question is similar to Québec’s *Supplemental Pension Plans Act*. According to *Retraite Québec*, an act is considered “similar” if it regulates pension plans to which an employer makes contributions in order to provide deferred income to workers and in which a worker’s rights are generally vested and locked-in. We are led to believe pension legislation in Alberta, British-Columbia and Newfoundland should be interpreted in a similar manner; out-of-country transfers should be allowed if the importing plan is regulated or registered under similar pension legislation.

Also, some jurisdictions (federal, Alberta, British-Columbia and Québec) allow cash-out for workers who are no longer Canadian residents, while others (Ontario and Newfoundland) do not. In those latter jurisdictions, benefit credits in a pension plan must be either maintained in the same plan, transferred to a new plan or transferred to one of the locked-in accounts prescribed by regulation / used to buy a life annuity contract.

However, in Ontario, while a person who is no longer a resident under the *Income Tax Act*, they cannot withdraw funds directly from their pension plan or transfer them to a plan outside the country, he or she may unlock the funds held in a prescribed locked-in account to which the pension plan was transferred. In order to access the funds, the individual must be recognized by the Canada Revenue Agency as a non-resident of Canada for the purposes of the *Income Tax Act* and obtain spousal consent for the unlocking of the funds<sup>151</sup>. Newfoundland, on the other hand, does not allow for the unlocking of the funds due to non-residency in any way<sup>152</sup>.

Like in so many social security bilateral or regional agreements, the key to international OPP unlocking cases is the acknowledgment by the exporting jurisdiction of similar guarantees in the

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<sup>148</sup> Financial Services Commission of Ontario, Bulletin 4/2 FSCO, t500-850, *Transfer of Commuted Value on Termination Outside Canada*, January 1994.

<sup>149</sup> *Employment Pensions Plans Act*, SA 2012, c. E-8.1.

<sup>150</sup> *Pension Benefits Act*, SNL 1996, c. P-4.01, s. 40.

<sup>151</sup> *Pensions Benefit Act, General Regulation*, RRO 1990, Reg 909, Sch. 1, s. 9.1(1), Sch. 1.1, s. 10(1)a), Sch. 2, s. 8.1(1)a, Sch. 3, s. 7(1) ; *Employment Pension Plans Regulations*, Alta Reg 35/2000, s. 39(23) and 40(26).

<sup>152</sup> Newfoundland and Labrador Superintendent of Pensions, *Locked-In Retirement Account Requirements*, Directive no. 4, Dec. 2002, <http://www.servicenl.gov.nl.ca/pensions/no4.pdf>

importing jurisdiction legislation. This rule applies when a cash-out option is not available according to the exporting province legislation.

Hering and Kpessa<sup>153</sup> compare the Canadian situation to EU rules on pension portability. They distinguish harmonization (Canada) from integration (EU). Integration implies not only the sharing of common principles, such as prudential rules of management, but as well, the sharing of a common purpose: are pensions a social policy tool? Interestingly, however, EU Directives do not go as far as CAPSA's proposal<sup>154</sup>. The proposed CAPSA Framework for pensions goes quite far in promoting a shared floor of benefits, including ancillary benefits such as spouses' pension. But the CAPSA Framework simply does not receive sufficient support because of province's desire to maintain its own prudential rules. EU law links portability rules to labour market mobility. Thereof differences in OPP regimes are acceptable unless they represent an obstacle to such mobility. In fact, neither the EU integration model nor the Canadian (unachieved) harmonization model considers OPP to be a social policy tool.

#### **4.4 Pooled Registered Pension Plans: the tool of the future?**

In December 2010, the federal government agreed with the provinces and the territories on a framework for Pooled Registered Pension Plans, a new savings vehicle / retirement scheme, whose implementation is hoped to improve retirement income adequacy in Canada. The framework aims to provide Canadians with a low-cost, easily mobile and effective retirement scheme and allow individuals who do not currently participate in a pension plan or who do not have access to a pension plan in the workplace to save for retirement. This framework creates a retirement option that is uniform across the country.

While Pooled Registered Pension Plans remain, in a strict sense, a voluntary savings vehicle, it may represent an interesting retirement option for mobile workers. This approach is also popular with the private sector as it takes pressure off calls for expanding the CPP, expanding individual contributions to RRSPs while shifting from an individual risk model to a collective level of investment.

The principle of a PRPP is simple: an employer can enrol its employees in a PRPP, who can opt-out of the plan if they desire. In Quebec, employers who employ five or more eligible employees will gradually be obligated to offer a pooled savings plan, called a Voluntary Retirement Savings Plan (VRSP)<sup>155</sup>. The employer can elect to make employer contributions to the plan, along with remitting employee contributions to the third-party plan administrator, such as a financial institution, a trust company or an investment fund manager. Eligible employees will automatically be enrolled in the plan and contributions will be deducted by the employer and remitted to the plan administrator. However, employees will be able to opt-out. In certain jurisdictions, such as Quebec, a default contribution rate applies, which the employee can modify.

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<sup>153</sup> Martin Hering and Michael Kpessa, 'The Integration of Occupational Pension Policies: Lessons from Canada', *Supra*, note 133.

<sup>154</sup> Canadian Association of Pension Supervisory Authorities.

<sup>155</sup> *Voluntary Savings Retirement Plans Act*, CQLR c. R-17.0.1, s. 45 and 140.

While the federal framework on PRPPs has been subject to some important criticism<sup>156</sup>, this new retirement savings vehicle does bring forward some interesting changes in terms of portability of benefits. Transfers are facilitated, notably due to the unified framework agreed to by the finance ministers. While PRPPs are far from offering a global solution to ensure a decent level of income for mobile workers when they retire from the labour market, the legislation concerning the PRPPs should be an inspiration for the legal framework of other retirement savings vehicles, such as more “traditional” OPP.

#### 4.5 Private pension-related questions for empirical researchers

For Canadian residents and foreign workers:

- Are mobile workers less likely to be offered private pension plans? If so, are they offered alternate forms of compensation?
- Do mobile workers have the necessary financial literacy to make strong decisions about how to manage pension contributions as they move between jobs and provincial jurisdictions? The literature suggests that workers in general have poor financial literacy. If so, what could help improve their knowledge?
- What are the potential costs and benefits of using PRPPs for mobile workers?
- Are pensions (their inadequacy, losing them, the lure of better ones) drivers of mobility?
- Have unions managed to negotiate better pensions for mobile workers than in non-unionized workplaces? Professional sectors seem to have had some success in negotiating portability.

For Canadian residents:

- Do Canadian-resident mobile workers have any concerns about accessing their private pensions upon retirement? Have concerns about private pensions played into any of their decisions about work or place of residence?
- Are Canadian residents who have worked abroad, especially those who may have immigrated as adults able to claim private pensions to which they have contributed in other countries?

For TFWs and undocumented workers:

- How commonly are TFWs offered private pensions? Does this factor into their planning?
- How easily can TFWs claim private pensions from outside the country? Do we know if TFWs are claiming these benefits systematically? Are there significant private pension contributions that are never claimed by foreign workers?
- Are undocumented migrants living in Canada able to claim a private pension from contributions made at a time when they were able to work legally (ex. refused refugee claimant who had a work permit while they were a claimant; former student who had a work permit)?

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<sup>156</sup> Notably, C.D. Howe Institute, Commentary No. 359, *Pooled Registered Pension Plans: Pension Saviour – or New Tax on the Poor ?*, James Pierlot and Alexandre Laurin, August 2012, [https://www.cdhowe.org/pdf/Commentary\\_359.pdf](https://www.cdhowe.org/pdf/Commentary_359.pdf)

## 5. Conclusion

It would seem that the Canadian framework has addressed the most grievous difficulties that might have been met by mobile workers who need welfare or pension income because they are no longer working. However, mobility is becoming a norm for younger generations of workers and it is questionable whether our social security apparatus is designed to offer equitable protection for the new model of workers on the move. Working and living between different municipalities or provinces does not seem to be a legal barrier to collecting welfare, public or private pensions if one is otherwise eligible. International mobility generally makes one ineligible for welfare and GIS benefits and can complicate achieving the required years of residency for OAS benefits (especially for people who have immigrated as adults). Contributory pensions, however, are generally accessible for internationally mobile workers. Of note, however, the CPP/QPP offers more security and continuity for mobile workers who change employers than do OPPs. It is having the status of a foreign worker (rather than the issue of mobility per se), however, that generally leads to the most categorical exclusion from welfare and OAS/GIS benefits.

Of course, eligibility in law does not always translate into access in practice. Empirical research might well document difficulties in access these different benefits for people otherwise eligible because of a lack of knowledge or Catch-22 type bureaucratic requirements to provide particular forms of documentation to prove eligibility (ex. provincial health card, driver's licence or lease). For the TFWs excluded from welfare benefits, this is extremely problematic for exactly those moments when they lose their employment and find themselves without financial resources. And finally, with all this mobility, are workers sometimes just forgetting or giving up on claiming pension contributions from other jurisdictions when they have retired elsewhere?