

Pension Division Upon Marital Breakdown

Instructions for Lawyers

I. Introduction

On June 24, 2003, the Government of Alberta brought about legislative changes that greatly affected the division of pensions upon marriage breakdown. These changes were finalized by the Government of Alberta on December 17, 2003. Please note, however, the key date for the application of these changes remains June 24, 2003.

The regulations affect the Local Authorities Pension Plan (LAPP), Public Service Pension Plan (PSPP), Management Employees Pension Plan (MEPP), Supplementary Retirement Plan (SRP) for Public Service Managers, Special Forces Pension Plan (SFPP), and Public Service Management (Closed Membership) Pension Plan (Closed Management). The regulations can be viewed on the Queen's Printer Website, in the Public Sector Pension Plan (Legislative Provisions) Regulation, Alberta Regulation 365/1993.

The primary effect of the changes was to make available lump sum payments from the plan member's pension to their non-plan-member spouses¹.

The December 17, 2003 finalization of the 2003 Regulations contained a **transitional provision**, allowing for a choice in the form of Matrimonial Property Orders (MPOs):

- specifically, for **MPOs filed with the Court and Alberta Pensions Services Corporation (APS) on or before December 31, 2009**, members had a choice as to how to divide their pensions: in accordance with the 2003 regulations (lump sum) or in accordance with the old regulations (division only upon the retirement, termination, or death of the member);
- for MPOs filed **after December 31, 2009 there is no longer a choice**: pensions must be divided in accordance with the 2003 regulations.

II. The 2003 Form of Matrimonial Property Orders

The 2003 Form of MPOs require a lump sum transfer to the non-plan-member spouse of part of the value of the plan member's pension. Generally the non-plan-member spouse will not be entitled to receive a cash payment, but will have his or her share of the pension funds transferred to the non-plan-member spouse's Locked-In Retirement Account ("LIRA")².

The non-plan-member spouse cannot, however, receive more than 50% of the pension benefit accrued by the plan member during the period of joint accrual (normally the time the parties were married or living together).

(A) What is Available for Division

The non-plan-member spouse is entitled to a portion (the "non-plan member spouse's share") of the plan member's pension benefit ("Total Entitlement").

- If a plan member is not vested**³ at the end date of the period of joint accrual, the Total Entitlement equals the plan member's contributions, with interest, to the pension plan.

ii. If a plan member is vested at the end date of the period of joint accrual, and there is to be an *immediate division*, the Total Entitlement is calculated as the present value of the plan member's pension, as if the plan member terminated from the pension plan at the end of the period of joint accrual with the spouse and commenced receiving his/her pension at "pensionable age" (age 65 for the Local Authorities and Public Service plan members, age 60 for Management Employees and SRP for Public Service Managers plan members, and age 55 for Special Forces and Closed Management plan members) ("Pensionable Age")⁴.

Please note: The above-noted calculation of the Total Entitlement does not necessarily equal the value of the pension to the plan member. Certain benefits, such as the value of early retirement enhancements, are not captured in the Total Entitlement. Plan members, their ex spouses, and their lawyers are encouraged to consult with an actuary if they wish to establish the value to the plan member of that person's *PSPPA* pension plan benefits.

iii. If a plan member is vested at the end date of the period of joint accrual, and there is to be a **delayed division**, the Total Entitlement is:

- a. where a plan member commences a pension, the commuted value of the pension; or
- b. where the plan member takes a termination payment, dies, or transfers their pension benefits to another plan, the actual amount paid or transferred to or on the plan member's behalf.

iv. If a plan member is receiving a pension (or pension advances) on the date the order is filed the Total Entitlement is the monthly pension payment payable to the plan member.

In order to obtain an estimate of the portion of a Total Entitlement that pertains to the period of Joint Accrual, and is therefore available for division between the parties, the Total Entitlement must be multiplied by the years of the period of joint accrual over the total years of pensionable service to the division date. This results in the "Total Pre-Division Benefit". The spouse is entitled to a maximum of 50% of the Total Pre-Division Benefit.

(B) What Benefits are Available to the Non-Plan-Member Spouse?⁵

The options available to the non-plan-member spouse fall into the following four categories, all of which revolve around the plan member's status and the plan member's proximity to pensionable age. Both the date of determination of the plan member's vested status and the plan member's proximity to pensionable age are the end date of the period of joint accrual. The end date must be set out in the order and generally will be the end of cohabitation or marriage.

i. Non-Vested Members

The non plan member spouse is entitled:

- a. to receive an immediate taxable cash payment from the pension plan; or
- b. to have that amount immediately transferred to an RRSP.

ii. Vested Members Not Within 10 Years of Pensionable Age

If the plan member is vested in the pension plan and is not within 10 years of Pensionable Age, the non-plan-member spouse must have his/her share transferred immediately to a LIRA (in his/her name)⁶.

iii. Vested Members Within 10 Years of Pensionable Age

If the plan member is vested in the pension plan and is within 10 years of Pensionable Age, the non-plan-member spouse can⁷:

- a. have his/her share transferred immediately to a LIRA; or

- b. have his/her share of the pension benefit calculated and transferred to a LIRA (in his/her name) at the time of the plan member's termination, transfer to another pension plan, retirement, or death.

iv. If the Plan Member is Already Receiving a Pension

The non-plan-member spouse is entitled to receive a percentage of the monthly pension payment payable to the plan member (up to 50% of the value accrued during the period of joint accrual).

(C) How is the Total Entitlement Divided?

The regulations require that the following calculation be used to divide pension benefits:

$$\begin{array}{l}
 \textit{Total} \\
 \textit{Entitlement}
 \end{array}
 \times \frac{\textit{Period of Joint Accrual (years + fraction of year)}}{\textit{Total Accrual Period (years + fraction of year)}} = \textit{Total Pre-division Benefit}$$

The “Period of Joint Accrual” is generally made up of the years the plan member and the non-plan-member spouse were married or together⁸ - while the plan member was a member of the plan - and it includes any optional service paid for by the plan member during that same period of time⁹.

The “Total Accrual Period” is the total number of years credited to the plan member in the pension plan and it includes any optional service that has been purchased. It is important to remember, however, that the end date for the Total Accrual Period depends on the nature of the benefit to which the non-plan member spouse is entitled:

- if the non-plan-member spouse is eligible to and elects to have a lump sum transferred to his or her LIRA at the time of the plan member's termination, retirement, death, or transfer to another pension plan (“Event”), the Total Accrual Period will include all of the plan member's service until the date of Event, including purchased optional service;
- if a lump sum payment is to be made to the non-plan-member spouse immediately, the Total Accrual Period is all of the plan member's service up to the end of the period of joint accrual, including optional service purchased prior to that date.

Once the above calculation is complete, the “Total Pre-Division Benefit” is multiplied by the “Division Factor”. The Division Factor is a fraction representing the percentage of the total pre-division benefit to which the non-plan-member spouse is entitled (for example, 50%).

(D) What happens to the plan member's pension after the non-plan-member spouse receives his or her share?

Where the non-plan-member spouse has chosen to take an immediate transfer of his or her entitlement to a LIRA (and, as a consequence, not chosen or been eligible, as the case may be, to take a delayed payout at termination, retirement or death, or receive a portion of the pension in pay), the plan member's pension is recalculated on an actuarial basis to account for the payment of a portion of the value of the pension to the non-plan-member spouse.

In particular, APS will calculate what the non-plan-member spouse's share of the plan member's pension would be if it were a monthly pension benefit (the “Benefit Offset”).

On annual Plan Member Statements, in pension estimates prepared for the plan member, and when the plan member takes his or her pension, APS will state the result of:

- calculating the plan member's monthly pension benefit without any reduction to account for the payment to the non-plan-member spouse (the "Unreduced Pension"); and
- then subtracting the Benefit Offset from the Unreduced Pension.

Example:

The non-plan-member spouse receives \$100,000 as a share of the plan member's pension. This amount is transferred immediately by APS to the non-plan-member spouse's LIRA. APS determines that the payment made to the non plan member spouse would equal a monthly pension benefit of \$400¹⁰. This becomes the Benefit Offset amount. The plan member decides to retire. APS calculates his unreduced monthly pension benefit to be \$2,500. Applying the Benefit Offset, the plan member is entitled to a monthly pension benefit of \$2,100.

Please note: This is a simplified example and the numbers contained in this example are arbitrary and do not reflect actual pension values.

If the non-plan-member spouse is eligible to choose, and chooses, to delay the transfer of her entitlement to her LIRA to the date the plan member takes his/her benefit after his/her termination, transfer, retirement, or death, the plan member's annual member statement will simply state that the benefit payable to the plan member will, in the future, be reduced pursuant to the MPO.

III. Requirements of requests for pension information

Under the regulations, we are required to provide pertinent pension related information to both the member and the non-member spouse upon request of either.

(A) The Information We Require

In order to provide any information, APS must first have a written request from either party, including:

- i. that party's signature;
- ii. the full names (including middle name), addresses, and telephone numbers for both the plan member and the non-plan-member spouse, or the contact information of their respective lawyers;
- iii. an estimated date for the period of joint of accrual; and
- iv. if either the plan member or the non-plan-member spouse would like APS to provide the information to his or her lawyer, we will require written authorization from him or her, allowing us to provide the information to his or her lawyer (as the case may be).

(B) The Information We Provide

Under the regulations, we are required to provide the requested pension information to both the member and the non-member spouse upon request of either. Therefore, upon receipt of a complete written request, APS will provide both parties with a statement containing:

- i. an estimate of Total Entitlement calculated as of the date of request or an earlier date if specified in the request;
- ii. the date the plan member became a participant in the pension plan;
- iii. the amount of pensionable service accumulated up to the date of request;
- iv. if the written request indicates the period of joint accrual, the amount of pensionable service accumulated during that period;
- v. the plan member's service, salary and contributions information; and
- vi. if applicable, the date the plan member terminated from the pension plan.

APS will provide this statement upon request but it is not required to provide it more frequently than once per calendar year.

After the division of the plan member's pension, APS will provide the plan member with a statement:

- i. advising of the date when the non-plan-member spouse's share of the plan member's pension was transferred from the pension plan to the non plan member spouse; and
- ii. a summary of the adjusted pension benefits.

IV. Further Information

If you require information please contact PSPP at 1-877-453-1PSP (1777).

Notes:

¹ To trigger a division and distribution, a matrimonial property order must be filed with the pension plan administrator. As pension partners that are in a common-law relationship are not covered under Alberta's *Matrimonial Property Act*, they are not eligible for a division and distribution of pension benefits on relationship breakdown.

The onus is on the non-plan-member spouse to ensure:

- APS is aware of action being taken to file an MPO;
- APS has received a court certified copy of the MPO when completed;
- APS is kept informed of any changes in contact information, particularly for delayed division MPOs, until the funds are disbursed.

² LIRA funds normally cannot be accessed until after age 50. Notwithstanding this, the *Employment Pension Plans Act* now permits funds held in LIRA's to be accessed in cases of financial hardship. Please contact the Office of the Superintendent of Financial Institutions at (780) 427 - 8322 for further information.

³ The term "vested" means that the plan member has at least 2 years of membership in the pension plan, except the MEPP, the Supplementary Retirement Plan (SRP) for Public Service Managers and the SFPP, which require 5 years of membership before the plan member is vested.

⁴ If pensionable age has already been reached, the date that will be used in calculating the Total Entitlement will be a date specifically mentioned in the order or, if no date is mentioned in the order, the date following the day on which the order is made.

⁵ Please note: the term "non-plan-member spouse" is used to refer to the spouse of the plan member in question. This term is *not* meant to reflect whether or not that spouse is or is not a member, in his or her own right, of the same (or other *PPSPA*) plan.

⁶ Please note, however, that the Plan's usual "small pension" rules still apply. Therefore, if the amount in question is below the prescribed minimum, it may be possible to transfer the funds to an unlocked vehicle. This, however, does not happen often. Please call us for estimates as to whether or not this may occur in your particular case.

⁷ Please note however, that the Plan's usual "small pension" rules still apply. Therefore, if the amount in question is below the prescribed minimum, it may be possible to transfer the funds to an unlocked vehicle. Please call us for estimates as to whether or not this may occur in your particular case.

⁸ The order itself will state what the Period of Joint Accrual is and that period may be greater or less than the actual period of marriage.

⁹ The Period of Joint Accrual will also include any service transferred into the pension plan from another pension plan that relates to service performed during the Period of Joint Accrual.

¹⁰ The amount of the Benefit Offset will be adjusted upward to reflect cost of living allowance increases for deferred pensions or downward to reflect the consequences of the plan member choosing to take early retirement.