



# Pension Division Upon Relationship Breakdown

## Instructions for Lawyers

### IMPORTANT NOTICE:

- Beginning **March 1, 2019**, common-law partners are permitted to submit Property Division Orders or agreements for division of their Local Authorities Pension Plan (“LAPP”), Public Service Pension Plan (“PSPP”) and Special Forces Pension Plan (“SFPP”) pension benefits.
- Division can now occur through a Property Division Order or an agreement. Please review the form of order or agreement requirements as provided or described on this website to ensure that all terms required by APS to administer the division of your order or agreement are included.
- If you are seeking a division of pension benefits as a common-law partner, you must meet the definition of “pension partner” below to be entitled to share in pension benefits.

#### “pension partner” means

- i. a person who, at the relevant time, was married to a member or former member and had not been living separate and apart from them for 3 or more consecutive years, or
- ii. if there is no person to whom subclause (i) applies, a person who, as at and up to the relevant time, had lived with the member or former member in a conjugal relationship
  - A. for a continuous period of at least 3 years, or
  - B. of some permanence, if there is a child of the relationship by birth or adoption.

## Property Division Orders and Agreements

### (A) What is Available for Division

The non-member spouse/common-law partner is entitled to a portion up to a maximum of no more than 50% (the “non-member spouse/common-law partner’s share”) of the member’s pension benefit (“Total Entitlement”).

- i. **If a member is *not vested*** at the end date of the period of joint accrual, the Total Entitlement equals the member’s contributions, with interest, to the plan.
- ii. **If a 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 member’s pension, as if the member terminated from the plan at the end of the period of joint accrual with the non-member spouse/common-law partner and commenced receiving their pension at “optimal age” 55.  
**Please note:** The above-noted calculation of the Total Entitlement does not necessarily equal the value of the pension to the member. Certain benefits, such as the value of early retirement enhancements, are not captured in the Total Entitlement. Members, their non-member spouses/common-law partners, and their lawyers are encouraged to consult with an actuary if they wish to establish the value to the member of that member’s plan benefits.
- iii. **If a 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 determined as at the date of the pension event.
- iv. **If a member is receiving a pension**, the Total Entitlement is the monthly pension payment payable to the member.

**Please note that a member becomes vested in PSPP, when the member has at least 2 years of pensionable service.**

See (C) below for information on how to estimate the portion of a Total Entitlement that pertains to the period of joint accrual, and is therefore available for division between the parties.

**(B) What Benefits are Available to the Non-Member Spouse/Common-Law Partner?**

The options available to the non-member spouse/common-law partner fall into the following four categories, all of which revolve around the member's status and the member's proximity to pensionable age (65 for PSPP), both as at the end date of the period of joint accrual. The end date must be set out in the Property Division Order or agreement and generally, will be the end of marriage or cohabitation.

**i. Non-Vested Members**

The non-member spouse/common-law partner is entitled:

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

**ii. Vested Members Not Within 10 Years of Pensionable Age**

If the member is vested in the plan and is not within 10 years of pensionable age (65 for PSPP) the non-member spouse/common-law partner must have their share transferred immediately to a LIRA (in their name).

**iii. Vested Members Within 10 Years of Pensionable Age**

If the member is vested in the plan and is within 10 years of pensionable age (65 for PSPP), the non-member spouse/common-law partner can:

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

**iv. If the Member is Already Receiving a Pension**

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

**(C) How do you estimate the non-member spouse/common-law partner's share based on the Total Entitlement Estimate?**

First, you calculate the total pre-division benefit as follows:

$$A = B \times (C/D)$$

Where

- A** is the total pre-division benefit;  
**B** is the total entitlement contained in the *Total Entitlement Estimate*;  
**C** is the period between the beginning and end dates of the period of joint accrual;  
**D** is the period during which the total entitlement accrued.

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-member spouse/common-law partner is entitled (for example, 50%).

### **(D) What happens to the member’s pension after the non-member spouse/common-law partner receives their share?**

Where the non-member spouse/common-law partner has chosen to take an immediate transfer of their 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 member’s pension is recalculated to account for the payment of a portion of the value of the pension to the non-member spouse/common-law partner.

## **Requirements of Requests for Pension Information**

Under the legislation, APS is required to provide pertinent pension-related information to both the member and the non-member spouse/common-law partner upon request of either of them.

### **(A) The Information APS Requires**

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

- i. the signature of the person requesting the information;
- ii. the full names, current addresses, and current phone numbers of both the member and the spouse/common-law partner. (Please note, a current address and phone number can be care of a lawyer);
- iii. an estimated end date for the period of joint accrual (normally, the time the parties were married or living together). This date must be either a date prior to or the date of the request;
- iv. if the request is from or is to go to a member’s lawyer, an authorization to disclose information, signed by the member permitting APS to disclose the information to that lawyer; and
- v. if the request is from, or is to go to, a non-member spouse/common-law partner’s lawyer, the non-member spouse/common-law partner must sign an authorization to disclose information permitting APS to disclose the information to that lawyer.

### **(B) The Information APS Provides**

Upon written request of either party, the plan administrator must provide both parties with a statement containing:

- an estimate of total entitlement calculated as of the date of request or an earlier date if specified in the request;
  - the date the member became a participant in the plan;
  - the elapsed time (in years) of the period of joint accrual;
  - the total accrual period (in years).
- APS will provide this statement to both parties once per calendar year.

- At the time a Property Division Order or agreement is being obtained and/or at the time the actual division takes place, the non-member spouse/common-law partner can request information on their share, including information relating to the calculation of that share, in order to verify its accuracy.
- After a division takes place, the plan administrator must provide the member spouse/ common-law partner with a written statement indicating the date the division became effective and a summary and description of the member spouse/common-law partner's remaining benefits.

## **Pension Commencement Date after Lump-Sum Division**

**When division is to be by lump-sum payment, the earliest that your pension can commence is the day after your Pension Division Order was granted by a Judge or your agreement was received by APS.** If your pension has already commenced, division of your pension is limited to a portion of your pension and no lump-sum distribution is available.

### **Further Information**

If you require information, please contact APS.

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### **Notes:**

Both non-member spouses/common-law partners who meet the definition of pension partner are eligible for a division of pension benefits on relationship breakdown under the legislation.

Please ensure that:

- APS is aware of any action being taken by the member or non-member spouse/common-law partner to obtain a Pension Division Order from the courts or that the parties are negotiating an agreement;
- APS has received a court-certified copy of the Pension Division Order or a copy of the agreement that includes all the required elements to divide or waive rights to the member's pension benefits;
- APS is kept informed of any changes in contact information, particularly for delayed division Pension Division Orders or agreements until the funds are disbursed.