

Office of the Superintendent - Pension Commission

Update #19 **Administrative Issues**

Revised February 2009

The purpose of this Update is to address a number of administrative issues which have arisen in relation to The Pension Benefits Act and Regulation, and require clarification.

Regulation Sections 3(7), 5(2), 10(4), Pension Benefits Act Sections 25, 31(1)

Annuities From Defined Contribution Pension Plans

In the event members, retiring from a defined contribution or money purchase pension plan, receive retirement payments from the pension plan, such plan is considered to be subject to the requirements of Section 3(7) of the Regulation. A full actuarial valuation report must be prepared in a manner consistent with the Standards of Practice for the preparation of such reports issued by the Canadian Institute of Actuaries, and filed with the Pension Commission as per the sections of the Regulation.

Administrative Expenses

Administrative expenses should be addressed in the plan text. Generally, administrative expenses are either paid from the pension fund, or paid outside the pension fund by the plan sponsor.

Upon settlement of a member's benefit, administrative expenses in respect of the member's benefit calculations must be treated in the same manner as any other administrative expense. Expenses in respect of these benefit calculations cannot be charged against the member's benefit as that is considered to be an attachment under Section 31(1) of the Act. Any plan which is offsetting benefits in this manner must cease immediately, and amend any plan provision which provides for this deduction. Members are entitled to the full value of their benefits. Members are entitled to an increase in their benefit in the amount of the deduction, plus interest at the credited rate.

Pension Benefits Act Sections 31(2) - 31(4), (6), (8), Regulation Section 24

Splitting of Pension Credits on the Breakup of the Marriage or Common-law Relationship after Retirement

Plan sponsors/administrators are faced from time to time with the breakup of a marriage or common-law relationship which occur after retirement. In some instances, the plan administrator is not aware that the parties have separated, and the documentation required under Section 31(2) may not be obtained for some time. As a result, full pension payments continue to be made to the member after the separation date. According to Section 24(1) of the Regulation, the spouse or common-law partner has an interest in the pension payments or payments due as of the date of separation.

Therefore, if the parties do not sign the Pension Benefits Spousal/Common-law Partners Agreement, once the members pension payments have been divided according to the Act and Regulation, the administrator must then address the matter of the spouse's or common-law partner's interest in the full pension payments which were made to the member from the date of separation until the pension payments were divided. The spouse's or partner's interest is referred to as the arrears. The following methods for addressing the arrears can be employed.

One method of dealing with the arrears is for the member to make a lump sum payment to the spouse or common-law partner, outside the pension plan, which must be equal to the present value of the arrears. The amount paid to the spouse or partner may take into consideration the tax implications for each of the parties. The administrator must take whatever steps are required to satisfy itself that the spouse or partner received the payment in satisfaction of their full interest in these arrears.

A second method involves the plan making a lump sum payment to the spouse or partner in an amount equal to the present value of the arrears. The members post-division pension payments must then be further adjusted to reflect the lump sum payment made to the spouse or common-law partner.

A third method requires a temporary reduction of the member's post-division pension payments. The amount by which the member's pension payments are further reduced, would be used to provide a corresponding increase to the spouse's or common-law partner's monthly pension payments in order to liquidate the arrears. Once the arrears to the spouse or partner are fully liquidated, the member's pension payments would then return to the post-division level. The repayment period should take into account the life expectancy of the plan member. However, there is still a risk to the spouse or partner that the plan member may die during the repayment period, and that pension payments will cease. The spouse or partner would then have to seek whatever remedies are available to them, outside of the pension plan.

Of the latter two methods, the lump sum payment from the plan may be preferable, as the arrears represent monies which are due and payable to the spouse or common-law partner. Further, the impact of the arrears on the member's post-division pension payments is lessened, as this value is spread over the member's remaining lifetime, rather than a specified period of time. The former spouse or partner is also not exposed to the risk of the member dying during the repayment period.

It should be noted that, in no event would the plan be expected to pay an amount to the spouse or common-law partner which exceeds the present actuarial value of the member's remaining post-division pension benefit. The balance, if any, due and payable to the spouse or partner would be a matter for the parties to resolve. Further, it is possible that the effect of either of the latter two methods, may be the temporary or permanent reduction of the member's post-division pension payments to zero.

Depending on the options put forward to the member and former spouse or common-law partner there should be written disclosure provided, including the amount of arrears, and as applicable, the amount of post-division pension payments and the effects to that amount of the options being put forward, and the repayment period, as well as any risks to the parties as outlined above. It is further recommended that the administrator obtain a written agreement between the parties regarding the method that will be employed to address the arrears

Pension Benefits Act Sections 21(1) - (2), 21 (2.3)

Allocation of Surplus to Plan Members

In the event of a plan termination or windup and conversion of defined benefits to money purchase, a pension plan may now provide for surplus funds to be either paid in cash to the member, or used to increase the members pension benefit under the plan, subject to the Canada Revenue Agency maximums.

Previously, if surplus funds were allocated to members on plan windup or conversion, the amount of surplus allocated had to be used to provide pension benefits for the member, with only that amount which was in excess of Canada Revenue Agency maximums being paid to the member in cash.

It should be noted that, other than upon plan termination or conversion, surplus funds allocated to plan members must be used to provide pension benefits.

This update has no legal authority. The Pension Benefits Act of Manitoba and The Pension Benefits Regulation, 188/87 R amended should be used to determine specific requirements.