

ACTUARY'S ROLE IN PENSION DIVISION UPON MARRIAGE BREAKDOWN

**PAPER PREPARED FOR APRIL 10, 2008 CLE COURSE
PENSION DIVISION FUNDAMENTALS FOR FAMILY LAWYERS**

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Trial Lawyers Association Of BC**

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SECTION 1 INTRODUCTION AND SUMMARY

B.C. FRA

The FRA requires the pension plan, if the parties so agree or the Court so orders, to administer an “if and when” division of the pension, in accordance with certain detailed rules. Such detailed rules are set forth in Part 6 of the FRA. Mr. Tom Anderson’s writings deal very thoroughly with the issues arising in such Part 6 divisions

Essentially, the FRA envisions most pensions being divided according to the rules described in Part 6 of the FRA (“Part 6 division”). However, the parties are allowed to “opt out” and use an alternative means of division ; e.g. settlement by payment of a lump sum, based on actuarial advice. Thus an actuary’s main area of involvement, and the primary focus of this paper, concerns lump sum valuations of defined - benefit Plans.

Pension Plans (“Local Plans”) To Which The FRA Applies

The requirements of Part 6 division do not apply to all pension plans covering B.C. residents. Such requirements apply only to “local Plans”, a term defined by the FRA. In **Section 2**, I describe the pension plans (“local Plans”) to which the amended FRA applies.

Defined - Contribution Pension Plans Do Not Normally Require Actuarial Valuation; Paper Focuses on Defined - Benefit Plans, Which Do Require Actuarial Valuation

There are essentially two types of pension plans. “Defined contribution” pension plans are similar to RRSP’s ; contributions by the employee and employer, which are determined by a formula usually relating to salary, are held and invested in a fund, and the contributions plus investment return are returned to the employee, upon eventual termination of employment, death, or retirement. The value of the Plan is simply the amount of the fund. In determining such value, in preparation for a tax - free transfer of the spouse’s share from the pension plan to an RRSP, lawyers should ensure that they count both employer and employee contributions, as well as investment return on all contributions.

However, in determining the **marriage - related** value, it may be necessary to deduct the value (contributions plus investment return) which relates to contributions in years before or after the marriage period; Plan administrators may or may not be willing to assist with such calculations.

Thus, for defined - contribution Plans, calculations relating to a marriage breakdown have no actuarial component, and normally no actuarial advice will be needed. However in

cases (e.g. some university faculty) where very large amounts are involved, or where the parties need assistance determining the marriage - related value, the parties may wish to have an actuary review the Plan's calculations, and/or estimate the marriage - related value.

"Defined benefit" pension plans, encountered more often than defined - contribution Plans, base eventual annual pension on a formula reflecting years of credited service, and usually also pay level. The rest of this paper deals with defined - benefit Plans.

Police officers and firefighters who are members of the BC Municipal Plan have the same defined - benefit Plan as other Plan members, but there is an additional component of pension ("special agreement contributions") which in substance forms a separate defined - contribution Plan.

Detailed Discussion Of Lump Sum Actuarial Valuations For Defined - Benefit Plans

As already mentioned, an actuary is involved where the parties wish to settle the pension issue by having the member make a lump sum payment to the spouse. The actuary then prepares a valuation of the member's pension rights. In **Section 3**, I discuss such lump sum valuations in detail.

After payment of such a lump sum, the member retains 100% of his entitlement. The Plan thus pays benefits to the member exactly as if there had been no marriage breakdown. The Plan's only role is to provide information to the actuary performing the lump sum division.

Nevertheless, the Plan may sometimes calculate a lump sum value of the member's pension rights. This value is almost always based on an assumption that the Plan member immediately terminates Plan membership. Usually (but not always), the Plan will state that such value is not necessarily appropriate for family law purposes. Such value is typically at the low end of the range of values that an actuary would calculate.

Similarly, a Plan member may sometimes propose a lump sum settlement based on the pension value being taken as the Plan member's own contributions, with or without interest. Such values are generally only a fraction of the fair actuarial value, and cannot form the basis of a fair settlement.

Lump Sums Paid Directly From Plan, When Member Is 55 Or Older

The FRA allows the spouse to become a "limited member" of the Plan. One of the limited member's options is to have the Plan pay to the limited member a lump sum, once the Plan

member attains eligibility for immediate pension, usually age 55. The parties should consider such a payment as an alternative to having the member pay a lump sum directly to the spouse. An actuary can address, in connection with a defined-benefit Plan, questions such as: Is the lump sum fair to the spouse? How does it compare to the lump sum that the spouse might obtain by negotiating/litigating a division outside the Plan? For more details on this point, see page 3 of my document, included in these materials, entitled "Division Of Pension Rights Upon Marriage Breakdown; Services Offered By Ian Karp Of Karp Actuarial Services; Information For Affected Individuals, And Their Lawyers".

**Private - Sector Plans Which Are Federally Regulated,
And Are Not Headquartered In B.C.**

In **Section 4**, I discuss the division of pensions under such Plans.

**Pension Plans Covering Employees Of The Federal Government,
RCMP, And Armed Forces**

In **Section 5**, I discuss the division of pensions under such Plans.

SECTION 2

WHICH PENSION PLANS ARE “LOCAL PLANS”, SUBJECT TO THE REQUIREMENTS OF PART 6 OF THE FRA?

As already mentioned, the requirements of Part 6 division apply only to “local plans”. Mr. Anderson’s writings have discussed the interpretation of “local plans” in detail. Assuming the member acquired pension rights in B.C., “local plans” are essentially those pension plans subject to the jurisdiction of B. C., another Canadian province, or under Federal jurisdiction. However, as discussed in Section 4, there is some controversy regarding the applicability of the B.C. legislation to those private - sector Plans which are under Federal jurisdiction, but not headquartered in B.C.

Description Of “Local Plans” Commonly Encountered

Public Sector Plans

Plans covering employees in the public sector of B.C. are “local plans”. Four large such Plans are:

- (1) Public Service Plan, covering direct employees of the B.C. government and employees of certain other government entities ; e.g. B.C. Ferries, B.C. correctional facilities.
- (2) Municipal Plan, covering employees of municipal governments, hospitals, almost all school districts.
- (3) Teachers Plan.
- (4) College Plan.

These Plans are administered by the Pension Corporation in Victoria, tel. (250) 387 - 1002; www.pensionsbc.ca. The Pension Corporation also administers Plans covering employees of the Workers’ Compensation Board, as well as Plans covering judges and MLA’s. It is also involved with the Plans covering employees of B.C. Hydro and I.C.B.C. All the above Plans are “defined benefit”, “final earnings” Plans.

Private Sector ; Plans Arising From Collective Bargaining

In the private-sector, Plans(subject to the exceptions listed below) would be “Registered Pension Plans” under the Income Tax Act. Such Plans would also be registered either under the Federal Pension Benefits Standards Act (“Federal PBSA”), B.C. Pension Benefits Standards Act(“PBSA”), or the comparable Act in another province.

Many large Plans arise from collective bargaining, and cover members of a particular union. Unionized occupations are generally covered by such Plans (e.g. carpenters, plumbers, longshoremen, forestry workers). These Plans are called “multi - employer” because many employers would make contributions.

Some employers have separate Plans for their unionized employees. One very large such Plan is the Telecommunication Workers Pension Plan, which covers unionized employees of Telus. It is regulated under the Federal PBSA.

Other Private Sector Plans

Until recent years, most large non-government employers have had defined benefit, final earnings Plans covering their non-union employees. However, in recent years, many of these employers have converted to defined - contribution plans for new employees, with older employees often retaining a defined - benefit plan, or some combination of the two.

U.B.C. has for many years maintained a defined - contribution Plan for faculty. Further, newer employers tend to avoid defined - benefit Plans, in favour of defined - contribution Plans, or a substitute for a pension plan such as a profit-sharing Plan.

Which Pension Plans/ Arrangements Are Not Required To Administer Part 6 Division?

The following plans and arrangements are not required to administer “Part 6 division” i.e. they do **not** qualify as “local Plans”. However, with the possible exception of 9 and 10 below, note that they are “pensions”, divisible as family assets. Some have their own specific methods of division. For example, Federal government pensions (see 1. below) are divisible under the PBDA. For others, (e.g. “supplemental” pension plans, see 2. below) there is no mandated method of division. However, as Mr. Anderson has pointed out, the B.C. Courts may well apply similar principles in dividing such pensions, as would apply under Part 6 division.

(1) Plans covering employees of the Federal Government, RCMP, and Armed Forces personnel. These employees are affected by the Pension Benefits Division Act (“PBDA”), which came into operation in 1994. Section 5 discusses the operation of the PBDA in detail.

(2) Pension arrangements not forming part of a formal pension plan. The most common instance will involve benefits to higher-paid employees (e.g. senior management, airline pilots) which cannot be provided through a formal pension plan, due to Canada Revenue Agency rules. Mr. Anderson has referred to such arrangements as “Supplemental Pension

Plans” or “SPP’s”.

(3) Severance pay arrangements. Severance pay which is offered unilaterally by an employer as an incentive to retire is **not** a family asset. However, my understanding of Mr. Anderson’s writings is that those arrangements providing benefits which build over an individual’s career, as does a pension, **are** a family asset. Federal employees and RCMP officers have such Plans. They provide a lump sum payment of one week’s pay(based on rate of pay at retirement) for each year of service(subject to certain maxima). Armed Forces personnel have a similar Plan. Note that the PBDA(described in (1) above) does **not** deal with severance pay. Mr. Anderson has stated:

“[Part 6] does not deal with benefits analogous to, but which are not, pensions. That does not mean that analogous benefits are not divisible under [Part 5] of the FRA. It does mean that the methods of pension division provided under [Part 6] cannot be automatically used to divide them. The parties or the court may well proceed by analogy with the pension division methods set out under [Part 6]”.

(4) Canada Pension Plan. There are non - compulsory credit-splitting provisions.

(5) Old Age Security(OAS). The maximum monthly benefit is currently \$502.31 per month. My understanding is that OAS is a family asset. Since each long-time Canadian resident age 65 or older is entitled to the same benefit, OAS is immaterial where the parties are about the same age.

However, valuation of OAS may in theory become a significant factor when one spouse is much older than the other, since then the older spouse’s benefits have greater present value. However, Mr. Anderson has pointed out that the older spouse then has a strong legal argument for not sharing any difference in value as the monthly OAS payment is required for retirement income. Based on this, I no longer value OAS payments.

(6) Pension payments already received (“past payments”, or “arrears”). Such payments may have been received from pension plans, OAS, CPP, severance pay, or other benefits. It is unclear whether credit-splitting should deal with payments already made, if they were made after the couple separated. This is often an important issue for older couples, and is often interrelated with maintenance issues.

(7) Pension plans administered in the U.S., covering B.C. residents.

If requested, I would carry out a valuation according to B.C. principles. But again, the parties would have to consider the appropriate legal principles to apply; see Mr. Anderson’s writings.

(8) A Plan registered outside B.C., where the member earned all pension entitlement outside B.C. As Mr. Anderson has indicated, this will often involve a member and spouse who moved to B.C. after the member retired.

(9) Disability pensions.

The law in this area is complex, and there have been several important decisions in recent years. Family lawyers need to carefully study the applicable legal principles in the case before retaining an actuary.

(10) Pension credits for service that relates to the marriage period, but that the member buys back after marriage breakdown, would not be subject to Part 6 division. Mr. Anderson has stated that:

“...pensionable service attributable to the marriage that was “purchased by and credited to the member after” the entitlement date (is excluded). However, if the member used family assets to purchase pensionable entitlement, the spouse would still be able to claim a share of it on general principles respecting entitlement to family assets”.

This provision arises most often with public - sector employees who are “buying back” previous periods of public - sector employment.

SECTION 3

LUMP SUM SETTLEMENT, NOT INVOLVING PLAN, BASED ON ACTUARIAL VALUATION

When To Request An Actuarial Valuation

Consider the situation where the two main family assets are the member's pension, and equity in the family home of roughly comparable value to the pension. One possible division is for the member to retain 100% of the pension, with the spouse retaining 100% of the equity in the house.

My understanding is that the general thrust of the 1995 FRA amendments was to shift the onus for pension division away from the courts and toward the Plans, and therefore the Court is unlikely to force the member to pay the spouse a lump sum if the member does not want to. Thus, I think it is advisable to proceed with a lump sum valuation only if both parties have agreed to this method of settlement.

Also, a lump sum valuation may be disadvantageous to a spouse if the member is in a "final earnings" Plan (many Plan members are) and is likely to be promoted in the future. This is because actuarial valuations deal only with the component of salary increase which applies to the entire working population. The possibility of the individual moving up to a better paying job (e.g. a teacher becoming a vice - principal or principal) is not factored in. In contrast, Part 6 division allows the spouse to benefit from the member's future promotions.

Finally, as already mentioned, the spouse can receive a lump sum directly from the Plan, once the Plan member attains the Plan's earliest retirement age, typically 55. If the Plan member is 55 or older, this offers an alternative means of achieving an **immediate** "clean break".

Using Actuarial Services Efficiently

- (1) Whenever possible, agree with the other side to jointly retain one actuary.
- (2) Consider obtaining a report by telephone conference call, not in writing, to reduce costs.

The telephone call can be tape-recorded or transcribed, provided all concerned agree. If the matter is not settled but proceeds to trial, a statement of agreed - upon facts can be prepared based on the actuary's findings, and then only points of disagreement about the assumptions need be litigated. (An example of a possible point of disagreement: assumed

retirement at age 60, or at age 65?)

(3) If you are uncertain whether to pursue the lump sum option, or if a very small pension is involved, ask the actuary for a preliminary opinion only.

(4) If a joint retainer is involved, copy the other side on all correspondence with the actuary and Plan administrator.

(5) At the outset, ask the actuary for a listing of information he/she requires, and ensure that the listing is carefully completed when first writing to the actuary about the assignment. I have included in these materials the information listing I am currently using in my practice; it is also available at:

www.karpactuarial.com/paper/2555mamar312008.pdf

(6) If possible, have the Plan member identify the contact - person at the Plan administrator's office he/she has been dealing with, and provide the actuary with that person's name, and contact information. Also, provide the actuary with a recent pension statement for the member, and a Plan summary if available. (Plan summaries are **NOT** required for the B.C. public sector Plans due to the detailed information available at www.pensionsbc.ca. Private sector employers may make information available on the internet, but sometimes only for employees' use).

(7) If a B.C. Public Sector Plan is involved, have the Plan member obtain from the Pension Corporation, or from the internet, a "Person Profile" document. The Person Profile is a document which gives more detailed information than annual statements. The Person Profile shows a year - by - year history of credited service and Plan earnings. It can therefore identify:

- i. That the employee is (or has been) part - time; (if so, the actuary must factor in a "full - time equivalent" rate of pay to avoid "penalizing the member twice" for being part-time).
- ii. Details re leave of absence, period of disability, etc.

Also, a Person Profile will contain information on all plans covering the member. For example, a long-time policeman (therefore a Municipal Plan member) may have pension credit in the Teachers Plan resulting from teaching experience before becoming a policeman, as well as some substitute teaching while a policeman. I understand from Pension Corporation staff that there are a significant number of people with more than one public sector job, and membership in more than one pension plan.

Fundamental Legal Issue Affecting Actuarial Valuations; Which Years of Pensionable Service Count?

Which years of pensionable service should count in determining the amount of marriage - related pension under a lump sum division? Should years of credited service count as marriage - related if they are before marriage? After separation? This is not a technical actuarial issue, but of course it can have an important effect on the results of the lump sum valuation. My understanding is that the FRA provides that, unless there is an agreement or Court Order to the contrary, the years which apply are those from the marriage date to the “entitlement date” (essentially, a triggering event).

Actuarial Assumptions Applied In Determining Present Value ; Overview

Regulation 11 is found at:

www.qp.gov.bc.ca/statreg/reg/F/FamilyRelations/77_95.htm#section%2011

It applies to actuarial valuations where the member is paying a lump sum directly to the spouse, without the Plan’s involvement. It also applies to the lump sum which a Plan offers the spouse **before** the member’s age 55. (Such offers are voluntary, and are very rare). It does **not** apply to the lump sum which a Plan pays the spouse **after** the member’s age 55. (This latter calculation is more straightforward actuarially, since it involves an assumption that the member immediately retires on pension). Regulation 11 states:

“(3) Without limiting the contingencies that may be considered in making a determination (re a lump sum in this context), the determination must make reasonable provision for the following contingencies:

- (a) the possibility that the member may terminate or die before retirement;
- (b) the possibility that the member may retire at an early, late or normal retirement date ;
- (c) the possibility that benefits being divided as family assets and paid under the plan will increase, whether by an automatic formula or on an ad hoc basis, after the date selected for valuing the benefits;
- (d) to the extent that benefits being divided as family assets are related to future salary levels, the possibility that salary levels will increase after the date selected for valuing the benefits.”

Actuarial valuations must meet the above requirements of Regulation 11, and must also follow the rules of the actuarial profession in Canada; see the following link.

www.actuaries.ca/SOP_Doc/4000_AE/SOP_e_AE_4000.pdf

However, the individual actuary still has some discretion in selecting actuarial assumptions. Thus my assumptions and methods, described below, would not necessarily be the same in every detail as those applied by another actuary.

I determine present values applicable as of a convenient date in the near - future, based on marriage - related years of pensionable service, determined as described above. Therefore, I base valuations on current information (e.g. current salary, current Plan provisions). Thus I require current information on the Plan, not just information as of triggering event.

Actuarial Assumptions Applied In Determining Present Value ; Details

1. Assumed Termination Age / Retirement Age ; Range Of Assumptions / Results

I calculate and report a range of present values, based on a range of assumptions as to when the Plan member will terminate Plan membership. At a minimum, professional standards require that the following assumed retirement ages be quantified:

- i. Age at which retirement is first available without a reduction.
- ii. Age at which maximum years of pension credit attained.
- iii. Normal retirement.

As an example, for a B.C. teacher who has taught from age 24 without any breaks, the above ages would be 57, 59, and 65 respectively.

If the member has not reached the earliest retirement age (usually 55), I always show the result assuming immediate termination of Plan membership. In many Plans (especially those in the private sector), the value assuming immediate termination of employment is much less than the value if the Plan member is assumed to stay until the age (e.g. 55 or 60) where he/she can retire on favourable terms.

2. Assumed Interest Rates, Before Consideration Of Future Increases In The Amount Of Pension Being Valued.

These rates are prescribed by the rules of the Canadian actuarial profession. Such rates vary with prevailing long - term bond yields. They are the same rates that are required to be used by Pension Plans for lump sum “transfer values” payable to a Plan member upon termination of Plan membership. The rates for April, 2008 calculations (re “non - indexed” pensions; i.e. future amounts where no future increases apply) are 4.75% per annum for future years 1-15, and 6.00% for future years 16 and later.

3. Mortality (Year By Year Risk Of Death)

Year - by - year risk of death is assumed to follow the standard table prescribed by the actuarial profession's rules. However, if there is evidence of poor health, I would comment on that in my report, indicating that the possibility of remaining life expectancy being less than normal is a negative contingency affecting my calculations. Thus, I request information on any serious health problems either party might have. More exact calculations of the effect of reduced life expectancy can be made provided a medical opinion regarding life expectancy is obtained, but in practice I have yet to see such a report in a family law case, due to cost concerns.

4. Increases Before Retirement ; Final - Pay Plan

I allow for "general economic" pay increases, but **not** increases attributable to future promotion.

5. Increases After Retirement ; Plan Document Provides For Indexing ("Contractual Indexing")

I value the indexing provision contained in the Plan. If the Plan provides full, unconditional indexing to the cost of living, an annual net discount rate is again prescribed by the rules of the Canadian actuarial profession. Such annual net discount rates for April, 2008 calculations are 2.25% per annum for future years 1-15, and 3.25% for future years 16 and later.

Reduction For Income Tax

In most cases, the assets against which pension rights are being traded are tax-free assets(e.g. equity in a home) or tax - paid assets(e.g. cash proceeds from the sale of an asset, where all applicable taxes have already been paid). In such a case, I think that an income tax reduction should be made, since the Plan member must first pay income tax before deriving any purchasing power from his pension. I calculate such reduction, based on the member's estimated average tax rate in retirement.

However, if pension assets are being "traded against" an asset, such as an RRSP, where taxes will be payable in future, then no tax reduction should be made. Similarly, no income tax reduction is made when a lump sum is transferred from a pension plan to a spouse's RRSP. This is because the member's pension rights are similar to an RRSP in that income tax is deferred until pension payments are received. Pension plans thus never consider income tax implications in calculating lump sum payouts.

Valuation Of Benefits Outside A Formal Pension Plan

The following benefits (which were referred to in Section 2) may require valuation. However, the requirements of “Part 6 division” will not apply to the payor of such benefits, so that the payor normally has no involvement in dividing the benefit.

(1) Supplementary benefits to higher-paid employees. When dealing with a higher-paid employee (e.g. senior executive, airline pilot), it is important to ensure that information on such benefits is obtained.

(2) Severance pay which is earned over the employee’s career, and is considered a divisible asset by the B.C. Courts.

(3) Canada Pension Plan benefits. Actuarial valuation of these benefits would be difficult, and therefore costly. I think that the credit-splitting provisions should be used, and actuarial valuation avoided.

(4) Payments already received (“past payments”). Case law varies on whether such payments should be valued or not. They should not be overlooked.

Example Of Results Of Valuation (Rough Estimates Only; Fictitious Case)

The Plan member is a female in her late 40’s, in good health, who has been covered by the B.C. Municipal Pension Plan for just over 12 years. This Plan is “2% final - five, indexed, integrated with CPP”. The parties were married a long time (so there is no “pre - marriage service”), and no “triggering event” has occurred ; I assume the triggering event to occur in a month or two. The Plan member earns about \$75,000 per year. In current dollars, based on projected “final earnings” assuming a current \$75,000 salary and just over 12 years of credited service, her annual earned lifetime pension is about \$13,000 per annum, plus about \$3,500 per annum payable only to age 65. The present value of her pension rights is as follows (nearest \$1,000):

Assuming immediate termination of Plan membership:	\$175,000
Assuming retirement at age 55 (with 15% reduction):	\$215,000
Assuming retirement at age 60 (with no reduction) :	\$200,000
Assuming retirement at age 65:	\$150,000

(In the B.C. Municipal Plan, deferred pensions are indexed before and after they begin to be paid. Further, the full deferred pension would be payable from age 60. In private sector Plans, there is generally no indexing before payments start, and the full deferred pension may be payable only from age 65, not age 60. Thus, in a private sector Plan, the

value assuming termination of Plan membership would be much smaller, relative to the retirement values, than in the above example).

Based on total projected pension income in retirement (including CPP), I estimated an average tax rate of 17%. The present value of the spouse's after - tax interest is then as follows (nearest \$1,000):

High End Of Range: $\$215,000 \times 50\% \times 83\%$, equals \$89,000

Low End Of Range: $\$150,000 \times 50\% \times 83\%$, equals \$62,000

The 83% factor makes the 17% tax reduction. (As already mentioned, this assumes that pension rights are being traded against cash or tax - paid assets, NOT RRSPs).

Thus the conclusion of the valuation is that the Plan member should "write the spouse a cheque" in an amount between \$62,000 and \$89,000.

Where Does A Fair Settlement Lie Within The Range Of Results Calculated?

I offer my general comments below. Of course, if the parties cannot agree, the court may need to decide this issue , based on the facts of the particular case.

For younger individuals with only a few years of Plan membership, the value assuming immediate termination of employment should probably be given the most weight. (However, actuarial valuations are rarely requested in such cases).

However, once pensionable employment exceeds ten years, it is more and more likely that the individual will not voluntarily leave pensionable employment before the earliest retirement age, normally 55. The termination value then becomes less important, and the values assuming retirement more important.

Individuals who enter a plan relatively late in life (say, after age 30) , will probably need to work to at least age 60, and perhaps age 65, to build up enough pension for a comfortable retirement. In the above example, the Plan member started earning pension credits only in her 30's. She will need to work close to age 65 in order to be able to comfortably retire. Thus the retirement at 65 value (the lowest in the range) should be given a great deal of weight. Had the Plan member started Plan membership 10 years earlier, she could (much like the teacher referred to earlier who taught from age 24 without any breaks) comfortably retire at 60, or even earlier. In that case, the high end of the present value range (e.g. retirement at 60, retirement at 55) should be given a great deal of weight.

SECTION 4

PRIVATE - SECTOR PLANS UNDER FEDERAL JURISDICTION

As mentioned in Section 2, in this context “under Federal jurisdiction” refers to private - sector Plans registered under the Federal Pension Benefits Standards Act. Mr. Anderson’s view is that such Plans are local Plans. This view is indeed generally accepted by Plans based in B.C.. However, most private sector Plans under Federal jurisdiction have their headquarters outside B.C. ; e.g. chartered banks, railways, CBC, Air Canada, Nav Canada. Most such Plans have an established nationwide policy regarding pension division. Such policies typically are not in accordance with Part 6 of the FRA.

The spouse often has the option of receiving a lump sum from the Plan. If the Plan offers a lump sum payment, it may be calculated assuming termination of Plan membership as of the separation date. This can result in an unfairly low lump sum being offered to the spouse. A different policy, also often seen in practice, involves the Plan member and spouse agreeing on the lump sum to be paid from the Plan to the spouse. The Plan then recovers the amount paid (plus interest) from the Plan member, by decreasing the amount of the member’s eventual benefit. Such policies can be fair and equitable to both Plan member and spouse, but each case requires careful analysis.

“If and when” division may not be viable under such Plans, since spousal benefits may be provided to the person meeting the definition of spouse at the time of retirement, or benefit payment. This would preclude the (former, or soon to be former) spouse from receiving survivor benefits. The spouse’s pension would die with the Plan member. This would therefore be an unacceptable option for a spouse, unless there is a great deal of life insurance coverage in the spouse’s favour (or an equivalent amount of assets willed to the spouse).

This is another complicated legal situation where, once again, I suggest that Mr. Anderson’s writings be consulted.

SECTION 5

DIVISION OF PENSIONS COVERING EMPLOYEES OF THE FEDERAL GOVERNMENT, RCMP AND ARMED FORCES: PENSION BENEFITS DIVISION ACT("PBDA")

How Does The PBDA Work ? What Are The Alternatives To It?

As already mentioned, these Plans are **not** subject to Part 6 division. The PBDA came into operation in 1994. It provides for a lump sum to be paid directly from the Plan to the spouse. As with Part 6 division, the member then has his pensionable service reduced in line with the pensionable service factored into the calculation of the lump sum. The spouse can ask to receive a lump sum at any time. There is no requirement to wait until age 55 as under Part 6 division. However, the lump sum is subject to "locking in" rules.

Division using the PBDA is not compulsory, but it is generally the best alternative. "If and when" division through the Plan does not (unlike Part 6 division) ensure the spouse a lifetime pension. The spouse's pension dies with the Plan member. This is therefore an unacceptable option for a spouse, unless there is a great deal of life insurance coverage in the spouse's favour (or an equivalent amount of assets willed to the spouse).

A lump sum division can be made outside the Plan. However, the actuarial fee must be paid, whereas no fee is charged for PBDA division. Further, determination of the resulting lump sum to the spouse, while probably ultimately not much different from the PBDA lump sum, generally requires negotiation by the parties and/or their lawyers. Finally, such lump sum division is possible only if there are sufficient non - pension assets from which the Plan member can pay a lump sum.

The rest of this Section focuses on obtaining a lump sum payout under the PBDA.

What Years Of Pensionable Service Are Counted, In Calculating The Lump Sum?

The "default" position is to base calculations only on the years of credit between cohabitation date(not marriage date, as in the B.C. rules), and separation date (not date of triggering event, as in the B.C. rules). As explained below, the PBDA is generally a favourable solution for the spouse. If the separation date and triggering event are quite close together, the application of the separation date (rather than the triggering event) generally will not prevent a spouse from proceeding with a PBDA division. However, where separation date and triggering event are very far apart, a PBDA division may be precluded. See Mr. Anderson's writings re the conditions under which the above default position can be varied.

Is The Resulting Lump Sum Fair To The Spouse?

Based on experience to date, such lump sums generally appear very fair to spouses; i.e. they generally are comparable to or exceed corresponding sums determined on B.C. principles. (Exceptions may involve cases where separation was some years ago, and the Plan member's rate of pay has since increased substantially).

The assumptions made appear in aggregate to be fair and reasonable. Thus, in general, it is likely that the lump sum under the PBDA will compare favourably with the amount the spouse could receive through negotiation or litigation, but of course this cannot be guaranteed in a particular case without doing specific calculations.

Obviously, from the spouse's perspective, especially close attention needs to be paid to cases where there is a long elapsed time between separation date and triggering event; the PBDA default division will not give the spouse credit for these years although Part 6 default principles would.

Is The Procedure Fair To The Plan Member?

As explained in connection with the B.C. rules, the member's "cost" (a reduction in pensionable service) generally compares favourably with the member's cost under other methods of division.

Obviously, from the plan member's perspective, especially close attention needs to be paid to cases where there is a long period of cohabitation before marriage; the PBDA division would require the Plan member to share the pension for those years although Part 6 default principles would not.

Special Situation ; Plan Member About To Retire

Consider a Federal civil servant about to retire on pension, say at age 58, with very long service. If the PBDA calculation is done just after the member retires, the resulting lump sum will be greater than if the calculation is done just before the member retires. This is because an active employee of that age will not be assumed to retire for another couple of years ; thus the first couple of years' pension payments are in effect omitted from the valuation. Thus postponing PBDA division until just after the member has retired (or perhaps just after the member's intention to retire is recorded in the system), may well be to the spouse's advantage, without any corresponding disadvantage to the Plan member.

This factor can have much greater financial importance re RCMP and Armed Forces personnel, since early retirement on favourable terms may be available at very young ages.

Special Situation ; Plan Member In Poor Health ; PBDA Payout Especially Favourable

The PBDA calculation uses a standard mortality table. No allowance is made for the individual's health situation. In contrast, lump sum actuarial valuations (outside the PBDA) must consider an individual's health situation. If the individual's remaining life expectancy is substantially less than normal, this must be considered in the valuation. Thus, if the Plan member is in poor health, obtaining a lump sum payout under the PBDA should be strongly considered.

Member Already Retired ; No Allowance For Past Payments

In connection with a member retiring on pension, the PBDA lump sum will deal only with payments to be made after the date a lump sum is calculated ; there is no allowance for pension payments already received. Thus, any claim re such "arrears" must be made separately. Such a claim would be directly against the Plan member ; the Plan would not be involved.

PBDA Does Not Deal With Severance Pay

As already mentioned, my understanding is that severance pay rights of federal employees are considered by the B.C. courts to be a family asset. However, the PBDA will not value these rights. Again, any claim re such amounts must be made separately, directly against the Plan member.