

DIVISION OF PENSION RIGHTS UPON MARRIAGE BREAKDOWN SERVICES OFFERED BY IAN KARP OF KARP ACTUARIAL SERVICES INFORMATION FOR AFFECTED INDIVIDUALS, AND THEIR LAWYERS

INTRODUCTION

Please note that I do NOT provide services in connection with Air Canada pensions. Also, I provide valuations in accordance with B.C. legal principles. In cases where the pension has been earned in another province, or one or both spouses now reside outside B.C., there may be some doubt as to which province's law applies. Any such doubt should be resolved by legal counsel prior to retaining my services.

IAN KARP'S QUALIFICATIONS AND EXPERIENCE

- Fellow of the Society of Actuaries, and the Canadian Institute of Actuaries, since 1979.
- 31 years' experience; last 28 years as consulting actuary in Vancouver; last 22 years operating Karp Actuarial Services Ltd.
- Instructor re pensions at March, 1991 and December 1993 Continuing Legal Education courses; author of 1990, 1991 and 1993 articles all reprinted in Continuing Legal Education: December, 1993 "Pensions and Tax For Family Lawyers".
- Speaker re pensions at:
 - i. July, 1995 Continuing Legal Education Family Law Conference.
 - ii. February, 1998 Canadian Pension and Benefits Institute Continuing Education Course re pensions and marriage breakdown.
 - iii. May, 1998 Trial Lawyers Association Of B.C. seminar.
 - iv. April, 2008 Continuing Legal Education course: Pension Division Fundamentals For Family Lawyers.
 - v. Various meetings, and Actuarial Evidence Seminars, held by the Canadian Insititute of Actuaries.
- Chairperson of Canadian Institute of Actuaries' committee on actuarial evidence (October 1998 - June 2000).

SOURCES OF INFORMATION RE DIVISION OF PENSIONS UNDER B.C. FAMILY RELATIONS ACT

1. March 2001 publication of the British Columbia Law Institute ; Questions and Answers About Pension Division on Marriage Breakdown in British Columbia ; BCLI Report, No. 13. Free copy found at www.bcli.org/pages/projects/pension2/menu.html.
2. Information available from Mr. Thomas Anderson, Barrister and Solicitor, formerly of

the B.C. Law Reform Commission and now in private practice specializing in pension division issues. Mr. Anderson is a leading authority on the law governing pension division in B.C., and the principal author of 1. above. His website address is as follows:

<http://www3.telus.net/pensions2/default.htm>

3. Information on Plans covering B.C. public sector employees; see the Plans' website at: www.pensionsbc.ca.

ARE YOU SURE YOU REQUIRE AN ACTUARIAL VALUATION?

An actuarial valuation places a current value on pension rights, so that the spouse's interest can be satisfied by the transfer of cash or assets from the pension - holder to the spouse. Before retaining actuarial services, ensure that you have considered other possible methods of pension division. In particular:

i. If the matter involves the pension of a Federal employee, RCMP officer, or member of the Canadian Forces, a "locked - in" lump sum payout can, provided the parties agree, be made to the spouse from the Plan under the Pension Benefits Division Act ("PBDA"). You should have the fairness of the payout from the Plan checked by an actuary. Be especially cautious if the Plan member has recently retired, may retire shortly, is a member of more than one plan, or if a buy - back of service is involved. The pension-holder has no "up - front" cost but receives less pension later on. You should also ensure that the value of severance pay (not dealt with by the PBDA) is addressed. For further information on the PBDA:

a. See my more detailed paper at the following link:

<http://www.karpactuarial.com/paper/2555cle9805TLApdf.pdf>

b. See information provided by the Federal Government at:

http://www.tpsgc-pwgsc.gc.ca/pension/pbda_kit-e.html

ii. If the pension - holder is eligible for early retirement (55 or older in most cases) the parties can agree to have the Plan pay a lump sum to the spouse. This is similar to the lump sum payout under the PBDA described above, but applies to all "local" Plans. The pension - holder has no up - front cost but receives less pension later on. Again, you should have the fairness of the payout from the Plan checked by an actuary. In this regard, **some Plan sponsors, particularly Plans which are Federally regulated or whose headquarters are located outside B.C., may not adhere to the letter of the B.C. Family Relations Act due to concerns about the potentially conflicting requirements of pension and tax legislation.**

iii. My understanding of case - law is that a court will not force the pension - holder to pay a lump sum if he/she does not want to. Therefore, if you represent the spouse, you should ensure that the pension - holder is amenable to settling the pension issue via a lump sum payment. If not, you should perhaps not seek actuarial services, or alternatively should request only an "initial review" so that you can consider further strategy with some knowledge of the worth of the pension.

OUTLINE OF REMAINDER OF THIS INFORMATION PACKAGE

- a. An outline of information I require to carry out an actuarial valuation.
- b. Information on my fees for lump sum actuarial valuations. (I also provide services in connection with “if and when” agreements, or in evaluating suitability of lump sums payable from Plans. Please ask for details).
- c. Description of a “joint retainer telephone report”, which I think is the most cost - effective means of obtaining an actuarial valuation.

INFORMATION REQUIRED FOR PENSION VALUATIONS RE MATRIMONIAL PROPERTY SETTLEMENTS; TO MAXIMIZE EFFICIENCY AND MINIMIZE COSTS, PLEASE FOLLOW THE FORMAT BELOW CAREFULLY, RESPONDING TO ALL APPLICABLE POINTS. IF THE MATTER IS A JOINT RETAINER, PLEASE COPY THE OTHER PARTY ON ALL CORRESPONDENCE TO ME

1. Names, and dates of birth, of both husband and wife. **If the Plan member is 53 years of age or younger proceed directly to item 2. (If the Plan member is a police officer or firefighter, please replace 53 by 48 in the above instruction).**

Note: If the Plan member is aged over 55 (or is soon to turn 55) a lump sum payout may be available from the Plan directly to the plan member, under Part 6 division. (Age 50 applies, NOT age 55, if the Plan member is a police officer or firefighter). This lump sum payout must assume immediate retirement of the Plan member, and therefore usually results in a higher value than the corresponding fair value determined by an actuarial valuation, which assumes a range of possible retirement ages. The non - pensioned spouse then has essentially three options:

- i. Terminate the valuation process in favour of drawing the lump sum from the Plan. (I then charge a consulting fee based on time spent, which is usually less than half of what the valuation would have cost).
- ii. Discard the option of a lump sum from the Plan as it does not assist the objective (e.g. retaining the family home) which gave rise to the request for an actuarial valuation in the first place. The valuation proceeds as originally planned.
- iii. Request that the valuation process proceed, but with additional calculations estimating the lump sum payout from the pension plan, so that this can be compared with the result of the actuarial valuation, which is aimed at determining fair value, if paid outside the pension plan.

This is a very complicated point and therefore, to ensure that all the issues are properly understood, I require a telephone discussion of it with the non - pensioned spouse, his or her lawyer, or a mediator, before proceeding any further.

2. Indication that both husband and wife have no serious health problems or details regarding health problems, including medical reports.

Note: “health problems” include substance abuse, HIV/AIDS risk, hazardous

lifestyle/hobbies. (I respect the right of individuals not to respond fully to the above so as to protect privacy, but I will note any such non-response in my oral or written report).

3. Date of marriage.

4. Date of separation.

(5-9 below should be completed if applicable).

5. Date of separation agreement dividing property.

6. Date of declaratory judgment under section 57 (formerly section 44) of FRA (actual or anticipated).

7. Date of an order for dissolution of marriage or judicial separation (actual or anticipated).

8. Date of an order declaring the marriage null and void (actual or anticipated).

9. Date that a trial is scheduled to commence. Please specify length of trial, and also day/time I will (if necessary) be required to give evidence.

My understanding of the amended FRA is that any of 5-9 is considered a "triggering event"; pension credits would cut off as of that date.

Additional Instructions Re Lines 10 - 18C Below

If both spouses have pension rights, items 10 - 18c below must be completed for each spouse. Also, if either party has entitlement under more than one pension plan (typically as a result of employment with two or more different employers) particulars re each plan should be provided.

10. A document (e.g. pay statement, "pay stub") showing current rate of pay (per annum, or per month, or biweekly) for pension - holder (required for most plans but not all; ask for details).

Please do NOT provide T4 employment earnings as reported for tax purposes. In almost all cases, pension is based on base rate of pay only, i.e. excluding overtime and other non-recurring items, therefore T4 earnings are inappropriate.

10a. If the pension - holder is not full - time, please provide:

i. The portion of "full - time equivalent" (e.g. .5, .8).

ii. The full - time equivalent rate of pay, on an annualized basis. (An hourly rate of pay can instead be provided, but it should be accompanied by full - time equivalent hours per week).

11. Any material you already have regarding the pensioned spouse's entitlement; letters, explanatory booklets, pension plan statements, etc. For members of B.C. public sector plans, if you or your client is corresponding with the Plan administrator, please request a

“Person Profile” and forward it to me. For RCMP officers and Federal civil servants, please also provide details re severance pay rights (part of “pension rights”: see **Cameron v. Cameron**, (1995) 100 B.C.L.R. (2d) 104 (S.C.)).

If you are aware of any “buybacks” of service, please let me know. My understanding is that, under the amended FRA, buybacks which occur after a triggering event are to be ignored (even if some or all of the service bought back is during the marriage). Buybacks which occur during the marriage are to be fully recognized, even if some or all of the service bought back was prior to the marriage.

12. Please indicate if the plan member’s pensionable employment involves any of the following jobs (special pension considerations apply): airline pilot, air traffic controller, corrections officer, firefighter, police officer, member of the legislature, member of parliament, judge.

13. Authorization, **addressed to the Plan administrator** (in general, the individual or entity able to provide information regarding the pension plan) and signed by the Plan member. It authorizes the Plan administrator to release information directly to me. Once signed, send me the authorization and I then deal directly with the Plan administrator. Sample wording:

To: Administrator of XYZ Pension Plan.

“Please provide Mr. Ian Karp, Consulting Actuary, with all information he reasonably requests in connection with my pension rights. Let this letter be your good and sufficient authority.”

The above brief language works in most cases, but in recent years some Plans have wanted more. To satisfy such Plans, additional wording along the following lines may be needed:

“Mr. Karp has been hired to carry out analysis and calculations regarding my pension rights to assist in arriving at a matrimonial property settlement, and requires information for this purpose. This authorization is signed (insert date on which the authorization is signed) and is valid for 1 year from this date.”

I am sometimes already aware (depending on which Plan is involved) of the appropriate contact - person. However, if you are already aware of who the contact - person is, please identify this person.

My understanding is that the FRA requires that, upon receipt of a “Form 1” from the non-pensioned spouse, the plan must provide information to the spouse. However, Plan administrators often do not accept this, and thus I prefer an authorization signed by the Plan member.

14. Please indicate whether the assignment is to be an initial review, “joint retainer telephone report”, written report, or other basis. If “joint retainer” please indicate how the cost is to be apportioned between the parties. (Note that even if one party pays 100% of my fees, that does not preclude a “joint retainer” where I report to both parties jointly). **I think that a “joint retainer telephone report” is the most cost-effective alternative, and works well under a range of situations ranging from “collaborative law” to very**

contentious, even acrimonious cases. In the last several years, the majority of my assignments have been carried out on this basis.

A detailed description of a “joint - retainer” report is given later in this document.

15. Please indicate any applicable deadlines, or timing requirements.

16. Please include an express statement of responsibility for payment of my reasonable fees ; advance payment is **NOT** required.

17. If a joint retainer:

i. Please provide the phone number and email address of the other party, or their lawyer if applicable.

ii. Please have the other party (or their lawyer) contact me so that I can ensure that both sides have an overall understanding of the work I will be doing.

18. Is the plan member actively employed, retired on pension (i.e. pension payments have started), disabled, or waiting for a pension to start later?

18a. Additional Information Required If The Plan Member Is Disabled

Please provide details re nature of disability (including a medical report if available), prospects for returning to work, and correspondence with the disability insurer.

Also, in addition to valuation of pension plan rights, the valuation of disability pensions (i.e. LTD benefits, or CPP disability benefits) may be an issue. **The case law on this point is complicated and needs to be carefully reviewed by counsel in cases where one or both spouses receive disability pensions.**

18b. Additional Information Required If The Plan Member Is Retired (i.e. Pension Payments Have Started)

Please provide:

i. Any correspondence between the Plan and retiree regarding the details of the retiree's pension entitlement.

ii. Tax slips for recent years, showing the amount of pension income each year.

I will need to be able to glean the following information, from the above material, other documents, and/or from contacting the Plan:

- Date of retirement.

- Date of first pension cheque.

- Gross monthly amount of first pension cheque.

- Current gross monthly pension.
- Full details re form of pension; e.g. percentage continuance to spouse; person named as spouse; guarantee period; change in amount at age 65, if applicable and Plan member is younger than 65.
- For private sector plans, plan's current policy, and history re granting of increases to pensions in payment.
- Total years of pension credit on which pension benefits are based; particulars re which years are covered (e.g. pension based on 30.5 years of pension credit, earned between March 1, 1968, and September 1, 1998).

18c. Additional Information Required If The Plan Member Is Not Actively Employed, Not Disabled, Not Retired, But Rather Has The Right To A Pension Starting At A Later Date

Please provide any correspondence between the Plan and the member regarding the details of the member's pension entitlement. I may then need to contact the Plan for further details.

(End of information requirements listing).

INFORMATION ON FEES FOR LUMP SUM ACTUARIAL VALUATIONS

Fees Quoted Do NOT Apply To Federal Pensions

Re Federal Government plans (includes RCMP, Canadian Forces), individual quotations and/or hourly billing apply, reflecting the extent to which analysis of the PBDA is required.

Similarly re Plans which are in the private or quasi - public sectors but are subject to Federal Pension legislation (e.g. CBC, Nav Canada, large chartered banks), individual quotations and/or hourly billing apply, since the Plan's policy re "splitting through the Plan" needs to be carefully scrutinized.

Fees Quoted Are Before Addition Of GST

Fees quoted below are before addition of 5% GST, and **are minimums; i.e. they apply if no unusual factors are present.**

Additional Fees If More Than One Plan Requires Valuation

Fees below assume that there is only one pension plan requiring valuation. If there is a second pension plan to value, fees will increase by 85%. Additional fees will apply if there are more than two plans to value.

Additional Fees If Any “Unusual Factors” Are Present

Additional fees apply if “unusual factors” are present. Various “unusual factors” are as follows:

1. One or more Plans outside Canada is involved.
2. There is a severance pay plan requiring valuation.
3. Either party has health problems which may affect life expectancy.
4. In addition to the valuation, analysis is required re the suitability of a lump sum being paid from the plan. As mentioned earlier, this generally applies if the Plan member is over age 55.
5. In addition to the valuation, analysis of another actuary’s report is required.
6. In addition to the valuation, analysis of a possible “if and when” arrangement is required, or there are numerous queries re if and when division.
7. In addition to the valuation, analysis of the proposed division by the Plan is required, where such division is not in accordance with the FRA. (This arises most often in connection with federally regulated plans headquartered in Ontario or Quebec).
8. There has been a “buyback” of service started or completed, or one is being planned and the implications require analysis.
9. The Plan member is disabled. As mentioned earlier, legal counsel will also have to determine whether any disability pensions are to be valued, and if so the legal principles on which such valuation(s) should be based.
10. Gathering the information required (e.g. from Plan administrators) proves inordinately difficult.
11. For members of B.C. public sector pension plans who have “special agreement contributions”, e.g. police officer, firefighter, **30%** will be added to fees quoted below.
12. There is an unusually large amount of discussion and explanation of valuation results.

**MINIMUM FEES, BEFORE ADDITION OF GST;
I.E. FEES BEFORE EXTRA CHARGES, IF ANY, RE “UNUSUAL FACTORS”**

If I am retained by a lawyer, I undertake the assignment only on the understanding that the lawyer is my client and will pay my reasonable fees. Upon request, I am pleased to confirm maximum fees before starting work.

Subject to the conditions described above, minimum fees are as follows:

Type of service (see further explanation below)	B.C. public sector plans	All other pension plans, excluding Federal plans
1. Initial review	\$ 400	\$ 550
2. Joint retainer telephone report	\$ 550	\$ 750
3. Written report (sole retainer)	\$1,200	\$1,550
4. Written report (joint retainer)	\$1,400	\$1,800

Further Description Of Alternative Forms Of Service

Initial Review

An “initial review” involves approximate calculations of value, and a report by telephone on the results (nothing in writing). This may be suitable where the lawyer is considering various possible means of pension division, wishes to assess whether a proposed settlement is fair, or wishes to make a settlement offer. **Results given to lawyers under this option are rough estimates only, and are NOT to be attributed to me as my “opinion”. Thus, this form of service is NOT intended as a substitute for a “joint retainer telephone report”.**

Joint Retainer Telephone Report

A “joint retainer telephone report” is generally the most cost - effective alternative. A detailed description of this service is given later in this document. Essentially, it provides similar results as in a written report. Results can be attributed to me, and carry the same precision and reliability as if given in a written report, subject only to clearly identified, suitable approximations. **If a joint retainer telephone report is selected, please read the detailed commentary given later in this document.**

Written Report

A written report (“joint retainer” or “sole retainer”) meets all professional requirements and can be submitted in court.

Additional Requirement In Connection With Joint Retainer Written Reports

Submission of a written report for court purposes involves participation in the adversarial system. In my view, this is inconsistent with a “joint retainer”. Therefore, a “joint retainer written report” is possible only if the parties agree that one of the parties be designated “the client”. The report will be addressed to “the client”, but by consent of “the client” a copy will be sent to the other party. Shortly after my report has been sent, we will schedule a three - way telephone call so that I might provide additional commentary re legal issues. (Normally included in joint retainer telephone reports, but not in written reports). Thus, it will be, in substance, irrelevant which party is “the client”. It will become relevant only if the matter proceeds to trial. In that case, I could appear as a witness only for “the client”.

DETAILED DESCRIPTION OF “JOINT RETAINER TELEPHONE REPORT”, ON ACTUARIAL VALUATION OF PENSION RIGHTS

This approach may not be feasible where relations between the parties are very acrimonious. However, where feasible, it is the most cost-effective approach. The objective of this approach is to provide the two sides with sufficient information to arrive at an informed resolution of the pension issue.

How does it work?

Both parties are equally “the client”, regardless of how the fee is split. Thus, all substantive communication with one party is shared with the other. **Please copy the other party on written communications to me. I require that each party state its acceptance of the joint retainer and accompanying fee - sharing arrangements.**

Getting the information needed to do the actuarial work

I first obtain the information I require from the parties, and from the Plan administrator.

Please provide information according to the format set out on pages 3 - 7 above.

Fundamental issue ; years of pensionable service to count

Consistent with the amended FRA, and unless there is an agreement to the contrary between the parties, I value those years of pensionable service which fall between date of marriage and the earliest triggering event. I recognize that some lawyers may have a differing position. Upon request, I will carry out supplementary calculations quantifying such differing position.

Present value varies, depending on when pension-holder is assumed to leave the pension plan

I calculate and report a range of present values, based on a range of assumptions as to when the pension - holder will terminate Plan membership. In many Plans, the value

assuming immediate termination of employment is much less than the value if the pension-holder is assumed to stay until the age where he/she can retire on favourable terms: this age is often 55 or 60. I use assumptions and methods which are consistent with both the requirements of the actuarial profession and B.C. legislation.

The requirements of the actuarial profession are set out at:

<http://actuaries.ca/members/publications/2006/206067e.pdf>

The requirements of B.C. legislation are set out in paragraph 11 of B.C. Reg.77/95

http://www.qp.gov.bc.ca/statreg/reg/F/FamilyRelations/77_95.htm

Downward adjustment re income tax

Re income tax, I explain that a reduction should be made, according to both actuarial principles and B.C. case law, since the pension-holder must first pay income tax before deriving any purchasing power from his pension. An exception arises when the pension is being traded against an RRSP, or another asset where taxes will be paid later. However, while there is case-law authority for making an income tax reduction, there is also conflicting authority indicating that no reduction should be made. I therefore quote results with and without an income tax reduction.

Final result: the amount the pension holder should pay to the spouse to equalize their interests

Such values follow from the considerations described under the previous headings. Thus there is normally a range of values.

Restrictions on use of telephone report

The conference call can be tape-recorded or transcribed. **However, except as described below, no portion of my comments is to be submitted in court in any shape or form.**

If the case proceeds to trial

The most cost-effective option is to put forward my findings, as given in the telephone conference call, as agreed-upon facts **without attribution to me so that a court cannot erroneously conclude that such document is “my report”**. Then the issues of fact under dispute can be litigated (e.g. one party says retirement should be assumed at age 65, the other side age 60). Indeed, the agreed-upon facts need not even be submitted to the Court: the parties can use the agreed-upon facts to calculate the result based on the Court's findings on issues of fact.