

Pension Division on Marriage Breakdown

We Want Your Feedback

A Discussion Paper Prepared By:

Alberta Finance

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Pension Division on Marriage Breakdown Discussion Paper

Introduction

Three years ago, rules for dividing pensions on marriage breakdown were added to the Employment Pension Plans Act and Regulation. The pension division rules are found in Part 4 of the *Employment Pension Plans Act* (EPPA)¹ and Part 4 of the *Employment Pension Plans Regulation*,² (“the Regulation”) with disclosure rules set out in Section 24 of the Regulation.

The provisions do not prescribe in detail the value of a pension benefit or what would constitute an equitable recognition of the value of the pension asset in the context of the total matrimonial property settlement in any given set of circumstances. Consistent with the overall intent of pension benefits standards legislation, they address the following issues:

- **The interest of the pension partner in the pension asset**

It has been well established for many years in case law that a pension that is earned during a marriage is an asset jointly owned by the two partners; however, as a starting point for more specific rules about how the asset is to be valued and how it is to be distributed, the principle of joint ownership, and what that means, had to be set out clearly in the statute.

- **The pension partner’s entitlement to have that interest satisfied directly by the pension plan**

The provisions allow the pension plan to divide and pay out pension entitlements in two portions, one to the member and the other to his or her former pension partner. The member’s and pension partner’s shares may be paid out at different times. The non-member pension partner often prefers this approach because it is more secure than depending upon the member. However, it remains possible to settle pension division in this latter manner, in which case the issues raised in this paper would not be of concern.

- **The amounts that may be paid out of the pension plan to satisfy that interest**

Most of the provisions deal, not simply with the principle that the asset is jointly owned, but with how it is to be valued, divided, and distributed between the two parties. The provisions are also intended to define minimum standards for the amount of funds that can be paid from a Registered Pension Plan to effect the sharing of a family asset at the time of marriage breakdown. The implication is that if, as a result of particular

¹ See Appendix

² See Appendix

circumstances of the two parties to the marriage breakdown, that minimum amount available from the pension plan is not considered to represent a fair value for the non-member, marital assets other than the pension asset will have to be used to make up the shortfall.

The principles underlying the provisions are:

- Entitlements earned by a pension plan member during marriage are a family asset and form part of the matrimonial property, and, as is the case with other matrimonial property, the partners are assumed to share equally in the value that accrued during the marriage;
- The overall intent of the EPPA and of pension plans registered under the Act must be respected: to accumulate funds for retirement for the plan member, with survivor benefits to the pension partner if there is one when the member dies; thus, the pension is a special asset with restrictions attached to its use;
- The end of a marriage, as it relates to pension plan entitlements, is conceptually similar to the member's termination of employment or death: a termination has occurred, and no future events will affect the value of the pension partner's share.

The provisions are also designed to address the following goals or criteria:

- Both parties in a marriage breakdown want to separate their financial affairs completely and permanently;
- The provisions are simple and straightforward enough to enable pension plan administrators, the Courts and family law practitioners to effect division of pension entitlements with minimum cost and complexity, in most cases;
- The provisions are as consistent as possible with current standards of actuarial practice, and do not address issues that are adequately and appropriately dealt with by the actuarial profession's standards of practice;
- The provisions are harmonized with corresponding provisions in other jurisdictions' pension benefits standards legislation, to the extent possible given variations between jurisdictions.

Purpose of Discussion Paper

It is now time for the new rules to be reviewed to determine whether they are working well for plan administrators, lawyers, Courts, actuaries and divorcing couples. A number of areas have been identified where the rules should be clarified. In addition, many people have suggested changes that would make the rules fairer, more flexible and easier to administer.

Alberta Finance is issuing this technical discussion paper to set out some of the suggestions for changes, sometimes including more than one alternative for a given subject. Because this is an inherently contentious issue where different people have different interests, it is not always possible to determine a consensus position from the suggestions. For this reason and because of the highly technical nature of the rules and the range of individuals and organizations affected, Alberta Finance will actively solicit

the views of a variety of stakeholders. However, anyone – group or individual – is welcome to make comments on the suggestions, as well as to propose other alternatives.

Interested groups are asked to review this discussion paper and provide their comments in response to the proposals set out below, to Alberta Finance by January 31, 2004.

All submissions should include the name of a contact person and contact details (return address, telephone, fax and e-mail address).

Please note that all comments and opinions received in response to this discussion paper become the property of Alberta Finance. While personal or confidential business information will be protected where possible, Alberta Finance reserves the right to publicly disclose information from the submissions in accordance with the provisions of the *Freedom of Information and Protection of Privacy (FOIPP) Act (RSA 2000)*.

For a description of how stakeholder input will be used and disclosed please see the section entitled “Next Steps” on page 14.

Responding to this Discussion Paper

There are three methods of responding to this discussion paper:

1. You can write to: “Pension Division on Marriage Breakdown”
c/o Alberta Finance, Employment Pensions
402 Terrace Building
9515-107 Street
Edmonton, AB T5K 2C3
2. You can e-mail us at Ellen.Nygaard@gov.ab.ca
3. You can send a fax to (780) 422-4283.

Useful Definitions:

Total entitlement: the member’s entire benefit in the pension plan, whether the member earned it before, during or after the marriage.

Total pre-division benefit: the portion of the total entitlement that was accrued jointly during the marriage.

Pension partner: a person who was married to the plan member. Please note that the definition of “spouse” in the EPPA and Regulation has been changed as a consequence of the *Adult Interdependent Partners Act*, and the word “spouse” has been replaced by the term “pension partner”. Nonetheless, under the *Matrimonial Property Act (MPA)* only married persons are entitled to a division of matrimonial property. The *Employment*

Pension Plans Act's division rules also apply only to persons entitled to avail themselves of the property division provisions of the MPA.

Member-pension-partner: (this term is found within the Pension Division Part; in this paper this person is referred to as the “member”) the partner who was the member of the pension plan and the division of whose benefit is in question.

Non-member-pension-partner: (this term is found within the Pension Division Part; in this paper this person is referred to as the “pension partner”) the other partner, who was not the member of the pension plan who earned the benefit in question.

Period of joint accrual: whatever period the parties agree, or the Court declares, to have been the period during which the couple were both accruing an interest in the pension. It does not have to coincide with the dates of marriage and separation, because the couple's circumstances may dictate other dates.

Proposals

1. Division by Matrimonial Property Agreements

Current provision:

Only a Matrimonial Property Order (MPO) can trigger a division of pension money. This MPO can either be written and issued by a judge, in the case of a disputed division, or issued by a judge based on an agreement between the couple (a “consent order”) where the two are able to agree on the division.

Proposal:

It is proposed that division could be triggered by a “matrimonial property agreement” as defined in sections 37 and 38 of the MPA³ if that agreement explicitly deals with the pension. Although those sections would permit an agreement to provide for a distribution of property at times other than marriage breakdown, both the marriage breakdown provisions and the general limitations of the EPPA regarding access to pension benefits would limit the terms of such an agreement as it affected a pension. For example, it would not be available for people who are married but wish to divide their incomes for tax purposes. It would also not be available to common-law partners unless the MPA is amended to include them. The plan administrator could rely on the agreement if it complies with the execution requirements under the MPA. The plan administrator would be further protected by the provision, already in the EPPA, that permits the administrator to go to Court at the couple’s expense to have the agreement interpreted in the event that the administrator does not believe he can act on the agreement as received.

Questions for Discussion:

- i. Do you support this proposal?
- ii. If not, why not?
- iii. If so, are there any issues associated with this proposal that have not been identified in this paper?
- iv. If not, do you have another alternative or do you prefer the current provision?

2. Estimates Provided by Plan Administrator

Current provision:

Plan administrators are required to provide an estimate of the total pension entitlement to couples preparing to settle their matrimonial property division. The total entitlement is the member’s entire pension asset, whether it was earned before, during or after the marriage. It includes not only the main pension benefit but also any voluntary or optional contributions that may have been made by the member. After receiving an MPO, the administrator is required to provide to the non-member pension partner a statement of the options available to him or her to receive a share of the benefit. After the non-member pension partner has received his or her share, the administrator must provide a statement

³ See Appendix

to the member indicating what was distributed to the ex-pension partner and what remains to the member.

Proposals:

A number of clarifications are proposed:

- a) The regulation will require the administrator to provide one estimate only, to assist the couple and the Court in determining how to divide matrimonial assets. This lone estimate is covered in the maximum fee that the administrator may charge for services associated with providing an estimate, dividing and distributing the non-member pension partner's share. The implication is that administrators may choose whether to provide any further estimates requested by the couple and may charge the couple fees at their discretion for the service.
- b) An "administrator" in the case of locked-in funds being held in a financial institution, means the financial institution; in the case of an insurance company that has issued an annuity to the member, it means the insurance company. (This is NOT to be taken to mean that the insurance company is required to divide the annuity. The information is provided so that the couple knows the value of the asset.)
- c) The date as of which the administrator is valuing the asset for the purpose of the estimate would be the date on which the administrator is making the calculation (which, as per the existing rules, must be not more than 90 days after the request is received). The administrator is providing only an estimate of the total entitlement at that time. All the other factors that can affect the total entitlement, and the share belonging to the pension partner, are unknown to the administrator at the time of the estimate, and in fact, may not be settled by the parties until later. The administrator should not have to issue estimates for multiple dates, or project a value for a future date, or estimate the value of the total pre-division benefit (i.e., the jointly accrued portion of the benefit).
- d) It will be clarified that the administrator, in providing to the pension partner a statement containing the options available to him or her, must include not only the options the administrator is required to provide under the legislation, but also any additional options that the plan provides to pension partners on marriage breakdown.

Questions for Discussion:

- i. Do you support these proposals?
- ii. If not, why not?
- iii. If so, are there any issues associated with these proposals that have not been identified in this paper?
- iv. If not, do you have other alternatives or do you prefer the current provision?

3. Survivor Benefits – Pension in Pay

Current provision:

Where the pension has already commenced at the time when the matrimonial assets are being divided, the asset to be divided is the pension itself, whether that pension is being paid from the plan or in the form of an annuity. The pension that the partners elected to receive when they started their pension was likely a joint and survivor pension with the pension partner as the nominee, continuing to the survivor after the first partner dies. But it is not clear what happens after one partner dies when there has been a marriage breakdown in the meantime.

Proposals:

Four alternatives have been identified. For the sake of discussion, this example will be used: A couple has a joint life pension that pays \$1000 a month, reducing to 60% (\$600) after the death of one of the two. After the commencement of the pension, they divorce, splitting the pension so that each receives \$500. What happens when one of them dies?

- a) **“Winner take all”** approach: provide that the entire survivor pension be paid to the survivor exactly as if a divorce had not occurred. Applying this approach to the above example, after death, the survivor receives \$600. The deceased’s estate or beneficiary receives nothing.
- b) **“True McAllister”** approach: provide that a share of the survivor pension, divided in the same proportion as the pension was divided while both were alive, be given in a lump sum to a beneficiary named by the deceased or to the deceased’s estate. Using the above example, after death the survivor’s pension payment reduces to \$300, while the lump-sum (commuted) value of the remaining \$300 stream of payments, based on the survivor’s life expectancy, is paid to the deceased’s named beneficiary or estate.
- c) **“Two pensions”** approach: provide that the pension plan must recalculate both shares as separate pensions as soon as a matrimonial property order or agreement is received. These shares could be paid as pensions or as transfers of lump sums to a locked-in vehicle for the individual. (Each could choose a different option.) The plan could offer single life pensions for each individual for his or her life, or other alternative forms including pensions with a guarantee period or a survivor benefit for a subsequent partner could be offered at the plan’s option. Using the above example, while the two are still alive, each person’s \$500 payment stream is converted to a lump sum (commuted) value, and either transferred out of the plan or used to provide a new pension calculated based on that person’s life expectancy.
- d) **“Same quantum”** approach: provide that the total benefit payable after first death will remain the same as it would have been if the couple had not divorced, but the survivor will retain the same pension payment as if the death had not occurred.

Using the above example, after the death the survivor would continue to receive \$500, and the lump sum (commuted) value of the remaining \$100 payment stream, based on the survivor's life expectancy, would be paid to the deceased's named beneficiary or estate.

These alternatives demonstrate that there is a broad range of possible options. The legislation could require one, or more than one of the above options to be offered by the plan administrator. If there is more than one option, the parties (or the Court) would be required to stipulate which option will be used. Whichever alternative or alternatives is available, all matrimonial property agreements or orders should use them rather than imposing a unique arrangement on a plan administrator.

Questions for discussion:

- i. Which of the above options do you support?
- ii. If more than one, should every administrator be required to offer all these options?
- iii. Do you support limiting the options available to those set out in the legislation?
- iv. Are there any issues associated with these proposals that have not been identified in this paper?

4. Waiver of survivor benefit after pension commencement

Current provision:

There is currently no provision in the legislation permitting a divorcing pension partner to waive (give up) entitlement to a joint life pension in order to facilitate a matrimonial property settlement.

The issue can arise where the pension commences before the marriage breaks down, or after separation but before settlement of the matrimonial property. The entitlement to a survivor pension comes into effect when the pension commences to be paid. If, at the time of pension commencement, the couple is still legally married and has not been separated for more than three years, the non-member still qualifies as the pension partner. A pension partner is entitled, under the pension partner protection provisions of the EPPA, to a joint life pension with the member. The pension partner protection provisions state that waivers are valid only if signed not more than 90 days before pension commencement.

Proposal:

As an alternative to splitting the pension payments and receiving a survivor benefit, the pension partner would be allowed to waive entitlement to a survivor pension. Signing a waiver would not mean the pension partner would renounce all rights to a share of the pension as a matrimonial asset – he or she would merely be waiving the right to be the other person (nominee) named in a joint life pension that is paid for the lives of the two people. If the pension had already commenced, this would mean that the administrator

would be required to recalculate the pension as a single life pension for the member, as if the pension commenced at the date of division. This would allow for one of two outcomes: either the single life pension is then divided and a lump sum transferred to the pension partner, or the pension partner is compensated with other assets.

Questions for Discussion:

- i. Do you support this proposal?
- ii. If not, why not?
- iii. If so, are there any issues associated with this proposal that have not been identified in this paper?
- iv. If not, do you have another alternative?

5. Waiver of Death Benefit

Current provision:

There is currently no provision in the legislation permitting a divorcing pension partner to waive (give up) entitlement to a death benefit in order to facilitate a matrimonial property settlement.

A situation that can arise rarely is where the member dies while the marriage breakdown and property settlement are still in progress, but before the pension commences. In those circumstances, the non-member is still a pension partner as defined under the EPPA if the couple has been separated less than 3 years. There is currently no provision in the EPPA allowing a pension partner to waive a pre-retirement death benefit.

Proposal:

The pension partner would be permitted to waive the right to a pre-retirement death benefit after the death. (This proposal is part of a general package of proposed reforms to the EPPA. It would enable spouses to waive pre-retirement death benefits before or after the death of the member.)

Questions for Discussion:

- i. Do you support this proposal?
- ii. If not, why not?
- iii. If so, are there any issues associated with this proposal that have not been identified in this paper?
- iv. If not, do you have another alternative?

6. 50% Limit on Pension Partner's Share

Current provision:

The distribution of a share of the pension benefit to the pension partner cannot reduce the member's share of the jointly-owned pension asset by more than 50% of its value before the division.

Proposal:

To permit greater flexibility for divorcing couples, the limitation would be removed. Instead, the general MPA provision would apply. In the MPA, there is a presumption that assets acquired during the marriage will be split 50-50. Despite this, the parties can agree to divide marital assets other than on a 50-50 basis. Only where there is a contest between the parties as to division of a particular asset, or percentage attributable to each partner, is a Court Order required.

Questions for Discussion:

- i. Do you support this proposal?
- ii. If not, why not?
- iii. If so, are there any issues associated with this proposal that have not been identified in this paper?
- iv. If not, do you have an alternative, or do you prefer the current provision?

7. Timing Issues: Determination of Value of Total Entitlement and Total Pre-Division Benefit**Current provision:**

The current Regulation provides little guidance as to the date or dates as of which the value of the member's total entitlement is to be determined for division purposes. In the ensuing discussion this will be known as the "date of determination". It should also be clarified how the jointly accrued portion, known as the total pre-division benefit, is calculated. (The total pre-division benefit is determined at the same time as the total entitlement for division purposes.)

In a defined benefit provision, a date of determination is needed to establish several points: whether or not the member is vested, whether the member is eligible for benefit improvements that might have been granted; whether the member is eligible for early retirement or other special benefits; whether the member has become entitled to an immediate pension; whether the member had in fact commenced a pension.

A second issue is whether the date of determination should be used for establishing the interest rate and other actuarial assumptions for valuing a defined benefit. These assumptions change as economic conditions, mortality statistics and standards of actuarial practice change.

A similar timing problem arises if the benefit is in a defined contribution plan or has been transferred to a locked-in account in a financial institution. The calculation of the total entitlement where it is the dollar value of a defined contribution plan, or of a pension entitlement that has been transferred to a locked-in account in a financial institution, is easy if it is a current value. However, it is sometimes more difficult to reconstruct a value after some time has passed, both because historical account values may not be available and because of potential added complications such as contributions made after the valuation date.

Proposals:

Two alternative approaches will be considered, which for the sake of discussion are labeled the “roll back the clock” method and the “water under the bridge” method.

a) “Roll back the clock”

Establish, as the date for determination of the total entitlement, either the date agreed upon by the parties, or, if they fail to agree, the date specified in the Court Order, as the end of the period of joint accrual. (See Useful Definitions section above.) The status of the benefit with respect to vesting, eligibility for early retirement or other special benefits, and eligibility for an immediate pension would all be determined as of that date. However, to determine the commuted value of a defined benefit, the administrator would use the actuarial assumptions that are being used for calculation of commuted values on the date when the division and distribution are actually being performed. In calculating the ‘total pre-division benefit’, the fraction used would be:

$$A=B \times \frac{C}{D}$$

With A being the total pre-division benefit (that is, the jointly accrued benefit)

B = the total entitlement

C= the period of joint accrual

D= the period during which the total entitlement accrued, beginning when the member joined the pension plan and ending at the end of the period of joint accrual.

b) “Water under the bridge”

Make the date of determination the date on which the account is being divided and distributed. The value of the total entitlement of a locked-in or defined contribution account is the value of the account as of that date. The status of the benefit with respect to vesting, eligibility for early retirement or other special benefits, and eligibility for an immediate pension would all be determined as of that date. The actuarial assumptions would also be those in effect for commuted value calculations as of that date.

In calculating the “total pre-division benefit”, the fraction used would be:

$$A=B \times \frac{C}{D}$$

With A being the “total pre-division benefit” (that is, the jointly accrued benefit)

B = the total entitlement

C= the period of joint accrual

D= the period during which the total entitlement accrued, beginning when the member joined the pension plan and ending at the date of determination.

This approach allows events that occur after the end of the period of joint accrual to affect the value of the total entitlement. Although this is inconsistent with the criterion that no events after the end of the relationship should affect the value of the benefit, it is administratively simpler. It is consistent with another principle for valuing joint assets: that as long as the two parties have a joint interest in the asset, increases and decreases in the value of the asset are assumed to be shared – both parties are “along for the ride” until the asset is split. As well, the fraction (C/D) that further divides the total entitlement to yield the part jointly accrued (the total pre-division benefit) compensates, roughly, for any increase in the value of the total entitlement by decreasing the fraction as the time passes after the marriage breakdown.

Questions for Discussion:

- i. Which alternative do you support for defined benefit provisions?
- ii. Which alternative do you support for defined contribution provisions?
- iii. Are there issues associated with these proposals that have not been identified in this paper?

8. Delayed Division

Current Provision:

The only option for a pension partner, where the pension has not yet commenced, is to have an immediate transfer of his or her entitlement unless the member is within 10 years of pensionable (normal retirement) age.

Proposal:

Give the pension partner of any member who was vested at the date of determination the option of delaying receiving his or her share of the pension until the time when the member receives his or her benefit. This option would not be available if the member is not vested at the date of determination.

The advantage of the existing option is that it severs a financial tie between the two permanently. It also ends the tie between the pension partner and the plan administrator. The disadvantage is that the immediate transfer may understate the true value of the pension partner’s share depending on the characteristics of the pension benefit and on future events. Adding the option of a delayed distribution gives the pension partner access to that potential additional value. The potential benefit can be significant in defined benefit plans that base the pension on the highest average salary, or that offer cost-of-living adjustments.

As stated in the introduction to this paper, the current provisions are intended to define minimum standards for the amount of funds that can be paid from a Registered Pension Plan to effect the sharing of a family asset at the time of marriage breakdown. The

implication is that if, due to the features of the plan or the circumstances of the couple, that minimum amount available from the pension plan is not considered to represent a fair value for the non-member, marital assets other than the pension asset will have to be used to make up the shortfall. However, if the fair value is substantially greater than the minimum amount, a full and fair division of the value of the pension may not be possible if the couple has no other assets of sufficient value to satisfy the pension partner's entitlement.

Questions for Discussion:

- i. Do you support this proposal?
- ii. If not, why not?
- iii. Should it be limited to defined benefit plans?
- iv. If so, are there any issues associated with this proposal that have not been identified in this paper?
- v. If not, do you have another alternative or do you prefer the current provision?

Next Steps

Following the review of submissions received by January 31, 2004, Alberta Finance will take the following steps:

1. Prepare a report that summarizes the views of stakeholders and identifies recommendations for the consideration of the Honourable Pat Nelson, Minister of Finance.
2. The report will identify the names of individuals and organizations that have made submissions to Alberta Finance. The report will not disclose their business contact information or any other identifiable personal information about them or any other individuals.
3. The report will not attribute a quote or an opinion to a specific individual unless consent has been obtained from that individual to do so.
4. The report will attribute comments made by individuals representing organizations to the organization and not the individual.

The report will be made public and will be accessible via the Internet.

Appendix

Excerpts from Employment Pension Plans Act RSA 2000 Ch. E-8

1986 cE-10.05 s44

Part 4 **Division and Distribution of Benefits on Relationship Breakdown**

Interpretation

58 (1) In this Part,

- (a) "agreement" means a matrimonial property agreement;
 - (b) "matrimonial property order" or "order" means a matrimonial property order within the meaning of the *Matrimonial Property Act*, or a similar order enforceable in Alberta of a court outside Alberta, that affects the payment or distribution of a person's benefits;
 - (c) "member-pension-partner" means, in relation to the pension plan in question, the pension partner who is or was the member in question, and " non-member-pension-partner" means the other pension partner;
 - (d) "share" means, with respect to a member-pension-partner or the non-member-pension-partner, that person's share of the total pre-division benefit resulting from the division under this Part and that, in the case of the non-member-pension-partner, is to be distributed under this Part;
 - (e) "pension partner" means a pension partner, including a former pension partner, to whom this Part applies;
 - (f) "total pre-division benefit" means the total benefit, or the value of that benefit, accrued to the member-pension-partner immediately before the division under this Part and on which that division is to be based pursuant to this Part.
- (2)** References in this Part to this Part include the regulations made with reference to this Part.

RSA 2000 cE-8 s58;2002 cA-4.5 s33

Prevalence of this Part in relation to benefits

59 (1) Notwithstanding the *Matrimonial Property Act* or any other rule of law or equity to the contrary, the Court shall not make a matrimonial property order dividing or distributing a benefit or any portion of a benefit except in a manner that complies with this Part.

(2) Nothing in subsection (1) prevents the Court from distributing, under the *Matrimonial Property Act*, property that is not a benefit in a manner that takes account of how a benefit is to be divided or distributed in compliance with this Part.

1999 c21 s35

Application

60 (1) This Part applies with respect to the division and distribution of benefits where, as between a member-pension-partner and the non-member-pension-partner, a matrimonial property order or agreement is filed with an administrator, and this Part applies notwithstanding any other provision of this Act, except as specifically stated, and notwithstanding any other rule of law or equity to the contrary.

(2) This Part applies only with respect to a matrimonial property order made or agreement entered into

(a) on or after March 1, 2000,

(b) before March 1, 2000 if there is filed with the administrator a written election by both pension partners to have this Part apply.

RSA 2000 cE-8 s60;2002 cA-4.5 s33

Matrimonial property orders

61 Subject to this Part, the entitlement of any person to a benefit is subject to entitlements arising under a matrimonial property order or agreement filed with the administrator.

1999 c21 s35

Division and distribution of benefits

62 Benefits must be divided between the member-pension-partner and the non-member-pension-partner, and the non-member-pension-partner's share distributed, in accordance with this Part and the prescribed conditions, in the prescribed manner and, subject to the foregoing, in accordance with the applicable matrimonial property order or agreement.

RSA 2000 cE-8 s62;2002 cA-4.5 s33

Valuation of benefits

63 (1) The value of the total pre-division benefit and the non-member-pension-partner's share must be calculated in the prescribed manner.

(2) The division of a benefit between the pension partners must not reduce the member-pension-partner's share of the total pre-division benefit by more than 50%.

(3) The aggregate of the actuarial present values of the shares of both pension partners must equal the actuarial present value of the total pre-division benefit.

(4) The total pre-division benefit and the value of the non-member-pension-partner's share are to be based only on the prescribed proportion of the total period for which the benefit was accruing.

(5) Subsection (2) does not apply with respect to additional voluntary contributions or optional ancillary contributions, and nothing in this Part prohibits the receipt by either pension partner of all or most of either or both kinds of contributions.

RSA 2000 cE-8 s63;2002 cA-4.5 s33

Locking in of non-member-pension-partner ' s share

64 (1) A provision of a pension plan that prohibits terminating members from transferring their pension entitlements if they are within 10 years of pensionable age does not apply with respect to a non-member-pension-partner's share.

(2) Sections 35 and 46, as they apply with respect to a member-pension- partner, also apply with respect to the non-member-pension-partner's share.

(3) Subject to this section, the non-member-pension-partner's share may be transferred under the prescribed conditions.

RSA 2000 cE-8 s64;2002 cA-4.5 s33

Bar against further claims

65 If the full amount of the non-member-pension-partner's share has been distributed pursuant to this Part,

(a) that pension partner has no further entitlement to any benefit or any other right under the plan, and

(b) the administrator and the plan have no further obligation to that pension partner and have no liability to either pension partner or any other person by reason only of the fact that the matrimonial property order or agreement was complied with.

RSA 2000 cE-8 s65;2002 cA-4.5 s33

Adjustment of member ' s share

66 After the division, the administrator shall adjust the member-pension-partner's share in the prescribed manner.

RSA 2000 cE-8 s66;2002 cA-4.5 s33

Application to Court for clarification, etc.

67 (1) If, on the filing of a matrimonial property order or agreement, the administrator is unable to comply with it because it is incomplete, it does not comply with this Part or the plan or there is doubt as to what exactly the administrator must do to comply with it, the administrator may apply to the Court to redress the situation arising from that inability so to comply.

(2) An application to the Court under subsection (1) is to be by notice of motion in the case of a matrimonial property order, or by originating notice in the case of an agreement, in either case supported by an affidavit and on 7 days' notice or any shorter period that the Court allows.

(3) The costs of an application under subsection (1) are to be borne by both or either of the pension partners, as decided by the Court and, to the extent that any such costs are paid by the administrator, the administrator has a right of action in debt against the pension partner or pension partners for the costs, according to the Court's decision on the costs.

RSA 2000 cE-8 s67;2002 cA-4.5 s33

Fees

68 The administrator may charge a fee for the services provided under this Part in an amount not exceeding that prescribed.

1999 c21 s35

Assignment and protection from execution, etc.

69 (1) The division or distribution of a benefit under a matrimonial property order or agreement does not constitute an assignment, charge, alienation or anticipation of the benefit for the purposes of section 85.

(2) Both pension partners' shares, except to the extent that they consist of benefits derived from additional voluntary contributions or optional ancillary contributions, have the exemption from legal process carried by section 85.

RSA 2000 cE-8 s69;2002 cA-4.5 s33

**Excerpts from Employment Pension Plans Regulation,
Alberta Regulation 35/2000 consolidated up to 306/2003**

Interpretation for purposes of the Act

[Section 1(1)]

(e) “matrimonial property agreement” means an agreement entered into between spouses or former spouses in proceedings under the *Matrimonial Property Act* and providing for the division and distribution of a benefit, that is adopted by the Court as a consent order;

Information on Spousal Relationship Breakdown

24(1) The information prescribed for the purposes of section 15(1)(k) of the Act is as set out in this section.

(2) An administrator shall provide to the member-pension-partner and non-member-pension-partner, within 90 days after receiving a written request for it from either, a statement specifying

(a) an estimate of the member-pension-partner’s total entitlement, as calculated under section 59, and, except where payment of the pension has already commenced, the value of the member-pension-partner’s additional voluntary contributions and optional ancillary contributions with interest, if applicable, but only up to and as of the date specified in the request,

(b) the date on which the member-pension-partner became a member, and

(c) the date, if applicable, on which the member-pension-partner terminated his membership.

(3) An administrator shall provide to the non-member-pension-partner, within 90 days after receiving a matrimonial property order, a statement containing

(a) the options available under section 58 to the non-member-pension-partner and a summary of the benefits to which the non-member-pension-partner may become entitled on exercising each of the options, and

(b) the deadline for choosing any option available and the consequences, if any, of not meeting the deadline.

(4) An administrator shall provide to the member-pension-partner, within 90 days after the division takes place, a statement containing

(a) the date the division became effective, and

(b) a summary and description of the remaining benefits to which the member-pension-partner will be entitled after the distribution of the non-member-pension-partner’s share.

(5) Section 56 applies with respect to the interpretation of this section.

AR 35/2000 s24;109/2003;245/2003

**Part 4
Division and Distribution of Benefits
On Spousal Relationship Breakdown**

Definitions

56(1) Definitions in section 58(1) of the Act apply with respect to the interpretation of this Part.

(2) In this Part,

(a)“matrimonial property order” or “order”, in addition to having the meaning in section 58(1)(b) of the Act, includes a matrimonial property agreement;

(b)“total entitlement” means the total benefit, or the value of that benefit, accrued to the member-pension-partner immediately before the division under Part 4 of the Act and on which that division is to be based under that Part, before applying any of the provisions of the *Matrimonial Property Act*, Part 4 of the Act or, except for applying section 59(3), this Part.

AR 35/2000 s56;109/2003;245/2003

Matrimonial property orders

57 A matrimonial property order must specify

(a)the dates when the period of joint accrual of the benefit began and ended for the purposes of the *Matrimonial Property Act*,

(b)the non-member-pension-partner’s share, having regard to section 63(4) of the Act or, where distribution is to be delayed under section 58(2)(c)(ii) or (iii), how the amount of that share is to be calculated at that future time, and

(c)subject to section 58, how that share is to be distributed.

AR 35/2000 s57;109/2003;245/2003

Division and Distribution of Benefits

58(1) The conditions prescribed for the purposes of sections 62 and 64(3) of the Act, and the manner in which benefits are to be divided and the non-member-pension-partner’s share distributed for the purposes of section 62 of the Act, are as set out in this section.

(2) The non-member-pension-partner’s share may

(a)to the extent that a right to a pension has not vested in the member-pension-partner, at the non-member-pension-partner’s option, be paid as a lump sum or, if permitted by that person’s own pension plan, transferred to that plan,

(b)to the extent that such a right is vested and, at the time of the marriage breakdown, the member-pension-partner is not yet within 10 years of pensionable age and has not yet commenced to receive a pension, at the non-member-pension-partner’s option, be transferred in any manner specified, and subject to all the conditions set out, in section 38(2) of the Act, but to a vehicle belonging to the non-member-pension-partner, or

(c)if such a right is fully vested and at that time the member-pension-partner is within that 10-year period or has attained pensionable age, and has not yet commenced to receive a pension, at the non-member-pension-partner’s option,

(i)be transferred in accordance with an option specified in clause (b),

(ii)be so transferred when the member-pension-partner ultimately terminates, commences his pension or dies or when the plan terminates, or

(iii)if the plan so provides, be paid as a pension from the plan to the non-member-pension-partner when the member-pension-partner ultimately terminates, commences his pension or dies or when the plan terminates.

(3) Notwithstanding subsection (2), if any of the circumstances described in section 45(1)(a) or (b) applies with respect to the share, the share may, at the option of the non-member-pension-partner, be paid to the non-member-pension-partner.

(4) Where a pension has already commenced to be paid, the non-member-pension-partner's share is to be paid in the form of a pension or, if the plan so permits, the value of that share may be transferred in accordance with an option referred to in subsection (2)(b).

AR 35/2000 s58;109/2003;245/2003

Calculation of benefits

59(1) The total entitlement, total pre-division benefit and non-member-pension-partner's share are to be calculated in the manner set out in this section.

(2) The proportion prescribed for the purpose of section 63(4) of the Act is that proportion of the total period for which the benefit was accruing that is represented by the period between the beginning and end dates referred to in section 57(a).

(3) The total entitlement, to be calculated at the same time as the total pre-division benefit,

(a) to the extent that a right to a pension has not vested in the member-pension-partner, is equal to the value of the member's contributions, if any, with interest,

(b) subject to subsection (4), to the extent that such a right is vested and if the member-pension-partner has not yet commenced to receive a pension and the non-member-pension-partner does not make the choice, if applicable, given by clause (c), is equal to the commuted value of the pension, calculated as if the member-pension-partner had terminated membership on the date mentioned in the order as the end of the period of joint accrual of the benefit and on the assumption that the member-pension-partner will commence to receive the pension at pensionable age or on the date mentioned in the order, if he has already reached pensionable age,

(c) where the non-member-pension-partner is entitled to choose and chooses the method of distribution set out in section 58(2)(c)(ii), is the actuarial present value of the member's pension or the value of any other benefit as at the date when it is to be received or commence to be received,

(d) where the non-member-pension-partner is entitled to choose and chooses the method of distribution set out in section 58(2)(c)(iii), is the pension itself, or

(e) where the member-pension-partner has already commenced to receive a pension, is the pension itself,

and, for the avoidance of any doubt, is to exclude any value deriving from the member-pension-partner's having made any additional voluntary contributions or optional ancillary contributions where no pension has yet commenced to be paid.

(4) The total pre-division benefit is to be calculated according to the following formula:

$$A = B \times \frac{C}{D}$$

where

A = the total pre-division benefit

B = the total entitlement

C = the period between the beginning and end dates referred to in subsection (2)

D = the period during which the total entitlement accrued.

(5) The non-member-pension-partner's share is to be calculated as the total pre-division benefit multiplied by the fractional proportion of it awarded or given to the non-member-pension-partner in the matrimonial property order.

AR 35/2000 s59;109/2003;245/2003

Adjustment of member-pension-partner's share

60 The manner in which the administrator must adjust the member-pension-partner's share, after the division, for the purposes of section 66 of the Act, is that

(a) the adjustment results in the share after and as a consequence of the division being such that the plan neither gains nor loses, and

(b) the adjustment calculation follows generally accepted actuarial principles.

AR 35/2000 s60;109/2003;245/2003

Fees

61(1) The maximum amount prescribed for the purposes of section 68 of the Act is

(a) in the case of a pension plan containing only defined benefit provisions, \$500,

(b) in the case of a pension plan containing only defined contribution provisions, \$150, and

(c) in the case of a pension plan containing both defined benefit and defined contribution provisions, \$650.

(2) The fee under section 68 of the Act is payable in equal proportions by the pension partners.

(3) The administrator may deduct a pension partner's share of the fee from any benefit payment that is to be made to or on behalf of that pension partner.

AR 35/2000 s61;109/2003;245/20

Filing of Documents with administrator

62 For the purposes of Part 4 of the Act and this Part, a matrimonial property order is filed with the administrator if it or a certified copy of it is served on the administrator in a manner referred to in section 88(a) or (b) of the Act, as the case may be, with the onus of proving proper service resting on the server.

Excerpts from Matrimonial Property Act, RSA2000 Ch. M-8

Agreements between spouses

37(1) Part 1 does not apply to property that is owned by either or both spouses or that may be acquired by either or both of them, if, in respect of that property, the spouses have entered into a subsisting written agreement with each other that is enforceable under section 38 and that provides for the status, ownership and division of that property.

(2) An agreement under subsection (1) may be entered into by 2 persons in contemplation of their marriage to each other but is unenforceable until after the marriage.

(3) An agreement under subsection (1)

(a) may provide for the distribution of property between the spouses at any time including, but not limited to, the time of separation of the spouses or the dissolution of the marriage, and

(b) may apply to property owned by both spouses and by each of them at or after the time the agreement is made.

(4) An agreement under subsection (1) is unenforceable by a spouse if that spouse, at the time the agreement was made, knew or had reason to believe that the marriage was void.

RSA 1980 cM-9 s37

Formal requirements for agreement

38(1) An agreement referred to in section 37 is enforceable if each spouse or each person, in the case of persons referred to in section 37(2), has acknowledged, in writing, apart from the other spouse or person

(a) that the spouse or person is aware of the nature and the effect of the agreement,

(b) that the spouse or person is aware of the possible future claims to property the spouse or person may have under this Act and that the spouse or person intends to give up these claims to the extent necessary to give effect to the agreement, and

(c) that the spouse or person is executing the agreement freely and voluntarily without any compulsion on the part of the other spouse or person.

(2) The acknowledgement referred to in subsection (1) shall be made before a lawyer other than the lawyer acting for the other spouse or person or before whom the acknowledgement is made by the other spouse or person.

RSA 1980 cM-9 s38