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CHAPTER C-9

CIVIL SERVICE SUPERANNUATION ACT

DIVISION OF BENEFITS ON MARRIAGE BREAKDOWN REGULATIONS

Pursuant to section 28 of the *Civil Service Superannuation Act* R.S.P.E.I. 1988, Cap. C-9, Council made the following regulations:

1. In these regulations

Definitions

(a) “Act” means the *Civil Service Superannuation Act* R.S.P.E.I. 1988, Cap. C-9; Act

(b) “commuted value” means the value of a benefit determined in accordance with the Recommendations for the Computation of Transfer Values from Registered Pension Plans adopted by the Canadian Institute of Actuaries and effective on September 1, 1993, to the extent that the recommendations are consistent with the Act and these regulations; commuted value

(c) “locked-in retirement vehicle” means a registered retirement savings plan, registered retirement income fund, or registered pension plan as defined in the *Income Tax Act* (Canada), or a life annuity purchased from an insurance company licensed to sell annuities in Canada, which states in writing that, while the spouse or former spouse is alive locked-in retirement vehicle

(i) any amount in the locked-in retirement vehicle shall continue to be subject to section 26 of the Act,

(ii) in the case of a registered retirement savings plan, payments are allowed only to another locked-in retirement vehicle,

(iii) in the case of a registered retirement income fund or a registered pension plan, payments are allowed only to another locked-in retirement vehicle or to the spouse or former spouse,

(iv) in the case of a registered retirement income fund, the total cash payments to the spouse or former spouse during the first year after the date the registered retirement income fund is entered into does not exceed twice the amount initially transferred into the fund divided by the difference between 90 and the age of the spouse or former spouse (to the nearest whole number) at the transfer date and, during subsequent years, does not exceed twice the minimum annual payments required by the *Income Tax Act* to be made from the fund to the spouse or former spouse,

(v) in the case of a registered pension plan, payments to the spouse or former spouse must be monthly lifetime payments in a form which is allowed under the *Income Tax Act* to a member of a registered pension plan who retires, and

(vi) in the case of a life annuity, only payments in a form to the spouse or former spouse are allowed and such payments must be monthly lifetime payments in a form which is allowed under the *Income Tax Act* to a member of a registered pension plan who retires. (EC455/00)

CALCULATION OF THE AMOUNTS SUBJECT TO DIVISION

Formula

2. (1) Subject to section 3, if the lump-sum value of the benefit of a member, vested former member, or pensioner is to be divided on marriage breakdown, the lump-sum amount subject to division shall equal

$$A / B \times C$$

where "A" is

(i) the number of years and part years of service included in "B" that were credited to the member, vested former member, or pensioner in the period between the date of the marriage and the date of marriage breakdown, plus

(ii) the number of years and part years of service completed prior to the date of the marriage which was not included to calculate benefits at the date of the marriage but was credited to the member, vested former member, or pensioner during the period between the date of the marriage and the date of marriage breakdown and is included in "B" at the date of marriage breakdown;

where "B" is

(i) the total number of years and part years of service which would be used to calculate the pension benefit of the member as if the member had terminated employment on the date of marriage breakdown, or

(ii) the total number of years and part years of service used to calculate the pension benefit of the vested former member or pensioner upon termination of employment where the vested former member or pensioner terminated employment before the date of marriage breakdown,

where "C" is

the total value of the benefit determined as of the date of marriage breakdown in subsections (2) and (3).

- (2) In subsection (1) the value of “C” shall be
- (a) in the case of a member who did not have a vested right to an accrued pension at the date of marriage breakdown, the member’s contributions under the Act accumulated with interest to the date of marriage breakdown, and prior to any adjustment in the member’s contributions being made with respect to any previous marriage breakdown;
- (b) in the case of a member who had a vested right to an accrued pension at the date of marriage breakdown, the commuted value of the accrued pension at the date of marriage breakdown based on the salary history, the contribution history and the benefit formula in force at the time and prior to any adjustment to the accrued pension respecting any previous marriage breakdown or, if greater than the said commuted value, the member’s contributions and interest to the date of marriage breakdown prior to any adjustment in the member’s contributions respecting any previous marriage breakdown;
- (c) in the case of a vested former member, the commuted value of the accrued pension at the date of marriage breakdown before any adjustment to the accrued pension respecting any previous marriage breakdown or, if greater than the said commuted value, the former member’s contributions and interest to the date of marriage breakdown before any adjustment in the former member’s contributions respecting any previous marriage breakdown;
- (d) in the case of a pensioner, the commuted value of the pension to which the pensioner was entitled at the date of marriage breakdown as if there had been no adjustment respecting any previous division of benefits on any previous marriage breakdown.
- (3) The commuted value calculated under subsection (2) shall include
- (a) the value of survivor benefits under the Act, both before the commencement of payment of a deferred pension and while the pension is in payment; and
- (b) the value of any annual increases under subsection 8(4) of the Act.
- (4) Where “B” in subsection (1) includes service transferred from another pension plan under section 3 of the Act, “A” shall include only that portion of the transferred service that was credited to the member, vested former member, or pensioner under the other pension plan between the date of the marriage and the date of transfer of the service.
- (5) For the purposes of subsection 23(3) of the Act, determination of the commuted value transferred into the prescribed locked-in retirement vehicle, pension plan, or annuity shall be made without regard to the gender of the member. (EC455/00)

Calculation of total
value of benefit “C”

Survivor benefits
and indexing
included

When service is
transferred from
another plan

Gender neutral
determination

WHERE BOTH PARTIES PARTICIPATE IN THE PLAN

Where both parties are members, etc.

3. (1) Where each person between whom the pension benefits are being divided on marriage breakdown is either a member, vested former member, or a pensioner and is entitled to a pension benefit under the Act, then the lump-sum amount as described in subsection 2(1) shall be calculated for each party.

Equality of lump-sum amounts

(2) Where the lump-sum amounts for each party are
(a) equal, no portion of the lump-sum amount shall be subject to division;
(b) not equal, then the smaller of the two amounts shall be subtracted from the larger and the difference shall be the amount that is subject to division.

Application of terms

(3) For the purposes of this section, section 5 and sections 18, 20, 23 and 24 of the Act, the term “spouse” or “former spouse” shall refer to the person for whom the amount calculated in accordance with section 2 is the smaller of the two amounts and the term “member”, “vested former member” or “pensioner”, as it applies, shall refer to the person for whom the amount calculated in accordance with section 2 is the larger of the two amounts. (EC455/00)

CALCULATION OF LUMP-SUM AMOUNT TRANSFERABLE TO SPOUSE

Calculation of transferable lump-sum amount

4. (1) Subject to subsections (2) and (3), the lump-sum amount which is transferable to the spouse or former spouse in accordance with subsection 23(1) of the Act shall equal the lump-sum value of the pension benefit subject to division in section 2 or 3, multiplied by the percentage share, which is not to exceed fifty per cent, awarded to the spouse or former spouse in a court order or domestic contract.

Amount credited with interest

(2) The lump-sum amount calculated in subsection (1) shall be credited with interest from the date of marriage breakdown to the date on which the amount is transferred under subsection 23(1) of the Act, based on the rate described in subsection (5).

Further adjustment re pension payments already made

(3) The lump-sum amount that includes interest calculated in subsection (2) shall be further adjusted if pension payments were made between the date of marriage breakdown and the date the amount is transferred pursuant to subsection 23(3) of the Act by subtracting the total amount of the share of the spouse’s or former spouse’s pension payments made, including interest determined in subsection (5), to the date of transfer from the lump-sum amount with interest calculated in subsection (2).

(4) The share of each pension payment of the spouse or former spouse shall be the amount described in section 5. Share of pension payment

(5) The interest rate for the purpose of subsections (2) and (3) is 5.0% per annum. (EC455/00) Rate of interest

REVALUATION OF BENEFITS WHERE LUMP-SUM VALUE DIVIDED

5. (1) Where only one spouse or former spouse is a member, vested former member, or pensioner and a division of benefits was effected under subsection 23(1) of the Act, the monthly pension of the member, vested former member, or pensioner shall be adjusted at retirement or, if later, at the date the division was effected, by subtracting an amount in respect of each division of benefits which equals Formula for revaluation

$$(D/C) \times F \times G \times H \times S$$

where

“D” is the lump-sum amount subject to division calculated in accordance with section 2 or 3;

“C” is the total value of the benefit respecting the member, vested former member, or pensioner calculated and described in section 2;

“F” is the monthly pension described in

- (a) clause 2(2)(b) in the case of a member;
- (b) clause 2(2)(c) in the case of a vested former member; and
- (c) clause 2(2)(d) in the case of a pensioner;

“G” is a factor which adjusts pension “F” in the same proportion as the total adjustment or indexing to pensions under subsection 8(4) of the Act from the effective date at which pension “F” was calculated to the retirement date or, if earlier, the date at which the division was effected;

“H” is a factor to adjust pension “F” from the assumed age at retirement used in calculating “C” to the actual age at retirement with regard to the reduction factor applied under subsection 9(4) of the Act, regarding reduced pension on early retirement;

“S” is the percentage share of benefits of the spouse or former spouse, as defined in the court order or domestic contract but in no case shall the share exceed 50% of the lump-sum value of the pension benefit of the member, vested former member, or pensioner.

Formula for
revaluation of
contribution - one
party a plan
member

(2) Where only one spouse or former spouse is a member, vested former member, or pensioner, the contributions with interest made by the member, vested former member or pensioner shall be revalued as of the date of marriage breakdown by subtracting from them an amount equal to

$$(D/C) \times T \times S$$

where

“D” is the lump-sum amount subject to division calculated in accordance with section 2 or 3;

“C” is the “C” or total commuted value calculated in respect of the member, vested former member or pensioner as described in section 2;

“T” is the total contributions with interest made by the member, vested former member or pensioner to the date of marriage breakdown;

“S” is the percentage share of benefits of the spouse or former spouse, as defined in the court order or domestic contract, but in no case shall the share exceed 50% of the lump-sum value of the pension benefit of the member, vested member, or pensioner.

Formula for
revaluation - both
parties plan
members

(3) Pursuant to subsection 23(6) of the Act, where both spouses or former spouses are either a member, a vested former member, or a pensioner, the monthly pension of the person who is deemed for this purpose to be the member, vested former member, or pensioner as indicated in subsection 3(3) shall be adjusted in accordance with subsection (1). The monthly pension of the person who is deemed for this purpose to be the spouse or former spouse as indicated in subsection 3(3) shall be adjusted by adding an amount which equals

$$(D/C) \times F \times G \times H \times S$$

where

“D” is the lump-sum amount subject to division calculated in accordance with section 3;

“C” is the total value of the benefit respecting the spouse or former spouse calculated as described in section 2;

“F” is the monthly pension described in clause 2(2)(b), (c) or (d), as it applies in the case of the spouse or former spouse;

“G” is a factor which adjusts pension “F” in the same proportion as the total adjustment or indexing to pensions under subsection 8(4) of the Act from the effective date at which pension “F” was calculated to the retirement date or, if later, the date at which the division was effected.

“H” is a factor to adjust pension “F” from the assumed age at retirement used in calculating “C” to the actual age at retirement with regard to the reduction factor applied under subsection 9(4) of the Act, reduced pension on early retirement.

“S” is the spouse’s or former spouse’s percentage share of benefits as defined in the court order or domestic contract, but in no case shall the share exceed 50%.

(4) Pursuant to subsection 23(6) of the Act, where both spouses or former spouses are either a member, a vested former member, or a pensioner, the contributions with interest of the person who is deemed for this purpose to be the member, vested former member, or pensioner as indicated in subsection 3(3) shall be revalued in accordance with subsection (3). The contributions with interest of the person who is deemed for this purpose to be the spouse or former spouse as indicated in subsection 3(3) shall be revalued as of the date of marriage breakdown by adding to them an amount equal to

$$(D/C) \times T \times S$$

where

“D” is the lump-sum amount subject to division calculated in accordance with section 3;

“C” is the total commuted value calculated in respect of the spouse or former spouse as described in section 2;

“T” is the total contributions with interest made by the spouse or former spouse to the date of marriage breakdown;

“S” is the spouse’s or former spouse’s percentage share of benefits as defined in the court order or domestic contract, but in no case shall the share exceed 50%.

(5) The adjustment applied to the pension after the pensioner reaches sixty-five years of age shall bear the same proportion to the adjustment applied to the pension before the pensioner reaches sixty-five years of age as the total pension after age sixty-five bears to the total pension prior to age sixty-five. (EC455/00)

Formula for
revaluation of
contributions-both
parties plan
members

Adjustment after 65

TRANSFER AMOUNTS LOCKED-IN

6. (1) Any amount transferred in accordance with subsection 23(3) of the Act shall be transferred only to a locked-in retirement vehicle.

Restriction on
transfers

(2) Where, within ninety days after receiving notice of the options for transfer, the spouse or former spouse fails to direct the Minister in

Default transfer
option

accordance with subsection 23(3) of the Act, the spouse or former spouse shall be deemed to have directed the Minister to purchase a life annuity in accordance with clause 23(3)(c) of the Act. (EC455/00)

Contents of
application for
division

7. The application made under section 18 of the Act shall contain the date of the marriage, the date of marriage breakdown and photocopies of evidence of the date of birth of the member, vested former member, or pensioner and of the spouse or former spouse and shall include as attachments, a certified true copy of the court order or a domestic contract made in writing, signed by the parties and witnessed. (EC455/00)