Newsletter express
Information bulletin for supplemental pension plans

17 March 2000

Valuation of benefits accumulated during marriage

Following a marriage breakdown, the property included in the family patrimony or in the acquests must be valued as at the date of the introduction of court proceedings. On application of one of the spouses, the court can, however, allow the valuation to be made as at the date on which the spouses stopped living together. Thus, a pension committee may be asked to value a member's accumulated benefits for the period of his or her marriage until cohabitation ceased.

On 4 March 1999, in 2 similar cases, *L'Association de bienfaisance et de retraite des policiers de la Communauté urbaine de Montréal* v. *Laurin*, and *Mondoux* v. *Comité de retraite du régime de retraite des employés de Ville de Laval*, the Québec Court of Appeal came to the conclusion that pursuant to the *Regulation respecting supplemental pension plans*, the pro rata rule provided for in section 40 must be applied with respect to the value as at the date of introduction of proceedings by simply replacing the total number of months of plan membership between the date of the marriage and the date on which proceedings were introduced by the number of months of marriage until cohabitation ceased. The calculation of benefits accumulated during marriage until the spouses stopped living together must, therefore, be made according to the following formula:

$$\text{value of benefits at introduction of proceedings} \times \frac{\text{months of membership during the marriage until cohabitation ceased}}{\text{total months of membership until introduction of proceedings}}$$

The committee may not use any other valuation method since that would be contrary to the provisions of the *Regulation respecting supplemental pension plans*. Furthermore, for the purposes of partition of family patrimony, article 426 of the *Civil Code of Québec* provides that the valuation of benefits must be made in conformity with the provisions of applicable pension plan legislation. Since this rule is public policy, it is inviolable. No one, neither the pension committee, nor the spouses nor even the Court can decide to use another valuation method for valuating pension benefits which are subject to section 40 of the *Regulation respecting supplemental pension plans.*

Rules for flexible pension plans

Québec government rules to facilitate the establishment of flexible pension plans came into force on 16 December 1999. Since that date, the adoption of the *Regulation to amend the Regulation respecting plans exempted from the application of certain provisions of the Supplemental Pension Plans Act* has made it possible to make optional ancillary contributions (OAC) to grant plan members additional benefits called "optional ancillary benefits". It must be noted that the Canada Customs and Revenue Agency (CCRA) changed its rules in November 1996 but it was necessary to change the Québec rules before plan members could take full advantage of flexibility.

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Québec
Régie des rentes

Before the coming into force of the regulation, the rules in place allowed to some extent the establishment of flexible pension plans on the condition that an employer counterpart be associated with the member's OACs. Consequently, the resulting benefits were subject to the 50% rule (sometimes called the minimum employer contribution). While some employers were willing to allow plan members to make optional contributions so as to complement the benefits already offered under their plan, not all employers were willing to make the required additional employer contributions.

For that reason, the new rules exempt OACs from certain requirements of the *Supplemental Pension Plans Act* so as to facilitate the establishment of flexible pension plans and to provide for appropriate monitoring of the resulting contributions and benefits. Moreover, since in some situations and because of tax rules, the benefits paid to a member may have a value when converted that is less than the OACs made, resulting in a loss for the member, the regulation provides a mechanism intended to limit that risk for the member. The main features of the new legal rules for flexible plans are as follows:

- OACs are not subject to the 50% rule; therefore, there is no employer counterpart;
- OACs are treated like additional voluntary contributions but are subject to some exceptions and adaptations as provided for in the regulation;
- OACs are not locked-in so long as they have not been converted into optional ancillary benefits;
- OACs are protected from transfer and seizure in the same way as ordinary member contributions;
- An employer who wishes to set up a flexible pension plan must undertake to pay each member an amount corresponding to any amount that the plan is prevented from paying the member because of tax rules. That undertaking extends to the member's spouse where there is partition of benefits. Likewise, it extends to a spouse or heirs following the death of the member;
- Members must be given information on the risks associated with flexible pension plans.
- The actuarial assumptions that must be used when OACs are converted into optional ancillary benefits are governed by the regulation;
- Fees of 1 000 $ must accompany an application for registration of an amendment to establish a flexible pension plan; the same fees are charged for a new plan.

A flexible pension plan that is in conformity with the regulation has to be structured so as to guarantee the member that he or she should be able to recover the value of all OACs when the time comes to convert them into ancillary benefits. That guarantee takes into account the employer's undertaking in this regard. Such a guarantee is not necessarily found in other types of flexible plans. Therefore, the Régie expects plan sponsors to set up flexible pension plans only if the plans are in conformity with the rules now found in the regulation. The new rules allow flexible pension plans already in effect before 16 December 1999 to be converted to the new form if the members give their consent. The Régie encourages the sponsors of such plans to consider conversion. More information can be found in the text of the new rules, which was published in Part 2 of the *Gazette officielle du Québec* on 1 December 1999.

Mailing list

In this age of rapid communication, we plan to use e-mail more and more to inform our clients of updates to our Web site, of new issues of *Newsletter*, *Newsletter Express* or of any other news on supplemental pension plans. To be notified by e-mail that an update or addition has been made, you can complete the on-line form on our Web site. You will find it in the section on private pension plans.

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