Pension Division on Marriage Breakdown

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Agenda

• Overview of issues in pension division on relationship breakdown
• Interaction between federal and provincial rules
• Review of provincial variations regarding
  • Definition of spouse
  • Eligibility for division
  • Division process and options
• Impact of pension division on death benefits
• Treatment of non-pension retirement benefits
Goals

- Understand process and requirements
- Know what questions to ask
- Know pitfalls and what to avoid
- Know when to get outside help
Pension Division Roadmap

- Jurisdiction
- Spousal Status
- Eligibility
- Calculation
- Documentation
- Initiation
- Division
- Recalculation
- Other Benefits
Main Issues in Pension Division
Determining Jurisdiction

- Provincially regulated plans: jurisdiction of employment
  - Where employer is located and member reports to work
  - Employees with no set workplace deemed to report to work where salary is paid from
- Federally regulated plans: PBSA and law of member’s province of employment
  - Where two laws conflict, PBSA prevails
- Province for benefits vs. province for division
Who is a “Spouse”? 

- Federal and provincial laws apply
- *Divorce Act* (federal): must be a “breakdown of the marriage” based on separation, adultery and/or cruelty
  - For separation, spouses must live separate and apart for at least one year

*Case Study 1: When is together really separate and apart?*
*Case Study 2: When is separate and apart really together?*
Who is a “Spouse”?

• Pension and family law statutes (provincial): criteria for determining who qualifies as a spouse for pension and property division

• Jurisdictional variations:
  • Terminology
  • Length of cohabitation for common-law
<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Definition</th>
</tr>
</thead>
</table>
| AB           | Pension Partner  
  • Married and not living separate and apart for more than 3 years  
  • Cohabiting for at least 3 years (or some permanence if parents) |
| BC           | Spouse  
  • Married and not living separate and apart for more than 2 years  
  • Cohabiting for at least 2 years |
| MB           | Spouse  
  • Married and not living separate and apart due to relationship breakdown  
Common-law Partner  
  • Cohabiting for at least one year (neither married) or three years (either married)  
  • Registered partner under *Vital Statistics Act* |
# Definitions

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>NB</strong></td>
<td>Spouse</td>
</tr>
<tr>
<td></td>
<td>• Married (including voidable and “form of marriage”)</td>
</tr>
<tr>
<td></td>
<td>• Common-Law Partner</td>
</tr>
<tr>
<td></td>
<td>• Cohabiting for at least 2 years</td>
</tr>
<tr>
<td><strong>NL</strong></td>
<td>Spouse</td>
</tr>
<tr>
<td></td>
<td>• Married (including voidable and “form of marriage”)</td>
</tr>
<tr>
<td></td>
<td>• Cohabiting Partner</td>
</tr>
<tr>
<td></td>
<td>• Cohabiting for at least one year (neither married) or three years (either married)</td>
</tr>
<tr>
<td><strong>NS</strong></td>
<td>Spouse</td>
</tr>
<tr>
<td></td>
<td>• Married (including voidable and “form of marriage”)</td>
</tr>
<tr>
<td></td>
<td>• Cohabiting for at least 3 years (or some permanence if parents)</td>
</tr>
<tr>
<td></td>
<td>• Domestic Partner under <em>Vital Statistics Act</em></td>
</tr>
<tr>
<td>Jurisdiction</td>
<td>Definition</td>
</tr>
<tr>
<td>--------------</td>
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</tr>
<tr>
<td>ON</td>
<td>Spouse</td>
</tr>
<tr>
<td></td>
<td>• Married</td>
</tr>
<tr>
<td></td>
<td>• Cohabiting for at least 3 years (or some permanence if parents)</td>
</tr>
<tr>
<td>QC</td>
<td>Spouse</td>
</tr>
<tr>
<td></td>
<td>• Married or in a civil union</td>
</tr>
<tr>
<td></td>
<td>• Cohabiting for at least 3 years (1 year if parents)</td>
</tr>
<tr>
<td>SK</td>
<td>Spouse</td>
</tr>
<tr>
<td></td>
<td>• Married</td>
</tr>
<tr>
<td></td>
<td>• Cohabiting for at least 1 year (if partner not married)</td>
</tr>
<tr>
<td>Federal</td>
<td>Spouse</td>
</tr>
<tr>
<td></td>
<td>• Married (including voidable)</td>
</tr>
<tr>
<td></td>
<td>• Common-law Partner</td>
</tr>
<tr>
<td></td>
<td>• Cohabiting for at least 1 year</td>
</tr>
</tbody>
</table>
Issues with Spousal Status

• “Dueling spouses” – member is separated from spouse and living with common-law partner
  • Some jurisdictions have provisions specifically addressing this
  • Impacts both pension and death benefits

  Case Study 3: Carrigan v. Carrigan – dueling spouses

• Date of determination of spousal status can have a significant impact on division

  Case Study 4: What a difference a week makes
<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Application of Pension Division Rules</th>
</tr>
</thead>
<tbody>
<tr>
<td>AB</td>
<td>Married couples only</td>
</tr>
<tr>
<td>BC</td>
<td>Married and common-law couples</td>
</tr>
<tr>
<td>MB</td>
<td>Married and common-law couples</td>
</tr>
<tr>
<td>NB</td>
<td>Married and common-law couples</td>
</tr>
<tr>
<td>NL</td>
<td>Married couples only</td>
</tr>
<tr>
<td>NS</td>
<td>Married and common-law couples</td>
</tr>
<tr>
<td>ON</td>
<td>Married (calculation and division) and common-law (division) couples</td>
</tr>
<tr>
<td>QC</td>
<td>Married and civil union couples (common-law if both parties agree)</td>
</tr>
<tr>
<td>SK</td>
<td>Married and common-law couples</td>
</tr>
<tr>
<td>Federal</td>
<td>Married and common-law couples</td>
</tr>
</tbody>
</table>
Pension Division Process
Starting the Process

- Administrators must provide statement of pension benefits upon request
  - Can come from either spouse or jointly
    - Notice to non-requesting spouse
  - Some jurisdictions have required forms (e.g. BC, ON); others use written request (e.g. SK, NL)

- Deadlines for providing statements
  - Range from 30 days (NL) to 90 days (SK)
  - Federal uses deadline of applicable province
  - No deadline in NB
• Most provinces allow administrator to charge fee for pension division
  • Maximum fees depend on plan type
  • Who pays fee, and how, varies by jurisdiction
  • MB, NB and SK do not allow fees

• Federal plans can charge “reasonable” fees if:
  • Permitted by plan text
    • Should not charge above provincial fees
  • Payment in best interest of all plan members
<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Maximum Fees</th>
<th>Payment Rules</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>AB</strong></td>
<td>DB: $1,000</td>
<td>Split between spouses or deducted from benefit payment</td>
</tr>
<tr>
<td></td>
<td>DC: $300</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Hybrid: $1,300</td>
<td></td>
</tr>
<tr>
<td><strong>BC</strong></td>
<td>DB: $750</td>
<td>Split between spouses unless they agree otherwise; may be deducted from benefit payment</td>
</tr>
<tr>
<td></td>
<td>DC: $175</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Hybrid: $925</td>
<td></td>
</tr>
<tr>
<td><strong>NL</strong></td>
<td>DB: $500</td>
<td>Paid by spouse and member</td>
</tr>
<tr>
<td></td>
<td>DC: $150</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Hybrid: $650</td>
<td></td>
</tr>
<tr>
<td><strong>NS</strong></td>
<td>DB: $500</td>
<td>Paid by spouse and member</td>
</tr>
<tr>
<td></td>
<td>DC: $250</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Hybrid: $650</td>
<td></td>
</tr>
<tr>
<td><strong>ON</strong></td>
<td>DB: $600</td>
<td>Paid by spouse who requests statement</td>
</tr>
<tr>
<td></td>
<td>DC: $200</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Hybrid: $800</td>
<td></td>
</tr>
<tr>
<td><strong>QC</strong></td>
<td>DB: $250 (statement); $150 (transfer)</td>
<td>Split equally between spouses unless they elect otherwise; may be deducted from benefit payments</td>
</tr>
<tr>
<td></td>
<td>DC: $150 (statement); $100 (transfer)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Hybrid: $325 (statement); $200 (transfer)</td>
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</tr>
</tbody>
</table>
• General rule: Need court order or written agreement authorizing division
  • Settlement instruments include: separation agreements, family arbitration awards, dissolution orders
• Should verify that instrument is final before proceeding
  • QC requires certificate of non-appeal

*Case Study 5: What makes a valid separation agreement?*
Benefit Calculation

- Calculation rules set out in legislation
- Before completing calculation, need to know:
  - Years of service
  - Accrual period for division purposes
  - Benefit type
  - Whether or not pension is matured
  - Treatment of interest

*Case Study 6: Heringer v. Heringer and the issue of interest*
### Calculation: Maximum Share

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Maximum Share</th>
</tr>
</thead>
<tbody>
<tr>
<td>AB</td>
<td>50% of benefits during relationship (excludes OACs/AVCs)</td>
</tr>
<tr>
<td>BC</td>
<td>100% of entire benefits (includes OACs/AVCs)</td>
</tr>
<tr>
<td>MB</td>
<td>50% of benefits during relationship (includes OACs/AVCs)</td>
</tr>
<tr>
<td>NB</td>
<td>50% of entire benefit (includes OACs/AVCs)</td>
</tr>
<tr>
<td>NL</td>
<td>50% of benefits during relationship (includes OACs/AVCs)</td>
</tr>
<tr>
<td>NS</td>
<td>50% of benefits during relationship (includes OACs/AVCs)</td>
</tr>
<tr>
<td>ON</td>
<td>50% of benefits during relationship (includes OACs/AVCs)</td>
</tr>
<tr>
<td>QC</td>
<td>50% of entire benefit (court can order more)</td>
</tr>
<tr>
<td>SK</td>
<td>50% of entire benefit (excludes excess contributions)</td>
</tr>
<tr>
<td>Federal</td>
<td>100% entire benefit (includes OACs/AVCs)</td>
</tr>
</tbody>
</table>
Division Options

• Available options for spouse’s share of pension vary by jurisdiction pension characteristics
  • Plan type
  • Benefit maturity
  • Payment status

*Case Study 7: Impact of ITA’s definition of “spouse” on transfer options*
Division Options

• General rule: locked-in transfer of CV
  • May unlock funds if circumstances warrant (i.e. small benefits)
  • Some amounts (i.e., unvested or excess contributions) payable in cash
• Some jurisdictions allow spouse to become “limited member” of plan
• Division option and legislation determines earliest date spouse’s share can be paid/ transferred
## Options for Spousal Share: DB

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Unmatured:</th>
<th>In pay:</th>
</tr>
</thead>
<tbody>
<tr>
<td>AB</td>
<td>transfer or limited membership</td>
<td>limited membership</td>
</tr>
<tr>
<td>BC</td>
<td>limited membership (can elect transfer once member terminates/retires)</td>
<td>limited membership</td>
</tr>
<tr>
<td>MB</td>
<td>transfer</td>
<td>division at source; limited membership if plan permits</td>
</tr>
<tr>
<td>NB</td>
<td>transfer options available to member</td>
<td>transfer options available to member</td>
</tr>
<tr>
<td>NL</td>
<td>transfer or limited membership</td>
<td>limited membership (also where eligible for unreduced pension)</td>
</tr>
<tr>
<td>NS</td>
<td>transfer or limited membership</td>
<td>transfer or limited membership</td>
</tr>
<tr>
<td>ON</td>
<td>transfer</td>
<td>division at source; separate pension from plan if plan permits</td>
</tr>
<tr>
<td>QC</td>
<td>transfer; limited membership if plan permits and spouse requests</td>
<td>transfer; limited membership if plan permits and spouse requests</td>
</tr>
<tr>
<td>SK</td>
<td>transfer</td>
<td>separate pension from plan</td>
</tr>
</tbody>
</table>
| Jurisdiction | Unmatured: transfer or limited membership  
In pay: same as unmatured if money still in plan; otherwise limited membership |
<table>
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<tbody>
<tr>
<td>AB</td>
<td></td>
</tr>
</tbody>
</table>
| BC           | Unmatured: transfer; limited membership if plan permits  
In pay: same as unmatured if money still in plan; otherwise limited membership |
| MB           | Unmatured: transfer  
In pay: division at source; limited membership if plan permits |
| NB           | Unmatured: transfer options available to member  
In pay: transfer options available to member |
| NL           | Unmatured: transfer  
In pay: separate payment |
| NS           | Unmatured: transfer  
In pay: separate payment |
| ON           | Unmatured: transfer  
In pay: separate payment |
| QC           | Unmatured: transfer; limited membership if plan permits and spouse requests  
In pay: separate payment |
| SK           | Unmatured: transfer  
In pay: separate payment |
Recalculating Member’s Pension

• Administrator must recalculate member’s benefit after division
  • Form of member’s pension
• Impact of death of member and spouse
  • Entitlement to benefit
  • Timing of death

*Case Study 8: Dealing with unfortunate events*
Death and Survivor Benefits
Death and Survivor Benefits

• Benefits payable to member’s spouse following death
  • Pre-retirement
  • Post-retirement (joint and survivor)
Pre-retirement Death Benefit

• Waiver permitted in AB, BC, MB, NS, ON, QC and SK
  • Prescribed forms required (except in QC)
  • Waiver revocable in AB, MB, NS, ON, QC and SK
    • Generally must be before member’s death; some exceptions

• Waiver not available in NB and NL

• Federal: spouse cannot waive but can surrender in favour of dependent beneficiary
Post-retirement Death Benefit

• Normal form of pension for member with spouse is joint and survivor (J&S)

• All jurisdictions allow spouse to waive J&S
  • Prescribed forms required (except QC)
  • Must be completed before pension commencement
    • Timeframes vary by jurisdiction

• MB, NB, NL, NS, ON, QC and SK allow revocation of waiver
  • General rule: file before pension commencement
    • MB and SK: can revoke before member’s death
Role of Settlement Instrument

- Impact of settlement instrument on death benefit entitlement
  - Timing
  - Irrevocable designation
  - Assignment

  *Case Study 9: Vladescu v. CTVGlobemedia – when is an assignment not an assignment*
Final Issues

• Recalculation of spousal share
• Impact of remarriage
• Access to information

• Related issue: has there been a relationship breakdown?
Dividing Other Retirement Plans

LIFS, LIRAs, SERPs, PRPPs
LIFS and LIRAs

- Divisible family property
- Rules for division
  - Some provinces (e.g. AB, SK) have specific rules
    - Maximum share payable to spouse
    - Transfer options
  - Others (e.g. QC) do not have rules, but require division in a “reasonable manner”
- Administrator is financial institution, not employer
  - Refer requests for information to institution
• Divisible family property
  • Not subject to pension legislation

• Addressed in some family law legislation
  • BC: special provisions applicable to “supplementary plans”
  • ON: SERP assets must be valued “where reasonably possible”
• Divisible family property
• Federal *Pooled Registered Pension Plans Act*
  • PRPPs subject to provincial family law division rules
  • All or part of PRPP assets may be transferred to spouse (married or common-law)
• Spousal transfer options:
  • Another PRPP
  • Prescribed retirement savings plan
  • Immediate or deferred annuity
PRPPs: Ontario Example

- ON PRPP legislation provides for division
  - Similar to pension division process

- Process:
  - Member or spouse applies for value
  - PRPP administrator sends information on value
  - Member/spouse notify administrator whether or not PRPP to be divided
    - Administrator makes lump sum transfer if required
    - Member’s account revalued post-transfer
TFSAs

• Divisible family property
  • Not subject to pension legislation

• Dealt with in settlement instrument
  • Generally treated like bank accounts

• Contribution room not affected by transfer out
Final Thoughts
## Pension Division Checklist

<table>
<thead>
<tr>
<th><strong>What you get</strong></th>
<th><strong>What to check</strong></th>
</tr>
</thead>
</table>
| News about relationship breakdown | • Jurisdiction  
• Spousal status/entitlement  
• Forms |
| Formal request for pension division | • Complete forms  
• Disclosure  
• Calculation method  
• Payment options  
• Fees |
| Notice of completed division | • Ongoing disclosure  
• Revaluation  
• Death benefits |
Takeaways

- No “standard” relationship breakdown:
  - Compliance obligations differ by jurisdiction
    - Differences between provinces, and between federal and provincial rules
  - LIFs, LIRAs, SERPs, etc. have their own valuation and division rules
- Legal and financial consequences to incorrectly handling pension division
  - The more you know, the better you can quantify risks to your plan
  - When in doubt, get outside help
Questions?