Division on Spousal Relationship Breakdown

A guide to assist in the understanding of the division on spousal relationship breakdown rules of *The Pension Benefits Act, 1992.*

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Introduction

The purpose of *The Family Property Act* (Saskatchewan) S.S. 1979, c. M-6.1, as stated in section 20 of that statute, is "to recognize that child care, household management and financial provision are the joint and mutual responsibilities of spouses and that inherent in the spousal relationship there is joint contribution, whether financial or otherwise, by the spouses to the assumption of these responsibilities that entitles each spouse to an equal distribution of the family property, subject to the exceptions, exemptions and equitable considerations mentioned in this Act".

One of the most controversial issues surrounding the distribution of family property and the administration of pension plans is the division of pension benefits on the breakdown of a spousal relationship. Part VI of *The Pension Benefits Act, 1992* (the "Act") of Saskatchewan provides rules with respect to the division of pension benefits on the breakdown of a spousal relationship. The legislation is intended to complement *The Family Property Act* by:

- avoiding potential conflict between the statutes;
- providing necessary technical details, particularly with respect to the valuation of pension benefits, that are not found in *The Family Property Act*; and
- giving administrative guidance to pension plan administrators on matters such as disclosure of information and the transfer of assets.

What follows is a series of questions and answers designed to provide insight into the operation of Part VI of the Act.

In a publication of this sort, it is difficult to avoid technical terms entirely. For your reference, a glossary of terms can be found in our publication "Glossary of Terms". In addition, you will find Part VI of the Act reprinted in Appendix A. In Appendix B we have added a brief description of the scope of the jurisdiction of the Act. Not all pension plans are registered pursuant to the Act.

Note: This publication has been developed as a general guide. It has no legal authority and should not be construed as legal advice.

1. When can a division occur?

A division can occur only on the breakdown of a spousal relationship and in accordance with a court order or interspousal agreement made pursuant to *The Family Property Act*. The corollaries are that a division cannot occur if there has not been a breakdown in a spousal relationship and the pension plan administrator cannot act on any other direction than that given by an order or agreement.

2. Can a pension plan administrator refuse to comply with a court order or interspousal agreement?

A pension plan administrator must comply with an order or agreement which calls for the division of a pension benefit, as long as the order or agreement complies with Part VI of the Act.

3. What if the administrator believes that an order or agreement does not comply with the Act?

The administrator should request that the parties amend the agreement or seek direction from the courts with respect to the order. The administrator must first and foremost administer the pension plan in accordance with the Act, *The Pension Benefits Regulations, 1993* (the "Regulations") and the plan itself.

4. Does Part VI apply if the breakdown of the spousal relationship occurred prior to January 1, 1993 (the date the legislation came into force)?

The date of the breakdown of the spousal relationship and the date of the order or agreement are not relevant in determining whether the administrator should comply with the order or agreement. If the division takes place after December 31, 1992 and the division complies with the Act, then the administrator must proceed.

5. Can a common-law spouse or same-sex partner seek a division of pension benefits on the breakdown of a spousal relationship?

Yes, effective July 6, 2001, a common-law spouse or same-sex partner may obtain a court order or enter into an interspousal agreement pursuant to *The Family Property Act.*

6. Must pension benefits be divided on the breakdown of a spousal relationship?

The division of pension benefits is not mandatory. The couple may prefer, or the courts may order, a division of family property in such a manner that the member's or former member's pension benefits remain intact.

Another possibility is that, although a breakdown of a spousal relationship has occurred, the couple may choose not to divide the family property pursuant to *The Family Property Act*. If a couple do so, however, it is worth noting that clause 2(1)(ff) of the Act defines "spouse" as meaning:

> "(i) a person who is married to a member or former member; or
> (ii) if a member or former member is not married, a person with whom the member or former member is cohabiting as spouses at the relevant time and who has been cohabiting continuously

with the member or former member as his or her spouse for at least one year prior to the relevant time".

Because of this definition, a married spouse remains a spouse for purposes of the Act, even if the couple is living apart. If a division on the breakdown of a spousal relationship does not occur and a couple are separated, but not divorced, then the married spouse of a plan member retains the entitlement to survivor benefits. This is the case even if the member has established another spousal relationship.

7. Could a member transfer all of his or her pension benefits to his or her spouse or former spouse?

The member must maintain a prescribed minimum interest in the plan so as to not unduly change the employee-employer relationship. A division of pension benefits must not reduce the commuted value of the member's benefits to less than 50% of the commuted value of the member's benefits prior to the division.

For purposes of this provision, the commuted value of the member's pension would not be restricted to that which accrued during the spousal relationship. Therefore, if the member were a member of the plan for a longer period than he or she were in a spousal relationship, it could be possible to transfer more than 50% of the commuted value of the member's pension which accrued during the spousal relationship and still meet this requirement.

No restriction exists on the division of a pension in payment or of the commuted value of a former member's pension benefits where the former member has not yet commenced receiving a pension. A "former member" means "a person whose membership in a plan has terminated and who retains a present or future entitlement to a benefit pursuant to the plan".

8. Who determines the value of the pension benefits to be divided?

The value of the pension benefits to be divided is determined by the plan administrator. Even where the amount of benefits to be divided is not determined directly by the plan administrator (for example, if the order was written prior to the coming into force of the Act), the administrator is responsible for ensuring that the amount does not exceed the maximum amount which may be divided in accordance with the Act.

9. What is the appropriate date of the valuation?

In most jurisdictions, family property is valued for division purposes on the date when spouses separate. However, *The Family Property Act* instructs the courts to value family property for division purposes either on the date of application or the date when the order distributing the property is made. The administrator must follow the direction of the court order in this regard.

As well, the courts can make appropriate adjustments to account for any increase or decrease in the value of the pension benefits between the date of the valuation and the date of division. However, in the absence of specific direction in the order or agreement, the administrator is not compelled to make such an adjustment.

10. How is the value of the pension benefits determined in a defined benefit plan where the member or former member is not yet retired?

A member of a defined benefit plan accrues an entitlement to receive a pension benefit which will become payable at retirement and over a period of time from retirement to death. The challenge in valuing such an entitlement is to convert this contingent future payment stream into an asset. The term used to describe the pension benefit as an asset is "commuted value".

Section 47 of the Act mandates the calculation of commuted value prior to retirement with the literal presumption of termination of membership. Furthermore, for most defined benefit plans[1], section 24 of the Regulations prescribes that "the commuted value of benefits must be determined in accordance with the recommendations for the computation of transfer values of pensions issued by the Canadian Institute of Actuaries, as amended from time to time". The Canadian Institute of Actuaries refers to this Standard of Practice as the "Recommendations for the Computation of Transfer Values from Registered Pension Plans".

The commuted value of the pension benefits must be determined with reference to service and salary, if relevant, to the date of valuation. For a plan that provides a pension based on salary at retirement or on average salary over a specified and limited period, no projection is made of salary beyond the date of valuation. As well, anticipated improvements in benefits, such as an increase in a flat benefit rate or an ad hoc improvement in pensions, should not be included in the calculation of commuted value, even where the plan has a history of such improvements.

The Canadian Institute of Actuaries also has a Standard of Practice called the "Standard of Practice for the Computation of the Capitalized Value of Pension Entitlements on Marriage Breakdown for Purposes of Lump-Sum Equalization Payments". An actuary will use this Standard if engaged to compute the value of a pension entitlement on marriage breakdown under "provincial family law acts". The Standard gives the actuary discretion to exercise professional judgement. It is quite acceptable to produce a wide range of opinion without going beyond the bounds of acceptable actuarial practice pursuant to the "Marriage Breakdown" Standard.

Individuals who have engaged, or are relying on the work of, an actuary with respect to a valuation of benefits on marriage breakdown should be aware of which actuarial standard has guided the actuary's opinion.

11. If the member of a defined benefit plan commenced a spousal relationship after becoming a member of the plan, what proportion of the commuted value of the member's pension benefits accrued during the spousal relationship?

Section 47 of the Act refers to the division of the value of the pension or other benefit "that accrued

[1] A Limited Liability Plan ("LLP") is a defined benefit plan in which the employer's funding obligations are limited by collective bargaining agreement or contract. An LLP can be amended such that commuted values are determined on a going concern basis. Please refer to our publications "Administrator's Guide – Limited Liability Plans' and "Guide – Member's Guide" for more information about LLPs and commuted values.

during the period beginning on the date of the commencement of the spousal relationship and ending on the date mentioned in the order or agreement". This provision is based on a principle established by subsection 23(1) of *The Family Property Act* which states:

> "Subject to subsection (4), the fair market value, at the commencement of the spousal relationship, of family property, other than a family home or household goods, is exempt from distribution pursuant to this Part where that property is:
>
> (c) owned by a spouse before the commencement of the spousal relationship."

Legitimate differences of opinion exist in the pension industry, most notably within the actuary community, as to the most appropriate determination of the value of pension benefits that a member of a defined benefit plan brings to the spousal relationship. What is presented here is an attempt to establish a basic rule, even if only as a presumption open to rebut. Because the rule is not cast in statutory form, the courts retain discretion to apply alternative approaches in appropriate circumstances.

There are three general approaches to determine the value of the pension benefits that accrued during the spousal relationship. Consider the following example:

At the date of the commencement of the spousal relationship, the member had 5 years of credited service, which on that date had a commuted value of $3,000. Had the member terminated on that date, the pension payable at retirement would be $1,000. At the date of valuation, the member had 25 years of credited service with a commuted value of $250,000. Had the member terminated at that date, the pension payable at retirement would be $30,000.

Using the **value added** approach, the value of the pension benefit accrued during the spousal relationship would be the difference between the commuted value of the member's benefits as at the date of commencement of the spousal relationship and as at the date of valuation:

$$\$250,000 - \$3,000 = \$247,000$$

A second approach is to **prorate** the commuted value based on the pension **benefit** payable from the plan:

$$\frac{(\$30,000 - \$1,000)}{\$30,000} \times \$250,000 = \$241,667$$

A third approach is to **prorate** the commuted value based on the years of credited **service**:

$$\frac{(25 - 5)}{25} \times \$250,000 = \$200,000$$

A pension plan provides a pension at retirement equal to the accumulation of the units of pension earned in each year. The basic question underlying the adoption of a rule is one of determining when it is appropriate to attribute any increase or decrease in unit value which occurred during the spousal

relationship to the units of pension acquired before the date of commencement of the spousal relationship. Just exactly what has accrued as at the date of commencement of the spousal relationship?

In the context of pension benefits legislation, we think in terms of the "accrual of entitlements" rather than the "accrual of value" pursuant to a defined benefit plan. One of the Act's most important provisions, subsection 19(3), states that "no amendment to a plan shall reduce a person's benefits that accrued before the effective date of the amendment". By that we mean that the formulae for determining benefits under a defined benefit plan cannot be reduced retrospectively or retroactively. For instance, a plan could be amended to reduce the pension benefit from 1.8% of salary per year of service to 1.5% of salary per year of service, but only for service on and after the date of the amendment.

Section 19(3) does not, however, mean that the value of the benefits cannot diminish due to circumstances outside of the plan and inherent in the calculation of the value of the benefits. For example, the commuted value of an individual's pension benefits as measured at two points in time may be different as a result of a change in interest rates.

The value of a defined benefit has meaning only on the occurrence of certain events - typically on the termination of membership, the termination of the plan, breakdown of a spousal relationship, the death of the member, or the retirement of the member. Until one of those events occurs, pension legislation does not protect the value of the member's benefits. For that reason, we do not believe that the "value-added" approach is consistent with the principles of pension legislation.

In a plan which provides a pension based on a rate of salary at termination or retirement or on average rates of salary over a specified and limited period, an increase in the member's salary results in an increase in the value of the unit of pension for each and every year of service. In other words, the entitlement to enjoy the benefit of future salary increases accrues. The Act calls for a literal presumption of termination at the date of valuation. Therefore, a projection of salary beyond that date is not included in the determination of commuted value of the pension benefit. However, the Act does not call for a presumption of termination at the date of commencement of a spousal relationship. Therefore, in determining the pension benefits accrued prior to the date of commencement of a spousal relationship it is appropriate to take into account salary increases during the spousal relationship. For final or best average plans, our preference is for the proration on service approach.

For a career average plan the unit of pension each year is computed as a proportion of that year's salary. Salary increases do not result in a retrospective improvement in benefits; a unit of pension in a higher salary year is worth more than a unit of pension in a lower salary year. For such plans, a proration on benefits approach is preferred.

A flat benefit plan provides a fixed dollar amount for each year of service without any reference to a member's salary. Either a proration on service or a proration on benefits is acceptable.

This policy is at its weakest with respect to benefits established during the spousal relationship which are retrospective in nature. Examples include:

- improving a flat benefit plan to provide a pension of $40 per month per year of service instead of $35 per month per year of service, for all years of service;

- during the spousal relationship, a member purchases service which preceded the date of commencement of the spousal relationship.

One could argue that these benefits arose with respect to membership during the spousal relationship and, therefore, the value of the benefits should be taken into account in the division. However, when judging the relative merits of such an argument it is important to bear in mind that the purpose of the legislation is to bring a workable approach to a complex problem.

12. Should excess employee contributions be included in the calculation of commuted value?

Section 31 of the Act provides that any employee contributions in excess of one-half of the commuted value of the member's pension are refundable on termination or retirement. The provision ensures that a member's employer funds at least one-half of the value of the member's pension benefits.

The division of pension benefits does contemplate the presumed termination of a member. However, section 47 uses the term "commuted value" in reference to the value of pension benefits to be divided. "Commuted value" is defined by the Regulations. That definition does not include excess contributions.

The parties or the court may take into account excess employee contributions in determining the value of family property. However, the administrator of the plan cannot make a transfer which does not comply with the Act.

13. What if the member's required employee contributions plus interest exceed the commuted value of benefits?

The administrator should use the greater of the commuted value of benefits and required employee contributions plus interest in determining the value of benefits to be divided. Unlike excess contributions, there is considerably more certainty with respect to the ultimate payment of at least the member's required contributions plus interest. Sections 29 (Locking-in) and 33 (Pre-retirement Survivor Benefits) of the Act ensure that on the termination of membership or on death prior to retirement, the member, or his or her spouse, named beneficiary or estate, will at a minimum receive an amount equal to the member's contribution plus interest.

14. Are there any restrictions on the division of additional voluntary contributions (AVCs) or optional ancillary contributions (OACs) which have not been converted to optional ancillary benefits?

No. Legislation imposes no restrictions on the division and distribution of AVCs or OACs, and they may be dealt with in any manner as set out in the court order or interspousal agreement.

15. Can the retirement method be used to determine the commuted value of pension benefits?

The retirement method means a method of calculating commuted value based on projected employment. For example, consideration would be given to the early retirement options available to the member if employment continued to retirement. For final or best average earnings plans, projected earnings are taken into account.

The termination method means a method of calculating commuted value based on the premise that the member had terminated membership on a specific date (usually the date of spousal relationship breakdown).

The Act regulates the operation of pension plans and pension plan administrators. The administrator of a plan is precluded from dividing a pension benefit in a manner which is not permitted by the Act. On the other hand, a division of family property which takes into account pension benefits, but does not require a payment of money from the pension plan, is not constrained by the rules of the Act.

16. How is the value of the pension benefit determined in a defined contribution plan?

The value of the pension benefit is calculated with reference to the contributions made by and on behalf of the member during the spousal relationship and interest on those contributions. In addition, interest which has accrued during the spousal relationship on contributions made prior to the spousal relationship, also would form part of the value to be divided.

17. What if the member is not vested at the date of breakdown of a spousal relationship?

A benefit vests with a member when the member acquires an unconditional entitlement pursuant to the plan to receive the benefit, whether at present or in the future. If the member is not vested at the date referred to in the order or agreement, then the member does not have an unconditional entitlement to benefits and no benefits are divisible.

Where the plan requires member contributions, a member who terminates prior to being vested retains the right to receive a refund of his or her contributions with interest. Therefore, a division can occur with respect to that amount.

18. How does a division occur after the commencement of a pension?

The division is of the pension payment. The order or agreement could specify the amount to be paid to the spouse or former spouse of the former member as a fixed amount or as a proportion of the pension.

The administrator must be careful to follow quite literally the directions of the order or agreement. For example, if the former member is in receipt of a bridge benefit which ceases at age 65 or if the former member's pension is adjusted on an ad hoc basis to offset inflation, then an order directing a payment to a former spouse of 50% of the member's monthly pension as at a particular date would produce a significantly different result than an order directing payment of 50% of the member's pension as adjusted from time to time.

A division of a pension in payment is not the same as a direction to pay from a former member. On a division, the spouse or former spouse of the former member is the payee for purposes of the *Income Tax Act* (Canada).

We also would permit, if the plan so provides:

- the commutation of the pension payments,
- the division of the commuted value based on a court order or interspousal agreement,
- the transfer of the divided portion of the commuted value to a locked-in retirement account (LIRA) or a deferred life annuity or to purchase an immediate, non-commutable life annuity or prescribed registered retirement income fund (pRRIF), and
- the selection of a new form of pension by the former member based on the reduced value.

If this approach is used, administrators will have to be particularly careful with respect to the re-selection of the form of pension by the former member to avoid anti-selection.

19. Can a court order or interspousal agreement provide for the division of a pension in payment if the member or former member is not yet retired?

Under a defined benefit plan where the member or former member is eligible to receive a pension without reduction and has not chosen to do so, then the division can be of either the commuted value of the pension benefits or of the pension itself, when it becomes payable.

If the division is of the pension itself, then the plan may offer different forms of pension to the former member and the former member's spouse or former spouse at retirement. The plan administrator must ensure that the actuarial present value of the pension payable to both parties equals the actuarial present value of the pension that would have been payable to the former member without the division.

20. Can that portion of the pension benefit which is to be divided for the benefit of the member's spouse be paid in cash?

Under most circumstances, no. In the case of a defined benefit plan, where the commuted value is being divided, the spouse or former spouse may transfer the value of the benefit to which the spouse or former spouse is entitled to a prescribed RRSP (referred to in regulations as a Locked-in Retirement Account or LIRA). The plan, however, may require such a transfer. If there is no transfer, the plan must provide a pension to the spouse.

Where the contribution account is being divided under a defined contribution plan, the plan must transfer the divided benefit to a LIRA. The LIRA must provide for the payment of a pension to the spouse in the form of a non-commutable life annuity or a registered retirement income fund. Funds in a LIRA cannot be withdrawn in cash.

There is an exception to the locking-in rule. Where the amount to be transferred is considered to be too small to be administered as a pension benefit, then it may be paid out in cash. Section 39 of the Act provides for such payment if the amount to be transferred on behalf of the spouse or former spouse does not exceed 20 per cent of the Year's Maximum Pensionable Earnings (YMPE). The YMPE is a term

used in the *Canada Pension Plan* to describe the maximum earnings on which contributions are deducted under the plan.

As well, the Act permits a payment in lieu of a pension where a person entitled to the pension has a condition that is likely to shorten considerably the person's life expectancy.

21. If the member would be eligible for a partial refund of contributions on termination of membership in the plan, can a portion of the divided pension be paid in cash to the member's spouse?

No. The Act makes no provision for such a payment.

22. When does the pension commence with respect to the spouse's share of pension benefits?

If the funds have been transferred to a LIRA, then the spouse may commence a pension at the earlier of:

- age 55, or
- a date provided by the plan.

If the funds are retained in the plan, then the pension must commence on a date provided by the plan.

23. What happens to survivor benefits after a division has occurred?

When a division of the commuted value of the member's pension benefits occurs (i.e., a division prior to retirement), the spouse or former spouse has no further claim or entitlement to any pension or benefit pursuant to the plan. This would preclude the spouse or former spouse from receiving survivor benefits.

If the division is of a pension in payment and the spouse or former spouse met the definition of spouse under the Act at the date of retirement, then the spouse or former spouse retains the entitlement to the post-retirement survivor benefit, unless the spouse has waived such benefits at retirement. The post-retirement survivor benefit stands as a benefit distinct from the pension benefit.

For example, assume at retirement the spouse of a former member met the definition of spouse for purposes of the Act and the former member receives a pension which provides for the payment, on death, of a pension equal to 60% of the amount to which the former member was receiving, to the spouse of the former member. Also assume that the former member is receiving a pension of $1,000 per month. If a court order provided for a division of the former member's pension such that the spouse receives $500 per month of this pension, then the former spouse would receive $500 per month until such time as the former member died, when the former spouse would commence to receive a survivor pension of $600 per month.

24. What is the post-retirement survivor benefit?

Section 34 of the Act establishes that a pension payable to a former member who has a spouse on the day on which the pension is to commence must be in a form which is payable to the surviving spouse on the death of the former member. It goes on to provide that the pension payable to the surviving spouse cannot be less than 60 per cent of the amount to which the former member was entitled.

A former member may receive a pension which does not comply with section 34 if the administrator of the plan receives a waiver before the pension commences that has been signed by the spouse in the presence of a witness and outside the presence of the member or former member. To be valid the statement must be signed no more than 90 days before pension commencement.

25. What happens to the member's pension benefits after the division?

After division, the member's entitlement under the plan must be recalculated to reflect the division. Depending on the nature of the plan, the plan administrator could directly offset the member's benefits or service by a specific amount determined at division.

The plan must be able to demonstrate that other beneficiaries of the pension plan did not suffer as a result of the division. In other words, the sum of the value of the divided pension benefits cannot exceed the value of the pension benefits as a whole. On the other hand, the plan cannot take advantage of the member in the recalculation. It is important to note, however, the plan need only demonstrate cost neutrality at the time of the division. The circumstances after division could result in a member being advantaged or disadvantaged.

Subclause 25(1)(d)(iii) of the Act requires a plan to disclose the method of recalculating benefits in the text of the plan filed with the superintendent.

For plans that require member contributions, the member's contribution account will have to be adjusted, even if the plan is a defined benefit plan. If a member's benefits are reduced on division, but not the member's contributions, then it is possible that unwarranted benefits could flow to the member as a result of the application of the 50% test (see question 12). To ensure fairness, the member's contributions should be reduced proportionate to the division of benefits.

As well, the member's credited service should not be reduced for purposes of determining whether or not the member qualifies for the payment of benefits, for example, subsidized early retirement benefits based on age and service.

26. Can a plan administrator accept a court order or interspousal agreement filed by the spouse of a member or former member?

A division of a pension benefit may proceed on the strength of an interspousal agreement or court order filed with the plan administrator by the spouse of a member. However, the administrator must inform the member of the filing and the member is given an opportunity to object to the division.

The grounds for such an objection are limited to the following:

- that the order or agreement has been varied or is of no force or effect;
- that the terms of the order or agreement have been or are being satisfied by other means; or
- that proceedings have been commenced in a court of competent jurisdiction in Canada to appeal or review the order or to challenge the terms of the agreement.

If the member objects, then the administrator must apply to the courts for direction.

Disclosure

Section 13 of the Act provides rules with respect to disclosure of information to members. Clause 13(1)(f) requires the disclosure of certain information to the member, former member or spouse of the member or former member, or the solicitor of any of them. Section 18 of the Regulations provides the details of what must be disclosed to the parties.

The administrator must provide the information without charge, unless the superintendent approves the charging of a fee. The superintendent is monitoring the costs incurred by plans, but for the near future will not approve the charging of a fee by any plan.

Prior to division on the breakdown of a spousal relationship, the spouse of a member or former member, or his or her solicitor, is entitled to receive information with respect to the value of the member's or former member's benefits. Where such information is provided, the administrator must notify the member or former member.

After division, the administrator must provide an accounting to all parties with respect to the distribution of funds or recalculation of benefits, as the case may be.

DIVISION OF LIRA or pRRIF

Sections 29 and 29.1 of the Regulations provide the rules with respect to the LIRA or pRRIF, respectively.

Paragraph 29(4)(j) states "that all (LIRA) contracts are subject, with any necessary modification, to the division on spousal relationship breakdown provisions in Part VI of the Act". Clause 29.1(4)(e) provides that a RRIF contract is subject to Part VI.

By necessity, the financial institution holding the LIRA or pRRIF contract would be obliged to transfer money pursuant to a court order or interspousal agreement. The plan administrator from which the money originated would have no obligation on division except to provide information to the parties, if necessary.

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APPENDIX A

The Pension Benefits Act, 1992

PART VI
Division on Spousal Relationship Breakdown

46(1) Notwithstanding any other provision of this Act, an administrator shall, on the breakdown of the spousal relationship of a member or former member, divide a pension or other benefit to which the member or former member is entitled, in accordance with this section.

(2) Subject to subsection (3), a pension or other benefit shall be divided:

> (a) where a court has made an order for the division of family property pursuant to *The Family Property Act*, in accordance with the order; or
>
> (b) where the member or former member and his or her spouse have entered into an agreement to divide their family property that is an interspousal agreement within the meaning of *The Family Property Act*, in accordance with the agreement.

(3) A division of a pension or other benefit pursuant to subsection (2) must not reduce the member's commuted value to less than 50% of the member's commuted value prior to the division.

47(1) The value of the pension or other benefit to be divided shall be calculated by the administrator in accordance with this section.

(2) In the case of a defined benefit plan pursuant to which a member or former member has not become eligible to receive a pension without reduction, the value of the pension or other benefit is to be calculated as the commuted value of the pension that accrued during the period beginning on the date of the commencement of the spousal relationship and ending on the date mentioned in the order or agreement, calculated as if the member or former member had terminated membership on the date mentioned in the order or agreement mentioned in subsection 46(2).

(3) In the case of a defined benefit plan pursuant to which a member or former member is eligible to receive a pension without reduction, the value of the pension or benefit is to be calculated as either the commuted value of the pension calculated pursuant to subsection (2) or as a division of the unreduced pension when the pension becomes payable, as provided in the order or agreement mentioned in subsection 46(2).

(4) In the case of a defined benefit plan pursuant to which a former member has commenced receiving a pension, the value of the pension or benefit is to be calculated as a division of the pension in accordance with the order or agreement mentioned in subsection 46(2).

(5) In the case of a defined contribution plan pursuant to which a member or former member has not commenced receiving a pension, the value of the pension or benefit is to be the value of the benefit provided by the defined contribution provision that accrued during the period beginning on the date of the commencement of the spousal relationship and ending on the date mentioned in the order or agreement mentioned in subsection 46(2).

(6) In the case of a defined contribution plan pursuant to which a former member has commenced receiving a pension, the value of the pension or benefit is to be calculated as a division of the pension in accordance with the order or agreement mentioned in subsection 46(2).

48(1) Subject to section 39, where the spouse or former spouse of a member or former member is entitled to a division of the commuted value of a pension pursuant to a defined benefit plan, the portion of the commuted value to which that person is entitled:

> (a) may be transferred to a prescribed RRSP, where the person provides the administrator with written directions to do so, but the plan may provide that a spouse or former spouse must make the transfer; and
>
> (b) where a transfer has not been made pursuant to clause (a), must be used to provide a pension to the person as if the person were a former member.

(2) Subject to section 39, where the spouse or former spouse of a member or former member is entitled to a division of the amount standing to the credit of the member or former member in a defined contribution plan, the amount to which the person is entitled must be transferred to a prescribed RRSP.

(3) Where an amount has been transferred to a prescribed RRSP or used to provide a pension to a person in accordance with an order or agreement mentioned in subsection 46(2):

> (a) the person has no further claim or entitlement to any pension or benefit pursuant to the plan;
>
> (b) the entitlement of the member or former member is to be calculated on the basis of the commuted value of his or her pension after the transfer, or on the amount standing to his or her credit after the transfer, as the case may be; and
>
> (c) neither the administrator nor the plan is liable to any person by reason of having complied with an order or agreement mentioned in subsection 46(2) in accordance with this Part.

49(1) Except where an order or agreement mentioned in subsection 46(2) has been filed with the administrator by the member or former member and his or her spouse or former spouse jointly, the administrator shall give a notice in writing to the member or former member that an order or agreement has been filed.

(2) Unless the administrator receives a notice in writing within 30 days of providing the notice mentioned in subsection (1) that the member or former member objects to the division of the pension or benefit on one of the grounds set out in subsection (3), the administrator shall comply with the order or agreement in accordance with sections 46 to 48.

(3) The grounds for an objection pursuant to subsection (2) are:

(a) that the order or agreement has been varied or is of no force or effect;

(b) that the terms of the order or agreement have been or are being satisfied by other means;

(c) that proceedings have been commenced in a court of competent jurisdiction in Canada to appeal or review the order or to challenge the terms of the agreement.

(4) A member or former member who submits a notice of objection pursuant to subsection (2) shall include with the notice documentary evidence to establish the grounds for objection.

(5) Where a notice of objection pursuant to subsection (2) is received by the administrator, the administrator shall apply to the court for directions and, subject to subsection (6), the court may make any order that it considers appropriate in the circumstances.

(6) No order as to costs shall be made against the administrator or the plan.

APPENDIX B

JURISDICTION

Essentially, *The Pension Benefits Act, 1992* applies to all employer-sponsored pension plans with Saskatchewan residents as members. A "plan" means a plan, scheme or arrangement organized and administered to provide pensions and pursuant to which an employer is required to make contributions on behalf of the members.

There are several plans that are not regulated by the Act:

1. Subsection 3(2) of *The Pension Benefits Regulations, 1993* provides that a plan does not include:

    - an employees profit sharing plan or a deferred profit sharing plan as defined in sections 144 and 147 respectively of the *Income Tax Act* (Canada);
    - an arrangement to provide a retiring allowance as defined in subsection 248(1) of the *Income Tax Act* (Canada);
    - the supplemental plan defined in clause 2(1)(hh) of *The Pension Benefits Act, 1992* if, under the plan to which it is supplemental, the members are entitled to benefits from that plan at least equal to the maximum benefit or contribution limit pursuant to the *Income Tax Act* (Canada);
    - that part of a plan which provides benefits or pensions insured under a contract issued pursuant to the *Government Annuities Act* (Canada); and
    - a registered retirement savings plan as defined in section 146 of the *Income Tax Act* (Canada); and
    - a pooled registered pension plan registered pursuant to *The Pooled Registered Pension Plans (Saskatchewan) Act.*

2. There are several pension plans established by statute of the Government of Saskatchewan for its own employees which are not subject to the Act, including:

    - Public Service Superannuation Plan (which primarily covers employees of departments and agencies hired prior to 1978);
    - Teachers' Superannuation Plan (which covers teachers hired prior to 1980);
    - SaskPower Superannuation Plan;
    - Liquor Board Superannuation Plan;
    - Members of the Legislative Assembly Superannuation Plan; and
    - Judges of the Provincial Court Superannuation Plan.

    However, it cannot be assumed that all public sector plans are not subject to *The Pension Benefits Act, 1992*. The Public Employees Pension Plan is registered under the Act. The plan covers employees of departments and agencies, as well as employees of many Crown Corporations such as SaskTel and SaskPower, hired after 1977. As well, the Saskatchewan Telecommunications Superannuation Plan is registered.

    The Cities of Saskatoon and Regina, the Universities of Saskatchewan and Regina, and the

Saskatchewan Association of Health Organizations have registered pension plans. Also, the Capital Pension Plan (which is a closed pension plan that provides annuities for former employees of several Crown Corporations) , the Municipal Employees' Superannuation Plan and the Saskatchewan Teachers' Retirement Plan (which covers teachers hired after 1979) are registered pursuant to the Act.

3. The federal government has legislation known as the *Pension Benefits Standards Act, 1985*, which is substantially similar to *The Pension Benefits Act, 1992*. The *Pension Benefits Standards Act, 1985* regulates employer-sponsored pension plans with respect to employment in connection with the operation of any work, undertaking or business that is within the legislative authority of the parliament of Canada. For example, the pension plans of firms or companies that are involved in navigation and shipping, railways, canals, telegraph and other works which connect one province to another, steamship lines, ferries between provinces, airlines, radio broadcasting stations and banks are regulated by the *Pension Benefits Standards Act, 1985*.

4. Pension plans for employees of the federal government, including the pension plans for the Canadian Armed Forces and the R.C.M.P., are not regulated by the province.

To complete the discussion on jurisdiction, we should comment on pension plans which are registered outside of Saskatchewan, but which have Saskatchewan members. Of the 1,400 plans in Canada with Saskatchewan members, only about 400 are registered with the Pensions Division.

The Federal Government and all provincial governments, except for Prince Edward Island, currently are party to agreements which provide for a pension plan to be registered in the jurisdiction in which the plurality of members are employed.

In simple terms, the agreements allow one regulator to act on behalf of another. The functions, authorities and duties provided to a regulator by pension benefits legislation may be delegated to another regulator. The parties to a pension plan - the administrator, the employer and the plan beneficiaries - need only interact with one pension authority. Documents are filed with only one pension authority.

However, the current agreements do not substitute the regulations of one jurisdiction for another. Benefit entitlement concerns continue to be governed by the laws of the jurisdiction in which the member is employed or by federal legislation, if the member is employed in included employment. Therefore, a plan operating in more than one jurisdiction will be subject to differing rules with respect to items such as vesting, portability and survivor benefits. Under the current agreements, the regulator of the jurisdiction of registration is expected to enforce all applicable laws, including those of other jurisdictions where the plan has members in more than one jurisdiction.