

March 2013

## B.C.'s New Family Law Act and Division of Pension Rules Now in Force

The new *Family Law Act* ("FLA") came into force today, March 18, 2013. It replaces and repeals the *Family Relations Act* ("FRA"). The FLA carries forward the basic structure established under the FRA, with some fine tuning to deal with issues not adequately addressed under the FRA.

This bulletin highlights the major changes to pension division under the new FLA.

### Application to Common Law Spouses:

- Unlike the FRA, the pension division rules in Part 6 of the FLA apply to unmarried spouses who have lived in a marriage-like relationship for at least two years, in addition to married spouses.

### Division of Benefits:

<b>Defined Contribution (DC) Plan</b>	<b>Defined Benefit (DB) Plan</b>
<p><i>Before Pension Commencement:</i></p> <ul style="list-style-type: none"><li>• Spouse receives share of the benefits by an immediate locked-in transfer to a prescribed retirement savings vehicle.</li><li>• Applies where DC account is used to purchase of an annuity and where DC account may be used to make withdrawals after pension commencement.</li><li>• If administrator consents, spouse can become a limited member.</li></ul> <p><i>After Pension Commencement:</i></p> <ul style="list-style-type: none"><li>• No change from FRA.</li></ul>	<p><i>Before Pension Commencement:</i></p> <ul style="list-style-type: none"><li>• Spouse becomes a limited member.</li><li>• After member becomes eligible to start the pension, spouse can take:<ul style="list-style-type: none"><li>• a lump sum transfer (subject to the PBSA locking-in provisions); or</li><li>• a separate pension payable for the spouse's lifetime</li></ul></li></ul> <p>(Under the FRA, a separate pension was only available if the spouse waited until the member elected to have the pension commence.)</p> <ul style="list-style-type: none"><li>• Calculation of benefit: Former spouse's separate pension is calculated based on the value of the benefits if the member had commenced a pension at the average age of retirement for the plan (even though FLA permits a spouse to elect a separate pension at any time after the member is eligible for pension commencement)</li></ul> <p><i>After Pension Commencement:</i></p> <ul style="list-style-type: none"><li>• No change from FRA.</li></ul>



<b>Supplemental Plan</b>	<b>Other Plans</b>
<p><i>Before Pension Commencement:</i></p> <ul style="list-style-type: none"><li>Spouse's share of the benefits can be a separate pension, with other options available with the consent of the plan administrator</li></ul> <p>(The FRA required the spouse to wait until the benefits become payable and then take a share of the income stream.)</p> <p><i>After Pension Commencement:</i></p> <ul style="list-style-type: none"><li>No substantive change from FRA.</li></ul>	<p><i>Individual Pension Plans (IPP):</i></p> <ul style="list-style-type: none"><li>Spouse becomes a limited member and receives the share by separate pension when the member elects to start the pension, with other options available with the consent of the plan administrator.</li><li>Change from the FRA which only allowed for a division of the income stream after pension commencement.</li></ul> <p><i>Disability Benefits to be Divided Pursuant to an Agreement or Order:</i></p> <ul style="list-style-type: none"><li>Spouse can receive a share at any time after the agreement or order is made.</li></ul> <p>(Under the FRA, the provisions in respect of disability benefits only applied after the member attained age 60).</p>

## Spouse as Limited Member:

- FLA expands the situations in which a spouse can be a limited member, covering divisions of supplemental plan benefits or defined contribution plans that allow spouses to remain in the plan.

## Pre-retirement Survivor Benefits:

- If a member dies before pension commencement and before the limited member received a proportionate share, the deferral of the division ends and the spouse's share of the pension benefits is determined as of the day before the death of the member.
- FLA eliminates the FRA's A÷B formula for division of pre-retirement survivor benefits by deeming the pension to be divided before pre-retirement survivor benefits are available (i.e. according to the pre-pension commencement division rules).
- FLA also clarifies that after a member dies and the limited member receives his or her proportionate share of the pension benefits, the pre-retirement benefits in respect of the member's share go to the designated beneficiary (or the estate of the member if there is no designated beneficiary).



## Dates for Pension Division (Single Triggering Event):

- Under the FLA there will be one triggering event rather than four. The FLA replaces the four triggering events under the FRA (separation agreement, order that there is no possibility of reconciliation, divorce order, order declaring the marriage a nullity) with a single triggering event – the date of separation.
- This date must be set out in the separation agreement or court order and will define the scope of the property to be divided.
- The portion of benefits to be divided is determined from the date the marriage (or the marriage-like relationship) commenced to the date of separation.

## Parties May Agree to Give More than 50% of Pension to Spouse:

- The parties can agree to give the spouse more than half of the pension. Previously, under the FRA, this was only permitted by court order.

## Administrative Matters:

- **Agreements Required:** The FLA clarifies what agreements and documents are required before the administrator divides the pension. The FLA provides that benefits cannot be divided unless there is an order or agreement that divides the benefits and the administrator is not required to divide a pension until the required information and documents are received.
- **Expanded Protection for Administrators:** The FLA expands on the FRA protection to administrators who are acting in good faith. Where an administrator has incomplete or otherwise insufficient application for a spouse to become a limited member or to divide benefits, the administrator can discharge any potential liability for its actions in relation to such an application by giving advance notice to the spouse.
- **Administrative Fees:** The FLA increases the fees that may be charged by an administrator in respect of pension division and permits the fee to be deducted from the payment of benefits.

## Transition from the FRA to the FLA:

- Unless an order or agreement provides otherwise, undivided pension benefits as of March 18, 2013 will be divided according to the rules under the FLA.
- If the prescribed forms under the FRA were delivered to an administrator before March 18, 2013, then the FRA will apply to the pension division. If those same forms are delivered after on or after that date, the administrator has discretion to accept the FRA forms, or require the parties to provide the forms prescribed under the FLA.



- If the spouse became a limited member of a plan under the FRA but the benefits have not yet been divided as of March 18, 2013, then the FLA will apply to the pension division.
- If an administrator consulted with a member and spouse respecting how the FRA would apply to an agreement or order dividing benefits between them, the FRA continues to apply in accordance with the consultation.

For more information please contact a member of our Pension and Employee Benefits Group.

## Team Members

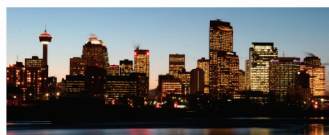
Name	Telephone	Email
Ken Burns	604.631.9286	<a href="mailto:kburns@lawsonlundell.com">kburns@lawsonlundell.com</a>
Murray Campbell	604.631.9187	<a href="mailto:mcampbell@lawsonlundell.com">mcampbell@lawsonlundell.com</a>
Lisa Chamzuk	604.631.6732	<a href="mailto:lchamzuk@lawsonlundell.com">lchamzuk@lawsonlundell.com</a>
Meghan Popp	604.631.9294	<a href="mailto:mpopp@lawsonlundell.com">mpopp@lawsonlundell.com</a>

Lawson Lundell LLP is a British Columbia Limited Liability Partnership. The information contained in this update is for general information purposes only. If you require legal advice or further information, please contact one of the lawyers listed above.



### Vancouver

Suite 1600, Cathedral Place  
925 West Georgia Street  
Vancouver, British Columbia  
Canada V6C 3L2  
(T) 604.685.3456  
(F) 604.669.1620



### Calgary

Suite 3700, 205-5<sup>th</sup> Avenue S.W.  
Bow Valley Square 2  
Calgary, Alberta  
Canada T2P 2V7  
(T) 403.269.6900  
(F) 403.269.9494



### Yellowknife

P.O. Box 818  
Suite 200, 4915 – 48 Street  
Yellowknife, Northwest Territories  
Canada X1A 2N6  
(T) 867.669.5500 Toll Free: 888.465.7608  
(F) 867.920.2206

