

LAW REFORM COMMISSION OF BRITISH COLUMBIA

c/o British Columbia Law Institute
1822 East Mall, University of British Columbia
Vancouver, British Columbia V6T 1Z1
Voice: (604) 822 0142 Fax: (604) 822 0144 E-mail: bcli@bcli.org
Website: www.bcli.org

Backgrounder

LRC 123—Report on Division of Pensions On Marriage Breakdown

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The division of family property between spouses on marriage breakdown has presented many questions for the courts to resolve. One kind of property, pension entitlement, has presented particular problems. The policy of the *Family Relations Act* is clear in stating that pension entitlement earned during the marriage by one spouse belongs just as much to the other. Giving effect to this policy is problematic for many reasons.

The variety of pension plans that exist, their highly technical nature, and the difficulties inherent in attempting to treat a stream of future income as a property right, all combine to create problems. The report discusses four groups of pensions that may need to be divided post-separation: extra-provincial plans outside BC jurisdiction; unmatured pensions in defined contribution plans; unmatured pensions in defined benefit plants; and matured local pensions of either kind. A significant defect of the current law is that it requires economic and actuarial issues to be resolved through litigation, a process not well equipped for that purpose. This can be expensive for the parties and places substantial demands on the courts.

A goal of reform is to fashion legislation in which the fundamental problems of pension division have been worked out in advance, and which will operate in a fair and straightforward manner without the need for extensive actuarial and legal advice. Achieving that goal requires the delicate balancing of the interests of the pension holder, the often highly dependent spouse, and the pension plan. The Commission published a working paper that fully canvassed the current law and described potential reforms. The working paper's suggestions are summarized in detail within the report.

Many who commented during the process of consultation felt that a scheme for pension division must also adopt as straightforward and simple a model as possible, for the benefit of both those who are affected by the legislation, and the professionals representing them. This policy played a significant role in selecting among various choices that had to be made in finalizing the details of the recommendations, including the conclusion that the direct involvement of plans in the process of pension division is an essential feature of a rational legislative scheme.

The Commission's final recommendations take the form of extensively annotated draft legislation that provides a comprehensive structure for dividing all forms of pension entitlement. It requires an entirely new approach for pension division that must, necessarily, be monitored over the initial years to ensure that it operates fairly and sensibly and that the goals of reform are met.

Further Developments

1. Recommendations implemented:
 - (a) *Family Relations Amendment Act, 1994*, S.B.C. 1994, c. 6 (at the time of implementation it was located in: *Family Relations Act*, R.S.B.C. 1979, c. 121, Part 3.1);
 - (b) *Division of Pensions Regulation*, B.C. Reg. 77/95, O.I.C. 196/95.
2. Act revised: *Family Relations Act*, R.S.B.C. 1996, c. 128 [part renumbered to Part 6].
3. Sections modified S.B.C. 1997, c. 20, ss. 7–15, brought into force by B.C. Reg. 24/98.