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BRITISH COLUMBIA
LAW INSTITUTE PENSION DIVISION REVIEW PROJECT

Backgrounder

Introduction to the Pension Division Review Project

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Introduction

When a spousal relationship breaks down, the *Family Law Act* provides for the division of family property between the spouses. Pensions represent a particularly complex form of property to divide in this manner, so the *Family Law Act* contains a comprehensive set of rules that apply to this process. These rules are located in part 6 of the act and in the *Division of Pensions Regulation*.

Part 6 and the regulation came into force on 18 March 2013. This date marked an important change in how the law deals with division of pensions on the breakdown of a relationship. Notably, the new part 6 applied for the first time to unmarried spouses. Since the new part 6 came into force, there have also been significant changes to allied legislation, such as the *Pension Benefits Standards Act*. As well, pension administration and family-law practice have both continued to evolve.

The Pension Division Review Project is dedicated to a review of pension division under British Columbia's *Family Law Act*. The goal of this project is to take developments in law and practice into account and make recommendations to reform part 6 of the *Family Law Act* and the *Division of Pensions Regulation*.

Pension Division Review Project Committee

The British Columbia Law Institute is carrying out the Pension Division Review Project with the assistance of a volunteer project committee. The project committee brings together a diverse range of experts from across the pensions and family-law fields to consider options for reform of part 6 the *Family Law Act*.

The members of the Pension Division Review Project Committee are:

Colin Galinski—Chair
Galinski Pension and Benefits Law Corp.

Cynthia Callahan-Maureen
BC Ministry of Finance

Stephen Cheng
Westcoast Actuaries Inc.

Stephanie Griffith
Bilsland Griffith Benefit Administrators

Darryl Hrenyk
BC Ministry of Attorney General

Gail Johnson
BC Financial Institutions Commission

Hon. Peter Leask, QC
Peter Leask, QC, Barrister & Solicitor

Margaret H. Mason, QC
Norton Rose Fulbright Canada LLP

Beatrice C. McCutcheon
Cook Roberts LLP

Jacqueline G. McQueen
Aaron Gordon Daykin Nordlinger LLP

Michael J. Peters
BC Financial Institutions Commission

Our Supporter

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Pension Division under Part 6 of the Family Law Act

Under the *Family Law Act*, a *spouse* is defined as a being either a person who “is married to another person” or a person who “has lived with another person in a marriage-like relationship, and (i) has done so for a continuous period of at least 2 years, or (ii) except in Parts 5 [*Property Division*] and 6 [*Pension Division*], has a child with the other person.” When a spousal relationship breaks down, the *Family Law Act* spells out the legal consequences for the spouses.

A major consequence for spouses is the division of their property. Under the *Family Law Act*, unless the spouses agree otherwise, “on separation, each spouse has a right to an undivided half interest in all family property as a tenant in common, and is equally responsible for family debt.” This right is subject to specific exclusions set out in the act and to a power given to the court to divide property unequally if an equal division would be “significantly unfair.”

The act provides that the family property that is subject to division on the breakdown of a spousal relationship includes “a spouse’s entitlement under an annuity, a pension plan, a retirement savings plan or an income plan.” This is significant because these pension entitlements are often among the most substantial assets owned by spouses.

But equitable division of pensions isn’t the straightforward matter that division of other assets may be. As BCLI noted in an earlier report, “[w]hile there is little difficulty in dividing

most assets, such as bank accounts, automobiles or the family residence, many problems quickly arose in trying to somehow give both spouses the benefit of the pension that accrued during the relationship, but would not be payable until perhaps years later.” These problems include placing a current value on what may be called a “future asset” and devising a system that is fair and equitable for both the spouses and for the pension administrator who is involved in the pension division.

In British Columbia, special rules have been developed to provide a legal framework for pension division. These rules are found in part 6 of the *Family Law Act* and in the *Division of Pensions Regulation*.

Part 6 sets out a system for division of pensions, with rules geared to the type of pension at issue. This system includes provisions on local (British Columbia) pension plans, division of other benefits (such as annuities), dealing with death of a plan member, and administrative matters and concerns. Much of the technical detail on dividing pensions is found in the *Division of Pensions Regulation*. The regulation also establishes prescribed forms for use in a given case involving pension division.

Legal Issues to Be Examined in this Project

The committee plans a thorough review of part 6 and the regulation. It is at work identifying issues for reform for its project work plan. The work plan currently includes issues in the following areas:

- commuted value transfer from benefit-formula plans on pre-retirement divisions;
- disability provisions;
- impact of target-benefit plan design;
- transitions from the *Family Relations Act* to the *Family Law Act*;
- forms prescribed under the regulation;
- administrative fees.

Project Timeline

The project will move toward its goal of recommending reforms to part 6 of the *Family Law Act* and to the *Division of Pensions Regulation* in four phases.

The first phase will concern project organization and issue identification. The second will involve regular project-committee meetings to identify and consider options for reform and to formulate tentative recommendations for reform. The project’s third phase will be public consultation on the committee’s tentative recommendations. Finally, the fourth phase will concern development of the committee’s final recommendations, to be contained in its report.

BCLI anticipates completing this project by 31 March 2020.

About the British Columbia Law Institute

The British Columbia Law Institute was incorporated in 1997 under the British Columbia *Society Act*. Its mission is to be a leader in law reform by carrying out the best in scholarly law-reform research and writing and the best in outreach relating to law reform.

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