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RESPONSE BOOKLET

Consultation Paper
on
Pension Division: A
Review of Part 6 of
the Family Law Act

Prepared by the
Pension Division
Review Project
Committee

May 2020

supported by:



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- promote the clarification and simplification of the law and its adaptation to modern social needs,
- promote improvement of the administration of justice and respect for the rule of law, and
- promote and carry out scholarly legal research.

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Pension Division Review Project Committee

The Pension Division Review Project Committee was formed in 2019 to review the pension-division provisions of the *Family Law Act* and supporting regulations and forms. This project committee is made up of leading experts in pensions and family law in British Columbia. The committee's mandate is to assist BCLI in developing recommendations to reform part 6 of the *Family Law Act*, the *Division of Pensions Regulation*, and prescribed forms. These recommendations will be set out in the project's final report, which is planned to be published in 2020.

The members of the committee are:

Colin Galinski—chair

(Principal, Galinski Pension and Benefits Law Corporation)

Cynthia Callahan-Maureen

(Director, Pensions and Personal Property Security, Financial and Corporate Sector Policy Branch, Ministry of Finance for British Columbia)

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Kevin Zakreski (staff lawyer, British Columbia Law Institute) is the project manager.

For more information, visit us on the World Wide Web at:

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Call for Responses

We are interested in your response to this consultation paper. It would be helpful if your response directly addressed the tentative recommendations set out in this consultation paper, but it is not necessary. General comments on pension division under part 6 of the *Family Law Act* are also welcome.

A helpful way to submit a response is to use a response booklet. You may obtain a response booklet by contacting the British Columbia Law Institute or by downloading one at <https://www.bcli.org/project/16050>. You do not have to use a response booklet to provide us with your response.

Responses may be sent to us in one of three ways—

- by fax: (604) 822-0144
- by email: pensions@bcli.org
- by online survey: link from <https://www.bcli.org/project/16050>

If you want your response to be considered by us as we prepare our report on pension division, then we must receive it by **15 September 2020**.

RESPONSE

Name:

Organization:

Position:

You may provide us with your name, the name of any organization you represent, and the title of your position within that organization, if you wish. You do not have to give us any of this information. You may still submit your response even if you leave some or all of the above spaces blank. You may respond to all or some of the tentative recommendations in this response booklet. If you wish to provide a more extensive comment than space permits, then please use the additional pages at the end of this response booklet.

Your response will be used in connection with the Pension Division Review Project. It may also be used as part of future law-reform work by the British Columbia Law Institute or its internal divisions. All responses will be treated as public documents, unless you expressly state in the body of your response that it is confidential. Respondents may be identified by name in the final report for the project, unless they expressly advise us to keep their name confidential. Any personal information that you send to us as part of your response will be dealt with in accordance with our privacy policy. Copies of our privacy policy may be downloaded from our website at <https://www.bcli.org/privacy>.

The numbers in parentheses refer to pages in the consultation paper where the tentative recommendation is discussed.

Transitional provisions

1. A spouse who has only filed a prescribed form under the Family Relations Act should be transitioned to the Family Law Act. (33-35)

Agree

Disagree

Comments:

2. The special transitional provision that kept spouses under the Family Relations Act if they had received a consultation from a plan administrator should no longer apply, so that the Family Law Act will apply to the division of the pension. (35-37)

Agree

Disagree

Comments:

3. The tentative recommendation to transition parties who have received a consultation should not affect entitlement dates. (37-38)

Agree

Disagree

Comments:

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4. The plan administrator should be required to annually notify a limited member who has not yet received benefits of the earliest date of the limited member's pension eligibility. (38-39)

Agree

Disagree

Comments:

Private annuities

5. *The Family Law Act should be amended to make the following changes to the treatment of private annuities:*

- (a) for annuities that have been purchased but are not in pay then*
 - (i) the drafting of the provisions should be clarified such that it's clear that the legislation applies to the purchase of an annuity by each spouse and part 5 applies, and*
 - (ii) division should be 50-50 to each spouse, subject to a different share by agreement or court order;*
- (b) if the annuity is in pay, then part 6 applies, and the income stream should be divided 50-50 to each spouse, subject to a different share by agreement or court order, and a spouse is entitled, by giving notice in accordance with section 136 of the act, to receive a share of the benefits payable under the annuity during the annuitant's lifetime until the earlier of*
 - (i) the death of the spouse, and*
 - (ii) the termination of benefits under the annuity. (45-47)*

Agree

Disagree

Comments:

Disability benefits

6. *If an agreement or order dividing benefits is silent on entitlement to disability benefits, all of a member's disability benefits should be allocated to the member and the limited member should have all the rights under the Family Law Act, including timing to commence the limited member's share of the pension benefits. (52–53)*

Agree

Disagree

Comments:

Waiving survivor benefits after pension commencement

7. *Section 126 (2) (a) of the Family Law Act should be amended to read as follows: "the spouse assigns his or her entitlement by entering into an agreement that requires the spouse to pay all or part of the survivor benefits received by the spouse from a plan to a person other than the spouse, or". (59–60)*

Agree

Disagree

Comments:

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8. Section 126 (2) (b) of the Family Law Act should be amended to read as follows: “the Supreme Court orders the spouse to pay all or part of the survivor benefits received by the spouse from a plan to a person other than the spouse.” (61)

Agree

Disagree

Comments:

9. Section 126 (3) of the Family Law Act should be repealed. (62)

Agree

Disagree

Comments:

Commuted value: transfer and calculation

10. The Family Law Act should be amended to make the limited member’s options with respect to commuted-value transfer mirror those of the member. (69–71)

Agree

Disagree

Comments:

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11. Section 23 (3) (c) of the Division of Pensions Regulation should be amended so that commuted value is calculated on the day before the death of the member. (71-72)

Agree

Disagree

Comments:

Locked-in retirement accounts and life income funds

12. Funds in a locked-in retirement account or life income fund should be divisible under part 6 of the Family Law Act. (77-78)

Agree

Disagree

Comments:

13. The rules applicable to the benefits under the transferring pension plan should apply to the division of the locked-in retirement account or life income fund. (77-78)

Agree

Disagree

Comments:

Death of spouse before becoming limited member

14. Part 6 of the Family Law Act should be amended to clarify that, if a spouse dies before a member's pension commences and before being designated a limited member, then the personal representative of the deceased spouse may take all steps necessary to designate the deceased spouse as a limited member of the plan. (86-87)

Agree

Disagree

Comments:

Administrative fees

15. Section 28 of the Division of Pensions Regulation should be amended (a) by raising the maximum administrative fee for registering the spouse as a limited member of the plan from \$750 to \$1 000 and (b) by raising the maximum administrative fee for transferring a proportionate share of the member's defined contribution account to the credit of the spouse under section 114 (2) (a) of the Act from \$175 to \$200. (92)

Agree

Disagree

Comments:

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16. Section 140 (3) of the Family Law Act should be amended to read as follows: "An administrator must deduct a fee under subsection (1) from the payment of benefits, unless the member and/or the spouse otherwise pay the fee to the plan administrator." (93-94)

Agree

Disagree

Comments:

Forms

17. Form P1 (*Claim and Request for Information and Notice*) should be revised by making the following changes to the form:

- (a) labelling the following fields as “required”: (i) name of plan/annuity; (ii) name of spouse; (iii) address (of spouse); (iv) name of member/annuitant; (v) at least one of the member’s date of birth, Social Insurance Number, or plan identification number;
- (b) labelling the following fields as “optional”: (i) address of administrator/annuity issuer; (ii) address (of plan member/annuitant); (iii) email address (of plan member/annuitant); (iv) telephone (of plan member/annuitant); (v) employer (of plan member/annuitant);
- (c) labelling the following fields with the notation “(if available)”: (i) email address (of spouse); and, (ii) telephone (of spouse);
- (d) in the telephone fields for both the spouse and the plan member/annuitant, deleting the references to “(home)” and “(work),” leaving only a single blank line for the fields;
- (e) striking out the heading “Declaration of spouse claiming interest” and substituting “Spouse’s statement” and, in the part of the form under this heading, striking out “[see below]” and “In support of that claim, I declare that (a) I began living in a marriage-like relationship with the member/annuitant on [date: y/m/d], (b) I was married to the member/annuitant on [date: y/m/d], and (c) I was separated from the member/annuitant on [date: y/m/d]”;
- (f) in the signature block for the form, striking out “Date of Declaration” and substituting “Date of Statement” and striking out the fields for a witness’s signature, name, and address;
- (g) adding the following statement to the form: “note that administrator needs to respect privacy in accordance with privacy legislation.” **(95–98)**

Agree

Disagree

Comments:

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18. Form P2 (*Request for Designation as Limited Member*) should be revised by making the following changes to the form:

- (a) labelling the following fields as “required”: (i) name of plan/annuity; (ii) name of spouse; (iii) address (of spouse); (iv) Social Insurance Number (of spouse); (v) Date of Birth (of spouse); (vi) name of member/annuitant; (vii) at least one of the member’s date of birth, Social Insurance Number, or plan identification number;
- (b) labelling the following fields as “optional”: (i) address of administrator/annuity issuer; (ii) address (of plan member/annuitant); (iii) email address (of plan member/annuitant); (iv) telephone (of plan member/annuitant); (v) employer (of plan member/annuitant);
- (c) labelling the following fields with the notation “(if available)”: (i) email address (of spouse); and, (ii) telephone (of spouse);
- (d) in the telephone fields for both the spouse and the plan member/annuitant, deleting the references to “(home)” and “(work),” leaving only a single blank line for the fields;
- (e) in the signature block for the form, striking out the fields for a witness’s signature, name, and address. **(98–101)**

Agree

Disagree

Comments:

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the Family Law Act**

19. *Form P3 (Request for Transfer from Defined Contribution Account) should be revised by making the following changes to the form:*

- (a) labelling the following fields as “required”: (i) name of plan; (ii) name of spouse; (iii) address (of spouse); (iv) Social Insurance Number (of spouse); (v) name of member; (vi) at least one of the member’s date of birth, Social Insurance Number, or plan identification number;*
- (b) labelling the following fields as “optional”: (i) address of administrator; (ii) address (of plan member); (iii) email address (of plan member); (iv) telephone (of plan member); (v) employer (of plan member);*
- (c) labelling the following fields with the notation “(if available)”: (i) email address (of spouse); and, (ii) telephone (of spouse);*
- (d) in the telephone fields for both the spouse and the plan member, deleting the references to “(home)” and “(work),” leaving only a single blank line for the fields;*
- (e) in the signature block for the form, striking out the fields for a witness’s signature, name, and address. **(101–104)***

Agree

Disagree

Comments:

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20. Form P4 (*Request by Limited Member for Transfer or Separate Pension*) should be revised by making the following changes to the form:

- (a) labelling the following fields as “required”: (i) name of plan; (ii) name of spouse; (iii) address (of spouse); (iv) Social Insurance Number (of spouse); (v) date of birth (of spouse); (vi) name of member; (vii) at least one of the member’s date of birth, Social Insurance Number, or plan identification number;
- (b) labelling the following fields as “optional”: (i) address of administrator; (ii) address (of plan member); (iii) email address (of plan member); (iv) telephone (of plan member); (v) employer of member;
- (c) labelling the following fields with the notation “(if available)”: (i) email address (of spouse); and, (ii) telephone (of spouse);
- (d) in the telephone fields for both the spouse and the plan member, deleting the references to “(home)” and “(work),” leaving only a single blank line for the fields;
- (e) in the signature block for the form, striking out the fields for a witness’s signature, name, and address. **(104–106)**

Agree

Disagree

Comments:

21. Form P5 (*Waiver of Survivor Benefits after Pension Commencement*) should be repealed. **(106–109)**

Agree

Disagree

Comments:

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22. *Form P6 (Administrator/Annuity Issuer Response) should be revised by making the following changes to the form:*

- (a) in Part 1: Receipt of Notice, striking out the check box for Form P5 (Waiver of Survivor Benefits after Pension Commencement);*
- (b) in Part 1: Receipt of Notice, adding check boxes for Form P8 (Change of Information) and Form P9 (Agreement to Have Benefits Divided under Part 6). (109–112)*

Agree

Disagree

Comments:

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23. *Form P7 (Withdrawal of Notice/Waiver of Claim) should be revised by making the following changes to the form:*

- (a) labelling the following fields as “required”: (i) name of plan/annuity; (ii) name of spouse; (iii) address (of spouse); (iv) Social Insurance Number (of spouse); (v) date of birth (of spouse); (vi) date of spouse’s death; (vii) name of spouse’s personal representative; (viii) contact information for spouse’s personal representative; (ix) name of member/annuitant; (x) at least one of the member’s date of birth, Social Insurance Number, or plan identification number;*
- (b) labelling the following fields as “optional”: (i) address of administrator/annuity issuer; (ii) address (of plan member/annuitant); (iii) email address (of plan member/annuitant); (iv) telephone (of plan member/annuitant); (v) employer (of plan member/annuitant);*
- (c) labelling the following fields with the notation “(if available)”: (i) email address (of spouse); and, (ii) telephone (of spouse);*
- (d) in the signature block for the form, striking out the fields for a witness’s signature, name, and address;*
- (e) making the part headed “Comments and Instructions” more prominent on the form. (112–114)*

Agree

Disagree

Comments:

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24. *Form P8 (Change of Information) should be revised by making the following changes to the form:*

- (a) labelling the following fields as “required”: (i) name of plan/annuity; (ii) name of spouse; (iii) address (of spouse); (iv) name of member; (v) at least one of the member’s date of birth, Social Insurance Number, or plan identification number;*
- (b) labelling the following fields as “optional”: (i) address of administrator/annuity issuer; (ii) Social Insurance Number (of spouse); (iii) date of birth (of spouse); (iv) address (of plan member/annuitant); (v) email address (of plan member/annuitant); (vi) telephone (of plan member/annuitant); (vii) employer (of plan member/annuitant);*
- (c) labelling the following fields with the notation “(if available)”: (i) email address (of spouse); and, (ii) telephone (of spouse);*
- (d) in the telephone fields for both the spouse and the plan member/annuitant, deleting the references to “(home)” and “(work),” leaving only a single blank line for the fields;*
- (e) in the signature block for the form, striking out the fields for a witness’s signature, name, and address. (115–117)*

Agree

Disagree

Comments:

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25. Form P9 (*Agreement to Have Benefits Divided under Part 6*) should be revised by making the following changes to the form:

- (a) labelling the following fields as “required”: (i) name of plan/annuity; (ii) name of spouse; (iii) address (of spouse); (iv) Social Insurance Number (of spouse); (v) date of birth (of spouse); (vi) name of member/annuitant; (vii) address (of plan member/annuitant); (viii) the commencement date; (ix) the entitlement date; (x) at least one of the member’s date of birth, Social Insurance Number, or plan identification number;
- (b) labelling the following fields as “optional”: (i) address of administrator/annuity issuer; (ii) email address (of plan member/annuitant); (iii) telephone (of plan member/annuitant); (iv) employer (of plan member/annuitant);
- (c) label the following fields with the notation “(if available)”: (i) email address (of spouse); and, (ii) telephone (of spouse);
- (d) in the telephone fields for both the spouse and the plan member/annuitant, deleting the references to “(home)” and “(work),” leaving only a single blank line for the fields;
- (e) in the fields for both the commencement date and entitlement date, striking out “[date]” and substituting “[date: y/m/d]”. **(117–120)**

Agree

Disagree

Comments:

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