PEPP *Talk* . . .

on Breakdown of Spousal Relationships

This issue of PEPP *Talk* provides members of the Public Employees Pension Plan (PEPP), their spouses and their lawyers information in the event of a breakdown of a spousal relationship.

The Public Employees Pension Plan

PEPP is a defined contribution (money purchase) pension plan registered under *The Pension Benefits Act, 1992* and the *Income Tax Act* (Canada).

The Plan is governed by *The Public Employees Pension Plan Act*, *The Pension Benefits Act, 1992* and their regulations. When *The Public Employees Pension Plan Act* is silent, *The Pension Benefits Act, 1992* prevails. Should the Acts conflict, *The Public Employees Pension Plan Act* prevails.

Members make regular contributions to PEPP and have the option to make voluntary contributions to the Plan. Participating employers also make regular contributions on behalf of their members. Participating employers are not required to contribute or match member's voluntary contributions to the Plan.

Return on investment is reflected in the changing unit values. At retirement, the member uses their account balance to provide income through a PEPP Variable Pension Benefit (VPB), a PEPP Lifetime Pension, a Saskatchewan Pension Annuity Fund (SPAF) life annuity, a prescribed Registered Retirement Income Fund (pRRIF), or a combination of these options. Members may choose to retire as early as age 50.

Definition of Spouse

In the event of a breakdown of a spousal relationship, *The Family Property Act* provides the definition of "spouse." The Act recognizes common-law relationships, in addition to legal marriages.

A spouse has two entitlements to the member's PEPP account: one is the entitlement to at least 60% of the survivor pension; the other is the entitlement to the death benefit as a designated beneficiary.

Dividing the Entitlement

A member's PEPP account balance, VPB account balance, the monthly pension benefits being paid to a PEPP member from a PEPP Lifetime Pension, or the monthly pension benefit being paid to a former PEPP member from the Saskatchewan Pension Annuity Fund (SPAF) may be divided upon a breakdown of a spousal relationship. See Appendix A for the governing legislation.

The pension will be divided in accordance with a court order or an interspousal agreement pursuant to *The Family Property Act*. *The Family Property Act* recognizes common-law relationships in addition to legal marriages.

*To download a copy of any of the Acts mentioned above, visit the Publications Saskatchewan website at https://publications.saskatchewan.ca.

The Public Employees Pension Plan Act prohibits payment of more than 50% of the member's account balance or monthly pension benefit payment. The 50% rule is applied on the specified date of division, and then again at the actual payment date to ensure not more than 50% of the member's account balance is paid out.

Court Orders

The court order specifies the terms of the division. The Plan administrators will perform any necessary calculations in accordance with the court order, given that the order complies with the legislation governing the Plan. If the court order has been issued in a province other than Saskatchewan, it *must be reissued* by a Saskatchewan Court pursuant to *The Family Property Act*.

Interspousal Agreements

The Plannera Pensions & Benefits (Plannera), as administrator for PEPP, looks for these elements in an interspousal agreement:

1. The first paragraph must state that the document is an interspousal agreement within the meaning of *The Family Property Act*.
2. There must be a Certificate of Independent Legal Advice enclosed with, or included as part of, the agreement for each party to the agreement.
3. There must be a declaration that there has been a breakdown of a spousal relationship and the parties are living separate and apart. (The agreement cannot be used as a method of income splitting between spouses.)
4. The date the pension asset is to be divided must be identified. This date is used to determine when the pension asset will be valued. The value of the PEPP account will be established based on the unit price in effect as of the date of division specified in the agreement.
5. The agreement should specify if return on investment is to be paid from the date of the valuation of the pension asset to the date of payment. If only a dollar amount or a percentage of the account on a specific date is mentioned in the agreement, then only that amount will be paid.
6. The agreement must specify the amount to be transferred to the spouse. This amount may be determined as[1]:
   (a) a fixed dollar amount to be transferred (lump-sum amount); or
   (b) expressed as a percentage (50% of the pension asset at a fixed date).

Legal Process

1. If the member's spouse provides PEPP with the court order or interspousal agreement, PEPP must notify the member that an order or agreement has been filed.

   The member has 30 days from the date of the notice to state his or her objection to the division of

[1] The amount transferred to the spouse cannot exceed 50% of the member's current account balance.

the pension asset. The member can object to the division based on:

(a) the court order or agreement has been varied or is of no force or effect;
(b) the terms of the court order or agreement have been or are being satisfied by other means; or
(c) proceedings have begun to appeal, or to review the court order, or to challenge the terms of the agreement.

The member must provide documentary evidence to substantiate his or her objection to the division. The parties are expected to make their application to PEPP for the division of the pension asset after the issues between themselves have been resolved.

After the 30 day period, providing no objections are received, PEPP will proceed with the division according to the court order or agreement.

2. When both the member and the spouse jointly file the court order or interspousal agreement, PEPP will proceed with the division.

3. No order for costs can be made against the Public Employees Pension Plan Board or PEPP.

Processing the Division

Upon request, PEPP will calculate one estimate of the value of the member's account accrued during the spousal relationship (with return on investment applied to a payment date, if requested), based on the dates provided in the request. The initial estimate will be provided free of charge. Subsequent related marital breakdown calculations are charged at a rate of $60 per hour (billed in half-hour increments).

PEPP deducts the calculation fee directly from the member's account when processing the division. If the member has money in more than one fund, the calculation fee will be withdrawn on a prorated basis based on the account balance within each fund.

Spousal Payment Options after Division

The member's spouse has two options for their payment:

- set up their own PEPP account[1] and leave the benefit in PEPP. The account will continue to accrue investment earnings based on current unit values; or
- transfer their account balance to a Locked-in Retirement Account (LIRA); PEPP requires a completed Canada Revenue Agency T2151 form (available from PEPP or your financial institution) to complete this transaction.

NOTE: Divided Funds are prorated out of member and employer contributions only. Voluntary contributions remain with the PEPP member.

Spouse as Beneficiary

The member has a spouse until the spousal relationship is legally dissolved. For a legal marriage, the spousal relationship is legally dissolved when the divorce becomes final. A common-law relationship

[1] If the spouse is currently a PEPP member, they may request to consolidate the payment with their own account.

includes a period of separation that is less than 90 days, so an interspousal agreement or court order under the Act may not be enforceable until the parties have been separated for more than 90 days.

According to subsection 21(4) of *The Public Employees Pension Plan Act*, the member's beneficiary must be the spouse. This means the spouse remains the member's beneficiary until the spousal relationship is legally dissolved, even though the pension asset has been divided. If the member dies before the spousal relationship is legally dissolved, the spouse is entitled to the death benefits from PEPP unless he/she waives the right to death benefits.

Once the spousal relationship is legally dissolved[1] or when the member's spouse has signed the appropriate spousal waiver (pre or post retirement), the member is deemed to no longer have a spouse and may designate anyone s/he chooses as beneficiary.

Waiving the Spouse's Right as Beneficiary

If the interspousal agreement does not include a spousal waiver provision, the spouse may waive his/her right as beneficiary until the spousal relationship is legally dissolved. The spouse must complete the appropriate waiver form: the *Spouse's Waiver of Death Benefits Prior to Retirement* form if the member is not yet retired, or the *Spouse's Waiver of Designated Beneficiary Status (VPB)* form for Variable Pension Benefit members, to waive his/her right as beneficiary. Members with a Lifetime Pension who wish to designate a beneficiary other than a spouse must complete the *Lifeime Pension Designated Beneficiary Waiver* form. [2] These waivers must be signed by the spouse outside the immediate presence of the member. The spouse's signature must be witnessed by an adult who is not the member.

The spouse may contact professionals such as a financial planner or legal counsel to help them fully understand the rights being waived. For more information, please refer to the issue of PEPP *Talk* on *Waiver of Spousal Benefits.*

A spouse may rescind his/her waiver at any time. Completing a spouse's waiver form, therefore, may not be a long-term solution. The member and spouse, however, can agree, through an interspousal agreement that the spousal waiver is irrevocable.

An alternative to completing the form would be to include the waiver of spousal benefits as part of the interspousal agreement. A blanket statement in which the spouse surrenders all rights, title and interest to the pension benefit is not sufficient. PEPP must be confident that the spouse fully understands the right s/he is waiving. The wording of the interspousal agreement must provide that:

- in the event of the death of the member the spouse waives any and all entitlement to a benefit under the Plan;
- the waiver is given for the purposes of subsection 21(4) of *The Public Employees Pension Plan Act*; and
- the spouse understands that as a consequence of the waiver, s/he will not be the deemed beneficiary of the amount standing to the credit of the member in the Plan.

If wording to this effect is not included as part of an interspousal contract, a PEPP *Spouse's Waiver of Death Benefits Prior to Retirement* form must be completed by the member's spouse and his or her lawyer.

[1] PEPP requires proof of divorce, such as a certified copy of the divorce certificate or Decree Absolute.
[2] If the spouse wants to waive their full entitlement to a member's pension, they must also submit a Spouse's Consent and Waiver of Post-Retirement Survivor Benefits form.

Beneficiaries After the Breakdown of a Spousal Relationship

You are able to designate someone other than your spouse as a beneficiary if:

- the relationship is legally dissolved (divorce decree); or
- the member and spouse are legally separated and the spouse waives the death benefit as part of the interspousal agreement; or
- a PEPP *Spouse's Waiver of Death Benefits Prior to Retirement* form or a *Spouse's Waiver of Designated Beneficiary Status (VPB or Lifetime Pension)* form on file.

It is important for the member to review the beneficiary designation that s/he has on file with PEPP when a breakdown of a spousal relationship has occurred. As long as the member names the spouse or former spouse as a beneficiary, that person is entitled to benefits as a beneficiary.

The member may change their beneficiary designation by completing a PEPP *Change in Personal Data* form and filing it with PEPP.

Other PEPP *Talks* that may interest you:

- *Waiver of Spousal Benefits*
  provides general information on waiving benefits.

PEPP *Talks* are available on our website at pepp.plannera.ca

Questions

For further information about breakdown of spousal relationships, contact:

Public Employees Pension Plan (PEPP)
110 - 1801 Hamilton Street
Regina SK S4P 4W3

Phone: 306-787-5442 in Regina
or toll free at 1-877-275-7377 (from outside the Regina calling area)

Fax: 309-787-0244
Email: pepp@plannera.ca

Administered by **Plannera Pensions & Benefits**

The information contained in this issue of PEPP *Talk* does not replace or supersede *The Public Employees Pension Act* or *The Pension Benefits Act, 1992* or related regulations. In the event of any misunderstanding or conflict, the Acts and Regulations will prevail. Please contact PEPP if you are or were working outside Saskatchewan. Your pension may be subject to the legislation of another province.

The Public Employees Pension Plan produces issues of PEPP *Talk* as a service to its members. These documents provide information on specific provisions of the Plan. Plan information is available in a variety of other forms including: issues of PEPP *Talk* on other topics; our newsletter, "Pension Perspectives"; PEPP Member Booklet; and the PEPP home page pepp.plannera.ca

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Appendix A: The Legislation

Sections 24 And 25 of *The Public Employees Pension Plan Act* provide:

Division on spousal relationship breakdown

"**24**(1) On the breakdown of the spousal relationship of a member, the board may, in accordance with this section, divide:

(a) the amount standing to the credit of the member; or

(b) a pension benefit provided by an amount standing to the credit of the member.

(2) Subject to subsections (3) and (4), a pension benefit payable to, or the amount standing to the credit of, a member is to be divided:

(a) where a court has made an order for the division of family property pursuant to *The Family Property Act, 1992*[1], in accordance with that order; or

(b) where the member and the member's spouse have entered into an agreement to divide their property that is an interspousal contract within the meaning of *The Family Property Act, 1992*, in accordance with that agreement.

(3) A division pursuant to subsection (2) of the amount standing to the credit of a member shall not reduce the amount standing to the credit of the member to less than 50% of the amount standing to the credit of the member prior to the division.

(4) A division pursuant to subsection (2) of a pension benefit provided by an amount standing to the credit of a member shall not reduce the amount of the pension benefit payable to the member after the division to less than 50% of the amount of the pension benefit payable to the member prior to the division.

(5) The amount to which the spouse or former spouse of a member is entitled on a division pursuant to subsection (2) of an amount standing to the credit of a member must be transferred to a pension plan or fund or a retirement savings plan or fund that does not permit contributions to be withdrawn:

(a) before the spouse or former spouse attains the age of 50 years; or

(b) for any purpose other than to provide a pension benefit to the spouse or former spouse.

(6) Subsection (1) and section 23 apply to any amount that is transferred pursuant to subsection (5).

(7) Neither the board nor the fund is liable to any person by reason of having complied with an order or agreement mentioned in this section. 1996, c.P-36.2, s.24; 2001, c.50, s.13 and c.51, s.11; 2002 c.8, s.2."

Objection to division

"**25**(1) Except where an order or agreement mentioned in subsection 24(2) has been filed with the board by the member and the spouse or former spouse jointly, the board shall give a notice in writing to the member that an order or agreement has been filed.

(2) Unless the board receives a notice in writing within 30 days after providing the notice mentioned in subsection (1) that the member objects to the division on one of the grounds set out in subsection (3), the board shall comply with the order or agreement.

(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.

[1] previously *The Matrimonial Property Act, 1997*

(4) A 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 board, the board may apply to the Court of Queen's Bench 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 board or the fund. 1996, c.P-36.2, s.