

Pension Commission

Update #31

Issued July 2004

Changes to Acts and Regulations due to *The Common-Law Partner's Property and Related Amendments Act*

Reference: *The Pension Benefits Act*, Sections 1(1), 1(3), 31(2), 31(8); and Regulation, Sections 24(1), 24(3), 24(3.1)

The Common-law Partners' Property and Related Amendments Act, S.M. 2002, c. 48 (CPPRA Act), received Royal Assent on August 9, 2002 and is effective June 30, 2004. The CPPRA Act amended Manitoba legislation, including *The Pension Benefits Act*, to extend the property rights and obligations of spouses to common-law partners. Essentially, on the death of one of the partners, the surviving partner is entitled to the property accumulated during the relationship, and on the breakdown of the relationship, the partners will be able to share in the property accumulated during the relationship.

The Vital Statistics Act now permits adults that are parties to a common-law relationship and are living in the province, to register their common-law relationship if they wish, under that Act. *The Vital Statistics Act* also allows one or both parties to a common-law relationship to register the dissolution of their common-law relationship under that Act.

For information on the registration or dissolution of a common-law relationship, under *The Vital Statistics Act*, contact

The Vital Statistic Agency
254 Portage Avenue
Winnipeg Manitoba R3C 0B6

Phone: (204) 945-3701
Toll-free: 1-800-282-8069 (Ext. 3701)
Fax: (204) 945-0424
Email: vitalstats@gov.mb.ca
Website: <http://web2.gov.mb.ca/ccca/vital/>

For additional detailed information on *The Common-Law Partners' Property and Related Amendments Act*, please visit the Manitoba Justice website at: <http://www.gov.mb.ca/justice/family/commonlaw/commonlawproperty.html> or view the legislation at <http://web2.gov.mb.ca/laws/statutes/index.php>.

Pension plans should be amended as soon as possible to reflect the amended provisions of *The Pension Benefits Act*, and where a plan has not been so amended, the plan is deemed to include the required provision and the plan administrator should act accordingly.

The relevant provisions of *The Pension Benefits Act* impacted by the CPPRA Act are outlined as follows:

Definitions, subsection 1(1)

The Act now defines "**common-law partner**" of a member or former member as

- a. a person who, with the member or former member, registered a common-law relationship under section 13.1 of *The Vital Statistics Act*, or
- b. a person who, not being married to the member or former member, cohabited with him or her in a conjugal relationship
 - i. for a period of at least three years, if either of them is married, or
 - ii. for a period of at least one year, if neither of them is married;

The Pension Benefits Act (Act) now also recognizes the common-law relationship of a person who, with the member or former member, has registered a common-law relationship under *The Vital Statistics Act*, subject to the requirements of the *Income Tax Act (Canada)*.

Entitlement under *The Pension Benefits Act* is dependent upon the parties' ability to establish the existence of the relationship to the satisfaction of the plan administrator or provide proof to the administrator of its registration under *The Vital Statistics Act*, as applicable.

The definition of "common-law relationship" under the Act remains unchanged as "the relationship between two persons who are common-law partners of each other".

Death of Member 21(26) and Surviving Common-Law Partner 1(3)

If the member or former member has two or more years of continuous service, the value of the pre-retirement death benefit must be no less than the commuted value of the benefit accrued on and after January 1, 1985. A surviving spouse or surviving common-law partner must receive the death benefit in the form of an immediate or deferred life annuity, as chosen by the spouse or partner. Alternatively, the spouse or partner has the right to transfer the benefit to a Locked-In Retirement Account (LIRA), a Life Income Fund (LIF) or a Locked-In Retirement Income Fund (LRIF), or another registered pension plan (if that plan agrees to accept such a transfer).

Subsection 1(3) states that a common-law partner shall be considered to have survived a member or former member with whom he or she had a common-law relationship only if they were cohabiting with each other immediately before the death of the member or former member for purposes of subsection 21(26) of the Act and provides evidence satisfactory to the plan administrator.

Joint Pensions – Section 23

The pension payable to a member or former member who has a spouse or common-law partner with whom he or she is cohabiting at the time payments are to begin, must be a joint pension reducing to not less than 2/3rds on the death of either, the member or spouse/partner. If the member and spouse/partner both agree, they may complete the "Pension Waiver Form" (MG 1701), which then allows the member to choose an alternate form of pension.

A common-law partner is entitled to the joint pension if he or she, with the member satisfies the conditions specified in the definition of common-law partner in Section 1(1) of the Act and provides evidence satisfactory to the plan administrator.

Division of Pension Benefits on Break-up – Section 31(2)

The CPPRA Act also amended the legislation affecting family property, now known as *The Family Property Act*, and extended property rights and obligations to common-law partners on the breakdown of a common-law relationship.

Pension benefit credits or payments due, are subject to an equal division under *The Pension Benefits Act* where either:

- a. an order of the Court of Queen's Bench made under *The Family Property Act* (formerly *The Marital Property Act*) exists requiring that family assets of the spouses or common-law partners are to be divided; or
- b. a written agreement between spouses or partners exists dividing family assets of the spouses or common-law partners between them.

For purposes of clause (a) it should be noted that only:

- married spouses;
- parties to a registered common-law relationship; or
- parties to non registered common-law relationship who have cohabited in a conjugal relationship for a period of at least three years

can obtain an order to divide family property under *The Family Property Act*. Otherwise, benefits and payments are divisible on the existence of a written agreement dividing family property.

Common-law partners are no longer required to file written declarations regarding the existence and termination of a common-law relationship in order that pension benefits be subjected to an equal division under the Act, as subsections 31(5) and 31(7) of the Act have been repealed.

The pension benefit credits or payments due that are subject to an equal division are those that accrued

- in the case of a common-law relationship, from the first day of the period in which the parties cohabited with each other in a conjugal relationship and which continued until they became common-law partners, or
- in the case of marriage, from the date of marriage or, if there was a period in which the parties cohabited with each other in a conjugal relationship and which continued until they were married, from the first day of that period,

until the date that the parties began living separate and apart.

For spouses who began living separate and apart before June 30, 2004, the pension benefit credit or payments due subject to division are those from the date of marriage.

Parties can waive the mandatory splitting in accordance with the requirements of section 31(6) of the Act where they have:

- a. received independent legal advice;

- b. received a statement from the pension plan administrator indicating the pension benefit credit or payments due, as the case may be, to which each spouse or common-law partner would be entitled if the division was to take place; and
- c. entered into a written agreement to the effect that the pension credits would not be divided between them, and the agreement must be in the form prescribed by Regulation 205/92.

LIRA, LIF and LRIF Contracts

LIRA/LIF/LRIF contracts should be amended as soon as possible to reflect the amended provisions of the Act, and where the contract has not been so amended, the contract is deemed to include the required provision and the financial institution should act accordingly.

This update has no legal authority. The Pension Benefits Act of Manitoba and The Pension Benefits Regulation, 188/87 R amended should be used to determine specific requirements.