



PRINCE EDWARD ISLAND
ÎLE-DU-PRINCE-ÉDOUARD

**TEACHERS' SUPERANNUATION ACT DIVISION
OF BENEFITS ON MARRIAGE BREAKDOWN
REGULATIONS**

PLEASE NOTE

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For more information concerning the history of these regulations, please see the *Table of Regulations* on the Prince Edward Island Government web site (www.princeedwardisland.ca).

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TEACHERS' SUPERANNUATION ACT
Chapter T-1

DIVISION OF BENEFITS ON MARRIAGE BREAKDOWN REGULATIONS

Pursuant to section 33 of the *Teachers' Superannuation Act* R.S.P.E.I. 1988, Cap. T-1, Council made the following regulations:

1. Definitions

In these regulations

- (a) “**Act**” means the *Teachers' Superannuation Act* R.S.P.E.I. 1988, Cap. T-1;
- (b) “**commuted value**” means the value of a benefit, determined in accordance with the Standard of Practice for Determining Pension Commuted Values, adopted by the Canadian Institute of Actuaries effective February 1, 2005, as amended from time to time, to the extent that the recommendations are consistent with the Act and these regulations;
- (c) “**locked-in retirement vehicle**” revoked by EC131/16. (EC672/09; 131/16)

1.1 Application

These regulations apply where a person has made an application under subsection 31.1(1.1) of the Act for a division of the pension benefits of a member, vested former member or pensioner that is to be effected by a transfer of the person's share of those pension benefits in accordance with subsection 31.5(3.2) of the Act. (EC131/16)

CALCULATION OF BENEFITS SUBJECT TO DIVISION

2. Formula

- (1) Subject to section 3, if the pension benefits of a member, vested former member or pensioner are to be divided on the breakdown of a spousal relationship, the benefits to be divided shall equal

$$A/B \times C$$

where

A is

- (i) the number of years and part years of service included in “B” that were credited to the member, vested former member or pensioner in the period

- between the date the spousal relationship commenced and the date of separation, plus
- (ii) the number of years and part years of service completed prior to the date the spousal relationship commenced which was not included to calculate benefits at the date the spousal relationship commenced but was credited to the member, vested former member or pensioner during the period between the date the spousal relationship commenced and the date of separation and is included in "B" at the date of separation;
- B is the total number of years and part years of service which would be used to calculate the pension benefit of the member, vested former member or pensioner on the date of termination of employment or the date of separation, whichever occurred first; and
- C is the benefit determined as of the date of separation in subsections (2) and (3).

Calculation of total value of benefit C

- (2) In subsection (1), the value of C shall be
- (a) in the case of a member who would not have been entitled to a deferred pension at the date of separation had the member terminated employment on that date, the member's contributions under the Act accumulated with interest to the date of separation, and prior to any adjustment in the member's contributions being made with respect to any previous breakdown of a spousal relationship;
- (b) in the case of a member who would have been entitled to a deferred pension at the date of separation had the member terminated employment on that date, the commuted value of the pension that would have been deferred at the date of separation based on the average weighted indexed pensionable salary, the contribution history and the benefit formula in force at the date of separation and prior to any adjustment to the deferred pension respecting the breakdown of any previous spousal relationship or, if greater than the commuted value, the member's contributions and interest to the date of separation prior to any adjustment in the member's contributions respecting the breakdown of any previous spousal relationship;
- (c) in the case of a vested former member, the commuted value of the deferred pension at the date of separation before any adjustment to the deferred pension respecting the breakdown of any previous spousal relationship or, if greater than the commuted value, the vested former member's contributions and interest to the date of separation before any adjustment in the vested former member's contributions respecting the breakdown of any previous spousal relationship; and
- (d) in the case of a pensioner, the commuted value of the pension to which the pensioner was entitled at the date of separation as if there had been no adjustment respecting any previous division of benefits respecting the breakdown of any previous spousal relationship.

Survivor benefits and indexing included

- (3) The commuted value calculated under subsection (2) shall include
- (a) the value of survivor benefits under the Act, both before the commencement of payment of a deferred pension and while the pension is in payment; and
- (b) the value of any annual accumulated pension indexing increases provided for under the Act.



When service is transferred from another plan

- (4) where B, in subsection (1), includes service transferred from another pension plan under a reciprocal transfer agreement entered into pursuant to section 30 of the Act, A shall include only that portion of the transferred service that was credited to the member, vested former member or pensioner under the other pension plan between the date the spousal relationship commenced and the date of transfer of the service.

Gender neutral determination

- (5) For the purposes of subsection 31.5(3.2) of the Act, determination of the pension benefits transferred into the prescribed locked-in retirement vehicle, pension plan or annuity shall be made without regard to the gender of the member or the spouse. *(EC672/09; 131/16)*

WHERE BOTH PARTIES PARTICIPATE IN THE PLAN

3. Where both parties are members, vested former members, pensioners

- (1) Where each person between whom the pension benefits are being divided is either a member, vested former member or a pensioner and each person is entitled to a pension benefit under the Act, the pension benefits as described in subsection 2(1) shall be calculated for each party.

Equality of pension benefits

- (2) Where the pension benefits for each party are
- (a) equal, no portion of the pension benefits shall be subject to division; or
 - (b) not equal, then the lesser of the respective pension benefits shall be subtracted from the greater pension benefits and the difference shall be the pension benefits that are subject to division.

Application of terms

- (3) For the purposes of this section, section 5 and sections 31.1, 31.2, 31.5, and 31.6 of the Act, the term "spouse" or "former spouse" shall refer to the person for whom the pension benefits calculated in accordance with section 2 is the lesser of the two respective pension benefits and the term "member", "vested former member" or "pensioner", as the case may be, shall refer to the person for whom the pension benefits calculated in accordance with section 2 is the greater of the two respective pension benefits. *(EC672/09; 131/16)*

CALCULATION OF SHARE OF BENEFITS TRANSFERABLE TO SPOUSE

4. Calculation of transferable pension benefits

- (1) Subject to subsections (2) and (3), the share of pension benefits which is transferable to the spouse or former spouse in accordance with subsection 31.5(1) of the Act shall equal the pension benefits subject to division in section 2 or 3, multiplied by the percentage share, which is not to exceed 50 per cent, awarded to the spouse or former spouse in a court order or domestic contract referred to in subsection 31.1(2) of the Act.

Amount credited with interest

- (2) The share of pension benefits calculated in subsection (1) shall be credited, with interest, from date of separation to the date on which the amount is transferred under subsection 31.5(1) of the Act, based on the interest rate described in subsection (5).

Further adjustment *re* pension payments already made

- (3) The share of pension benefits that includes interest calculated in accordance with subsection (2), shall be further adjusted if pension payments were made between the date of separation and the date the amount is transferred pursuant to subsection 31.5(1) of the Act, by subtracting the total amount of the spouse's or former spouse's share of the pension payments made, including interest as determined in subsection (5), to the date of transfer of the share of pension benefits with interest calculated in subsection (2).

Share of pension payment

- (4) The share of each pension payment of the spouse or former spouse shall be the amount described in section 5.

Rate of interest

- (5) The interest rate for the purpose of subsections (2) and (3) is 4 per cent, compounded annually. (EC672/09; 131/16)

REVALUATION OF PENSION BENEFITS WHERE BENEFITS DIVIDED**5. Formula for revaluation – one party a plan member**

- (1) Where only one spouse or former spouse is a member, vested former member or pensioner and a division of benefits was effected under subsection 31.5(1) of the Act, the monthly pension of the member, vested former member or pensioner shall be adjusted at retirement or, if later, at the date the division was effected, by subtracting an amount in respect of each division of benefits which equals

$$(D/C) \times F \times G \times H \times S$$

where

- D equals the pension benefits subject to division calculated in accordance with section 2;
- C equals C as defined in subsection 2(1);
- F is the monthly pension that corresponds to the value described in
- (i) clause 2(2)(b) in the case of a member,
 - (ii) clause 2(2)(c) in the case of a vested former member, or
 - (iii) clause 2(2)(d) in the case of a pensioner;
- G is a factor which adjusts pension F in the same proportion as the total adjustment or indexing to pensions under section 19.1 of the Act from the date of separation to the retirement date or, if later, the date at which the division was effected;
- H is a factor used to adjust pension F from the assumed age at retirement used in calculating C to the actual date at retirement with regard to the reduction factor applied under subsection 16(1.3) of the Act, regarding reduced pension on early retirement; and
- S is the percentage share of benefits of the spouse or former spouse, as defined in a court order or domestic contract referred to in subsection 31.1(2) of the Act, but in no case shall the share exceed 50 per cent of the pension benefits of the member, vested former member or pensioner.



Formula for revaluation of contribution - one party a plan member

- (2) Where only one spouse or former spouse is a member, vested former member or pensioner, the contributions with interest made by the member, vested former member or pensioner shall be revalued as of the date of separation by subtracting from them an amount equal to

$$(D/C) \times T \times S$$

where

D equals the pension benefits subject to division calculated in accordance with section 2;

C equals C as defined in subsection 2(1);

T is the total contributions with interest made by the member, vested former member or pensioner to the date of separation; and

S is the percentage share of benefits of the spouse or former spouse, as defined in a court order or domestic contract referred to in subsection 31.1(2) of the Act, but in no case shall the share exceed 50 per cent of the pension benefits of the member, vested former member or pensioner.

Formula for revaluation - both parties plan members

- (3) Pursuant to subsection 31.5(6) of the Act, where

(a) both spouses or former spouses are either a member, vested former member or pensioner, the monthly pension of the person who is deemed for this purpose to be the member, vested former member or pensioner as indicated in subsection 3(3) shall be adjusted in accordance with subsection (1); and

(b) the monthly pension of the person who is deemed for this purpose to be the spouse or former spouse as indicated in subsection 3(3) shall be adjusted by adding an amount which equals

$$(D/C) \times F \times G \times H \times S$$

where

D equals the pension benefits subject to division calculated in accordance with section 3;

C equals C as defined in subsection 2(1) with respect to the spouse or former spouse;

F is the monthly pension that corresponds to the value described in clause 2(2)(b), (c) or (d), as it applies in the case of the spouse or former spouse;

G is a factor which adjusts pension F in the same proportion as the total adjustment or indexing to pensions under section 19.1 of the Act from the date of separation to the retirement date or, if later, the date at which the division was effected;

H is a factor used to adjust pension F from the assumed age at retirement used in calculating C to the actual date at retirement with regard to the reduction factor applied under subsection 16(1.3) of the Act, regarding reduced pension on early retirement; and

S is the spouse's or former spouse's percentage share of benefits, as defined in a court order or domestic contract referred to in subsection 31.1(2) of the Act, but in no case shall the share exceed 50 per cent.

Formula for revaluation of contributions-both parties plan members

- (4) Pursuant to subsection 31.5(6) of the Act, where



- (a) both spouses or former spouses are either a member, vested former member or a pensioner, the contributions with interest of the person who is deemed for this purpose to be the member, vested former member or pensioner as indicated in subsection 3(3) shall be revalued in accordance with subsection (3); and
- (b) the contributions with interest of the person who is deemed to be the spouse or former spouse as indicated in subsection 3(3) shall be revalued as of the date of separation by adding to them an amount equal to

$$(D/C) \times T \times S$$

where

- D equals the pension benefits subject to division calculated in accordance with section 3;
- C equals C as defined in subsection 2(1) with respect to the spouse or former spouse;
- T is the total contributions with interest made by the spouse or former spouse to the date of separation; and
- S is the spouse's or former spouse's percentage share of benefits as defined in a court order or domestic contract referred to in subsection 31.1(2) of the Act, but in no case shall the share exceed 50 per cent.

Adjustment after 65

- (5) The adjustment applied to the pension after the pensioner reaches sixty-five years of age shall bear the same proportion to the adjustment applied to the pension before the pensioner reaches sixty-five years of age as the total pension earned during the spousal relationship after age sixty-five bears to the total pension earned during the spousal relationship prior to age sixty-five. (EC672/09; 131/16)

Transfer amounts locked-in

6. "locked-in retirement vehicle", defined

- (1) In this section, "**locked-in retirement vehicle**" means a registered retirement savings plan, registered retirement income fund, or registered pension plan as defined in the *Income Tax Act* (Canada), or a life annuity purchased from an insurance company licensed to sell annuities in Canada, which states in writing that, while the spouse or former spouse is alive,
 - (a) any amount in the locked-in retirement vehicle shall continue to be subject to section 31.8 of the Act;
 - (b) in the case of a registered retirement savings plan, payments are allowed only to another locked-in retirement vehicle;
 - (c) in the case of a registered retirement income fund or a registered pension plan, payments are allowed only to another locked-in retirement vehicle or to the spouse or former spouse;
 - (d) in the case of a registered retirement income fund, the total cash payments to the spouse or former spouse during the first year after the date the registered retirement income fund is entered into does not exceed twice the amount initially transferred into the fund divided by the difference between 90 and the age of the spouse or former spouse (to the nearest whole number) at the transfer date and, during subsequent years, does not exceed twice the minimum annual payments required by the *Income Tax Act* (Canada) to be made from the fund to the spouse or former spouse;



- (e) in the case of a registered pension plan, payments to the spouse or former spouse must be monthly lifetime payments in a form which is allowed under the *Income Tax Act* (Canada) to a member of a registered pension plan who retires; and
- (f) in the case of a life annuity, only payments in a form to the spouse or former spouse are allowed and such payments must be monthly lifetime payments in a form which is allowed under the *Income Tax Act* (Canada) to a member of a registered pension plan who retires.

Transfer of pension benefits permitted

- (2) A share of pension benefits may be transferred to a retirement savings plan or fund for the spouse or former spouse that is a locked-in retirement vehicle.

Idem

- (3) A share of pension benefits may be transferred to a financial institution authorized to sell immediate or deferred annuities that are locked-in retirement vehicles, for the purchase of such an annuity for the spouse or former spouse.

Application to prior division

- (4) A non-member spouse or non-member former spouse may elect to have subsections (2) and (3) apply to a division effected prior to the coming into force of these regulations. (EC672/09; 131/16)

7. Contents of application for division

The application made under section 31.1 of the Act shall contain the date of the marriage, the date of marriage breakdown and photocopies of evidence of the date of birth of the member, vested former member or pensioner and of the spouse or former spouse of such persons and shall include as attachments, a certified true copy of a court order or a domestic contract made in writing and signed and witnessed by the parties. (EC672/09)

7.1 Revocation

These regulations are revoked on December 31, 2019.