

EPPA Update 18-03

Issued May 2018

Eligibility for Pension Credit Splitting on Relationship Breakdown Extended to Common-Law Spouses

A Court of Queen's Bench of Alberta decision issued April 13, 2018 gives common-law pension partners the same rights to split pension benefits as apply to legally married pension partners on marriage breakdown. It should be noted that the common-law pension partner must meet the criteria for being a pension partner as defined in section 1(3)(b) of the *Employment Pension Plans Act* (EPPA).

The written agreement under the *Matrimonial Property Act* Section 78(a) of the EPPA was challenged in relation to section 15(1) of the *Charter of Rights and Freedoms* (the Charter).

The Court declared that s 78(a) of the EPPA shall be read as follows:

"agreement" means a written agreement between pension partners that provides for the division and distribution of a benefit and that meets the requirements of sections 37 and 38 of the *Matrimonial Property Act*, *mutatis mutandis*, whether or not that Act is applicable as between the pension partners.

A "read in" effectively amends the legislation. What this means is that eligible common-law pension partners, on the breakdown of their relationship, may split pension benefits based on the same rules that apply to married pension partners. No more than 50% of the benefit accrued during the relationship may be paid to the pension partner, and the benefit is locked-in. As well, the period of an eligible common-law relationship immediately before the date of marriage is now included in the determination of the joint accrual period. This ruling only applies to Alberta members of pension plans registered under the EPPA or the equivalent legislation of another jurisdiction.

In order to comply with this new situation, agreements between common-law pension partners will need to meet the formal requirements of the *Matrimonial Property Act*, set out in section 38.

The EPPA, the Employment Pension Plans Regulation and this court decision should be used to determine the specific legislative requirements that apply to the splitting of pension credits upon the breakdown of common-law relationships.

Interpretive Guideline #5: Division and Distribution of Pension Benefits on Marriage Breakdown will be updated to reflect this change.

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