

Office of the President
of the Treasury BoardCabinet du président
du Conseil du Trésor

Ottawa, Canada K1A 0R5

Ms. Lucie Laliberté
Pothier and Gahrns
Suite 305, 116 Albert Street
Ottawa, Ontario
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235-6299

Dear Ms. Laliberté:

Re: Pensions Benefits Division Act and Regulations

I enjoyed meeting with you in the boardroom of Minister Eggleton's office on August 19, 1994. The meeting was convened at the request of Marlene Catterall, M.P., since she was of the view that our Minister's office would benefit from hearing your views before finalizing the new regulations under the Pension Benefits Division Act (PBDA). I am pleased that we followed Ms. Catterall's suggestion to meet with you, since you have most effectively presented a particular perspective on the regulations which merits consideration.

At the conclusion of our meeting on August 19th, I undertook to consider seven separate points which you made regarding the new regulations. Ashley Dent and I met for two hours with Treasury Board officials on August 23rd to discuss your points, and I telephoned you on August 24th to obtain further clarification. I will now be recommending to Mr. Eggleton that he act upon seven points as follows:

1. We will make the change which you requested in the Regulatory Impact Assessment Statement to ensure that it is clear that the new regulations are not intended to resolve the question of the "value" of the pension between the parties. This was an important point which you raised with us, and we are pleased to make this change. Enclosed is a draft of the wording which we intend to use on this Regulatory Impact Assessment Statement. We trust you will find it to be to your satisfaction.
2. You asked that spouses of persons who died on or after February 14, 1991, be allowed to avail themselves of these new PBDA regulations. Unfortunately, we cannot accede to your request, since we have received legal advice to the effect that we must utilize the date of Royal Assent of the PBDA, being September 29, 1992. We trust you will understand that the legal situation vis-à-vis the Act and regulations does not allow us much flexibility on this point. Otherwise, we could have agreed to your request.

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3. In the situation of death of a plan member, you requested that the limitation period under the regulations be extended from the proposed 12 months, to a period of 24 months. We have listened to the views of our officials on this point, as well as to your arguments that the number of other beneficiaries who would be forced to wait until the expiry of the limitation period would not be that great. We have attempted to balance the interests of these other beneficiaries, against the interests of the spouses of the plan members. We have concluded that a compromise is in order, and will be recommending that the limitation period be increased from the existing 12 months to 18 months. This will allow those widows who reside in other parts of the country (or the world) more time to learn of the death of their ex-spouses. The longer limitation period will also allow more time for lawyers to become aware of the existence of the regulations, so as to advise widows (or widowers) accordingly.

4. You pointed out that if a plan member provides his written consent to Treasury Board officials, the Government will release detailed information to his ex-wife on benefits which have accrued under his pension to the date of his marriage, and to the date of his separation. You have advised that this information is most useful in assisting the wife's actuary in calculating the value of the pension. You have also pointed out that if the husband refuses to sign the consent, the existing regulations do not allow the wife's actuary to obtain this information. Unfortunately, given the late date at which we are attempting to implement these regulations, and the fact that the various forms which the Government will use have already been printed, it is difficult for us to accommodate your request. In addition, our officials advise that since this matter has already been considered by Mr. Eggleton's Pension Advisory Committee, we should at least ask that Committee to look at this point again prior to making any changes.

Therefore, although it is not our preferred solution to the point which you raised, we are today instructing the Minister's Pension Advisory Committee to place this particular item at the top of the agenda for their very next meeting. We will also request that you (or a representative of your organization) be invited to articulate this particular point before the members of the Committee. Once the Committee has heard your views, we will be asking for its opinion in this matter. If the Committee recommends the changes, Mr. Eggleton would consider the introduction of a separate regulation at a later date to make the desired change.

In addition, we have instructed Treasury Board officials to compile statistics on the number of spouses who write to us requesting the release of the information in question, as well as the number of spouses who send us court orders compelling Treasury Board to release this same information. We will then have a better idea of the number of problem cases which the regulations may be creating.

5. You have asked that Section 11(2) of the Regulations be amended. This regulation currently provides that once the transfer is approved by the Minister, the matter is at an end. You have correctly pointed out to us, however, that this would preclude a woman (who merely accepted her husband's valuation) from obtaining the maximum transfer value of his pension from Treasury Board after the transfer has been approved by the Minister. We have accepted the validity of your argument, and will amend the regulation accordingly. As a result, the regulations will provide that women can request the maximum transfer value even after the transfer has been approved by the Minister.

We have also identified another concern arising out of our discussions with you. If a woman merely asks Treasury Board to provide her with an application form, she will not necessarily know that she could have applied to us to obtain an estimate of the pension value. Therefore, Treasury Board officials have now agreed to ensure that each time a woman (or spouse) requests that we provide her with an application form, we will also send her a pamphlet which will specifically indicate that she has the right to request an estimate of the pension value. In this manner, we hope that more spouses will become aware of their rights under the new regulations.

6. You have also asked that we indicate to you whether the mortality tables utilized by government officials under the CSFRA take into account the occupations of the military personnel. I am enclosing an answer to your question, attached to this letter.
7. You have objected to the fact that whereas the PBDA allows women three methods to obtain funds from a pension split, the proposed regulations allow only two methods, which appear to prohibit women in many cases from collapsing their RRSP and taking the monies as a lump sum. We were not prepared to make any changes on this item, for reasons which we discussed on August 24th.

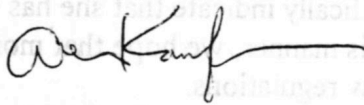
In view of the legal point which you raised with us, however, we have re-examined the matter. Our conclusion is that from a legal point of view, Section 8(1)(A) of the PBDA sets out three possible vehicles into which monies can be paid. The first vehicle is sufficiently described in that Act and therefore there are no regulations under the PBDA to provide for its implementation. We believe that this is proper. Section 8(1)(A) provides, however, that the RRSP vehicle is to be "of the prescribed kind". The same section of the Act also provides that the annuity vehicle is to be "of the prescribed kind". As a result, the Act leaves it to the Regulations to prescribe the kind of RRSP and annuity which are permissible. I note that Section 17 of the Regulations does in fact prescribe a particular kind of RRSP and annuity. In one instance, the kind of RRSP prescribed is a locked in vehicle. In view of the foregoing, our legal advisors do not see any inconsistency between Section 8 of the

Act which sets out three possible vehicles and Section 17 of the Regulations which prescribes the details of two of those vehicles. As a result, we conclude that no changes to the regulations are in order.

We will now proceed to draft the necessary changes to the regulations based upon the above analysis. You will appreciate, however, that this means that the Regulations cannot come into effect at the end of August, 1994, as we originally had hoped. We now expect to bring all of the PBDA regulations into force by about mid-September, 1994. While we are not pleased with such further delays, we believe that in this instance the delay is worthwhile in order to accommodate many of the points which you suggested.

Thank you for your assistance.

Sincerely,



Allan Kaufman
Executive Assistant

cc: Marlene Catterall, M.P.

AK/aj/257a

REGULATORY IMPACT ANALYSIS STATEMENT

Description

The *Pension Benefits Division Act* allows payment from a federal pension plan where a division of pension benefits has either been ordered or agreed to as part of the property settlement following the termination of a spousal relationship. The Act covers the pension plans for federal public servants, members of the Canadian Forces and RCMP, Members of Parliament, Lieutenant Governors, Governors General and diplomats not covered by the public service plan.

The Act provides that a pension plan member or member's spouse or former spouse may apply for a division of pension benefits if a court has so ordered as part of a divorce, annulment or separation settlement or if, following a separation of one year or more, a couple have entered into a written agreement or been ordered by a court to divide pension benefits. The statute also provides that the party not applying for the division may make a formal objection. The division of benefits is accomplished by transferring an amount into the qualifying retirement vehicle selected by the spouse, and adjusting the member's benefits. The amount transferred will be fifty percent of the member's benefits accrued during the period subject to division, unless the agreement or court order specifies a smaller amount.

Regulations are required to determine the value of the accrued benefits; determine the adjustment in the member's benefit; determine the effective date of the adjustment of pension benefits and determine the conditions under which information will be provided to a spouse or former spouse of a plan member and the nature of the information to be provided. **It should be noted that the purpose of the Act and the Regulations is to provide a mechanism for making payments out of the pension funds, not to fix the value of the pension as between spouses in property settlements made upon the breakdown of their relationship.**

Regulations are also required to prescribe the circumstances under which a person may apply or act on behalf of another person, including the personal representative of a deceased party; determine the terms and conditions for withdrawing an application; prescribe qualified retirement savings vehicles; and making the adaptations to the pension plans made necessary because of a transfer.

Alternatives Considered

The Act is framework legislation. That is, Parliament approved guiding principles, and left the operating details to regulation. Without a change in the enabling statute, there is no alternative to the regulatory route.

Anticipated Impact

The application of these regulations extends to those members of the pension plans and their spouses or former spouses whose circumstances are as described in the amendments. It is not possible to anticipate the numbers of people in these circumstances who will apply for a division of pension benefits.

Consultation

Early notice was provided through the 1993 *Federal Regulatory Plan*, proposal TBS-3.

These Regulations were prepublished in the *Canada Gazette* Part I on June 7, 1994, and comments were solicited from those who had appeared in front of Parliamentary Legislative Committees and representatives of other interested communities. Comments were received from interested groups which resulted in extending the period for application when one of the parties has died, and clarifying spousal rights to information. Those comments which would require statutory changes will be considered in further pension reform.

Compliance

The normal legislative, regulatory and administrative compliance structures will apply, including internal audits, and responses to enquiries received from Members of Parliament, affected plan members and their representatives.

Contact

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TO A File
c.c. B. Peacock

FROM DE G. Seymour
Legislation Officer

SUBJECT OBJET PBDA - CFSA - Mortality Assumptions

Security classification	Classification de sécurité
Originalor/Telephone number	Auteur/Numéro de téléphone
G. Seymour	
Our file	Notre référence
8575-000-004	
Your file	Votre référence
Date	
August 24, 1994	

To confirm advice given to the Ministers office in response to Ms. L. Laliberté's comments during the Prepublication period, I called the actuary at OSFI today.

Generally, all PBDA assumptions are made based on the member's status on valuation day, and are those in the last actuarial valuation report for the plan laid before Parliament.

On the issue of mortality, the rates used for purposes of the PBDA are simply the rates published in the report of December 31, 1990, Appendix 10, p 54, copy attached

APPENDIX 10

Rates of Current Contributor Mortality for 1991

<u>Age Nearest Birthday</u>	<u>Males</u>	<u>Females</u>
17	0.0006	0.0002
18	0.0006	0.0003
19	0.0006	0.0003
20	0.0007	0.0003
21	0.0007	0.0003
22	0.0007	0.0003
23	0.0008	0.0003
24	0.0008	0.0003
25	0.0008	0.0004
26	0.0008	0.0004
27	0.0008	0.0004
28	0.0008	0.0004
29	0.0008	0.0005
30	0.0008	0.0005
31	0.0008	0.0005
32	0.0008	0.0006
33	0.0008	0.0006
34	0.0008	0.0006
35	0.0008	0.0006
36	0.0009	0.0006
37	0.0010	0.0006
38	0.0010	0.0007
39	0.0010	0.0008
40	0.0011	0.0008
41	0.0012	0.0009
42	0.0013	0.0010
43	0.0014	0.0011
44	0.0016	0.0012
45	0.0018	0.0013
46	0.0020	0.0014
47	0.0022	0.0016
48	0.0023	0.0017
49	0.0025	0.0019
50	0.0028	0.0021
51	0.0031	0.0022
52	0.0035	0.0024
53	0.0041	0.0025
54	0.0048	0.0027
55	0.0057	0.0029
56	0.0066	0.0032
57	0.0069	0.0038
58	0.0070	0.0038
59	0.0073	0.0040