

# **The Role of Pension Assets in a Marriage Breakdown**

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## **I. INTRODUCTION**

Provincial property law considers pension an asset in a marriage or common-law relationship. This paper will bring clarity to the marriage breakdown process followed by Canadian Pacific and will give lawyers valuable information in the event pension assets are involved in a divorce or legal separation.

## **II. CANADIAN PACIFIC RAILWAY COMPANY PENSION PLAN**

This plan is federally regulated and abides by the *Pension Benefits Standards Act, 1985* (the *Act*). Section 25 of the *Act* permits a division of pension benefits in the case of a marriage breakdown, subject to the applicable provincial property law.

## **III. MARRIAGE BREAKDOWN PROCESS**

On marriage breakdown, the key responsibility for Canadian Pacific is to ensure proper authorized documentation has been received regarding an employee's pension. The time it takes to get that documentation can vary greatly, depending on the parties' understanding of the process.

The process includes a number of steps:

1. An employee contacts Pension Services at Canadian Pacific, advising of a marriage breakdown and the requirement for a pension valuation.
2. The employee is asked to complete a form which gives basic information such as name, spouse's name, spouse's date of birth, marriage date and/or common-law date, separation date and divorce date (if available).
3. From that information, Pension Services determines the value of the pension and sends it in a standard offer letter to the employee.
4. At a later date, further documentation is requested from the parties and Pension Services administers the settlement, if applicable.

This is a very easy process, however, what happens in between each of these steps is what can make this a very long process.

Looking at each step individually, this is what you should know:

### **Step 1 - Employee contacts Pension Services at Canadian Pacific, advising of a marriage breakdown**

A marriage breakdown can be a highly emotional time for the employee. Waiting until the last

minute to ask for a pension valuation and then finding out it may take a couple of weeks just adds to the stress of the situation. It can take Pension Services 2 to 4 weeks to provide pension values. Any request for pension values should be made as soon as it is known that pension will form part of the family assets for the purposes of the property division.

The spouse or the spouse's lawyer can contact Canadian Pacific for pension information but values cannot be provided without the consent of the employee or a court order.

**Step 2 - The employee is asked to complete a form which gives basic information such as name, spouse's name, spouse's date of birth, marriage date and/or common-law date, separation and divorce date (if available).**

It is the employee's responsibility to complete this form accurately. Inaccuracies lead to problems later on which can delay the process.

If Pension Services is contacted by the spouse, they will be asked to complete a form which gives basic information such as name, employee's name and employee number, their date of birth, date of marriage and/or common-law date, separation and divorce date (if available).

If Pension Services is contacted by either lawyer for the employee or spouse a form is not required and a standard offer letter is prepared without pension values.

**Step 3 - From that information, Pension Services determines the value of the pension and sends it in a standard offer to the employee.**

Information received from the employee prompts a standard offer letter which includes the value of the pension.

The letter also advises that:

- Canadian Pacific does not give advice on marriage breakdown and encourages all the parties involved to seek professional legal advice.
- Canadian Pacific is neutral in the process.
- Dollar amounts are based on information provided by the employee on the form (Step 2).
- Documentation is required for the division of a pension and can include such documents as Directions, Affidavits, Marriage Certificates, Separation Agreements, Court Orders, etc.....
- When a court order is involved, it cannot be acted upon until the time for appealing the order has been exhausted. Information about such appeals is expected to be provided by the lawyer representing the employee and should confirm whether the time for appeals has been exhausted and the order was not appealed.
- There are options for the spouse for the assigned portion of pension money.