

1. British Columbia - Legislative developments

A new Family Law Act

On November 23, 2011, the B.C. legislature passed a new family law – i.e., the Family Law Act – that fully came into force on March 18, 2013.

This new family law replaced, then, the Family Relations Act.

As a result, since March 18, 2013, the division of pension benefits in B.C. is subject to the Family Law Act.

The new Act:

- ▶ improves and updates family law and makes it easier for British Columbians to understand;
- ▶ reflects the current needs of families and the changing nature of families;
- ▶ protects the best interests of the child when families experience separation and divorce;
- ▶ encourages parents to work together to reduce the effect of conflict on children and the emotional and financial costs to families experiencing separation and divorce; and
- ▶ supports, where appropriate, ways of resolving conflicts outside the courtroom.

The most significant change for pension plans is that the pension division provisions will be extended to common-law spouses who have lived together for at least two years.

In addition, the Family Law Act clarifies the law of pension division upon separation. In other words, a single trigger event- i.e., the date of separation- replaces the four triggering events in the old Family Relations Act (separation agreement, order that there is no possibility of reconciliation, divorce order, order declaring the marriage a nullity). Using separation as the triggering event means that spouses will not be required to go to court or negotiate a separation agreement to trigger entitlement to an interest in family property.

Most other changes are housekeeping in nature.

Standard Life will communicate further with plan sponsors with respect to the application of the new Family Law Act.

Harmonized Sales Tax (HST) - Back to the future

In a referendum held in 2011, a majority of British Columbians have voted against keeping the HST.

As a result, the B.C. Government decided to dismantle the HST and re-implement its combined 12% Provincial Sales Tax (PST) and Goods and Services Tax (GST) tax system, effective April 1, 2013.

Please note that our systems have been updated accordingly.

Other changes

Quebec Sales Tax (QST)

Since January 1, 2013, the QST is harmonized with the GST, as follows:

- ▶ The QST has been increased to 9.975% from 9.5%.
- ▶ The GST and the QST are charged separately. In other words, QST is not charged on the GST anymore.

Prince Edward Island HST

The P.E.I. Government has replaced its retail sales tax effective April 1, 2013, with the HST at a 14% composite rate.

Please note that our systems have been updated accordingly.

2. Carrigan case

On October 31, 2012, the Ontario Court of Appeal released its decision in *Carrigan v. Carrigan Estate*.

The issue at the heart of this case is related to the spouses' rights to pre-retirement death benefits under section 48 of the Ontario *Pension Benefits Act (PBA)* when a member is survived by both a common law spouse with whom he resided at the time of death and a legally married spouse for whom he was separated but whom he designated a beneficiary of his pension plan.

Facts

- ▶ The member, Mr. Carrigan, died in 2008, while he was remaining married to Mrs. Carrigan, the legally married spouse, although they were separated for several years at the time of the member's death. Their separation had never been formalized their separation by a separation agreement or a court order.
- ▶ At the time of the member's death, the member was living with Ms. Quinn, the common law spouse since at least January 2000.
- ▶ In 2002, the member designated Mrs. Carrigan and their daughters as the beneficiaries of the death benefit in his pension plan.
- ▶ Both Mrs. Carrigan and Ms. Quinn claim the death benefit of the member's pension under section 48 of the *PBA*.
- ▶ This case went into court, and in 2011, the trial judge dismissed the action of the legally married spouse – i.e., Mrs. Carrigan – for a declaration that she was entitled to her husband's pre-retirement death benefit under section 48 of the *PBA*, and also dismissed Mrs. Carrigan's unjust enrichment and constructive trust claims.
- ▶ The trial judge found that Ms. Quinn – i.e., the common law spouse – was entitled to the death benefit.
- ▶ Mrs. Carrigan went into an appeal, and the Ontario Court of Appeal released its decision on October 31, 2012.

The Ontario Court Appeal Decision

The Court of Appeal allowed the appeal, set aside the trial judge's decision and replaced it with a declaration that Mrs Carrigan and the daughters of Mr. Carrigan are entitled to his pension benefit as designated beneficiaries, in accordance with subsection 48(6) of the *PBA*.

As the Financial Services Commission of Ontario (FSCO) explains it in a communication that you can find on its web site, "... the court gave an interpretation which was unexpected and inconsistent with how section 48 had been previously administered."

After assuming that both Mrs. Carrigan and Ms. Quinn qualify as Mr. Carrigan's spouse for the purposes of section 48 of the *PBA*, the Court of Appeal reviewed subsections 48(1) and 48(3) of the *PBA*.

Subsection 48(1) of the *PBA* gives statutory spousal priority to the member's spouse. As a result, regardless of who has been designated the member's beneficiary, the pre-retirement death benefit must be paid to the eligible spouse, if any, at the time of the member's death.

Subsection 48(3) of the *PBA* provides that such statutory priority does not apply where the member and his or her spouse were living separate and apart on the date of death.

The Court of Appeal essentially considered that the word "spouse" must always refer to the legally married spouse. For the Court, "..., only legally married spouses can live separate and apart from the member and still be a "spouse" under the *PBA*." In other words, it is not conceivable for common law spouses to live separate and apart.

Since subsection 48(3) applies in this case, the statutory spousal priority contemplated subsection 48(1) is rendered inapplicable and therefore, the member's designated beneficiary is entitled to the pre-retirement death benefit under subsection 48(6) of the *PBA*.

The end result is that neither Mrs. Carrigan nor Ms. Quinn is entitled to the pre-retirement death benefit as a spouse. Instead, Mrs. Carrigan and her two daughters are entitled to the pre-retirement death benefits as Mr. Carrigan's designated beneficiaries.

Application for leave to appeal

After the Ontario Court of Appeal released its decision, Ms. Quinn, the common law spouse, filed an application for leave to appeal to the Supreme Court of Canada.

On March 28, 2013, the Supreme Court of Canada has dismissed with costs Ms. Quinn's application to appeal.

As a result, the decision of the Ontario court of appeal is upheld and we are evaluating the potential implications of that decision on our procedures and plan documentation. We will keep you posted.

3. Quebec's Public Prescription Drug Insurance Plan : The end of the 15-year rule

On January 14, 2013, the 15-year rule was eliminated. The 15-year rule required the provincial drug plan to reimburse the brand name drug price for a few more years after patents had expired and generic alternatives were available.

With the elimination of the 15-year rule, Quebecers covered by the public prescribed drug insurance plan are now reimbursed only according to the price of equivalent generic drug of several brand name drugs – i.e., approximately 60 drugs.

The elimination of the 15-year rule does not impact plan sponsors that have their group insurance plan with Standard Life.

4. Alberta 2013 Budget - PharmaCare Program and Generic Drug Pricing

On March 7, 2013, Mr. Doug Horner, President of Treasury Board and Minister of Finance of Alberta, presented the Alberta budget for 2013.

Mr. Horner announced that a PharmaCare program will be implemented on January 1, 2014. Currently 20% of Albertans do not have drug coverage of any kind. We will keep you posted as details on the program design will be unveiled.

In addition, formerly priced at 35%, Mr. Horner announced that generic drugs will be priced at 18% of the corresponding brand drug price for public and private plans. This new measure is in effect since March 15, 2013. However, the process for the change is expected to take some time to execute. As a result, the actual price changes will not occur until May 1st.

We are currently evaluating the impact, if any, of these measures for plan sponsors that have their group insurance plan with Standard Life.