

**ACTUARY PROVIDING SERVICES TO
LAWYERS AND INDIVIDUALS RE PENSION MATRIMONIAL MATTERS**

SOME IMPORTANT ISSUES ARISING IN DAILY PRACTICE

**PAPER PREPARED FOR MAY 25, 2011 CLE COURSE
PENSION ESSENTIALS FOR LAWYERS**

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SOME IMPORTANT ISSUES ARISING IN DAILY PRACTICE

This paper canvasses a few important issues:

1. What exactly does “valuation date” mean? Discussion of why valuation date should always be in the near future, unless it is an exceptional case where the lawyer is seeking to revisit the reasonableness of an agreement made several years (sometimes many years) in the past.

2. Issues re the assumed salary increases assumed by the actuary.

- Why all actuaries in B.C. agree projecting salary increases is required.

- Why the current rate of pay is needed, and past salaries are not sufficient, at least for calculations which assume retirement is 5 years or more into the future.

3. Regarding pensions already in payment:

- Should the member’s lifetime pension be valued by discounting just for the member’s possible death, or both for the member’s death and the spouse’s death?

- If there was a survivor benefit assigned to the former spouse at the time pension payments started, should the actuary be counting that as an asset in the spouse’s hands, or just ignoring it?

- If there is a guarantee period and the spouse/former spouse is the beneficiary, to whom is the value of this attributed?

4. Special cases:

- Federal government employment; why few actuarial reports are requested in connection with these cases.

- Private sector or quasi - public organizations under Federal jurisdiction; e.g. Telus, chartered banks, Nav Canada/CBC/Canada Post; why these cases are complicated and actuarial fees will be higher to deal with them.

- Disability; why any case re disability raises so many difficult issues, and why the cost of actuarial services for these cases can be as much as triple those in a relatively

straightforward case.

5. Issues re the terms under which the lawyer hires the actuary

- Everything's a joint retainer now.

- The very first thing to do is to ensure the other side is agreeable to retaining the actuary.

6. Issues re indexing of BC public sector plans; possible new benefit structure for police officers and firefighters.

This is a brief paper free of technical detail. For a more detailed description of the actuary's role in pension division, please see my 2008 paper prepared for a previous CLE course, available at:

<http://www.karpactuarial.com/paper/2555cle9805TLApdf.pdf>

1. ISSUES RE VALUATION DATE

Almost All Actuarial Valuations Are Required For Current Settlement

I define "valuation date" as "assumed settlement date" or "date which is considered "now" for purposes of applying actuarial present values". By definition, every actuarial present value requires a specified valuation date; a date which will be considered "now". Actuarial principles view this date as the date funds are available for investment, which is why "assumed settlement date" is (or in my view should be) synonymous with valuation date.

Assuming the actuarial valuation is required for current settlement, the valuation date should always be a convenient date in the near future, or sometimes the trial date or mediation date if there is one.

Lawyers from time to time request a valuation date which is some years ago, even when wanting values for current settlement; e.g. "Please value the pension as of June 1, 2003". It often turns out that the parties separated on June 1, 2003. In my interpretation, what the lawyer is really asking is "please give a current value, but assume that pension credits earned after June 1, 2003 are not marriage - related." I will do this, but only after I first set out the result based on the "default position" under Part 6; i.e. that marriage - related credits are those earned between marriage date and triggering event / entitlement date.

Exceptional Case; Review Of Old Agreement Is Wanted

All of the above goes out the window in the exceptional case (accounting for perhaps 2-3% of assignments) where the purpose of retaining the actuary is **NOT** to obtain values for

current settlement, but rather to examine whether a past agreement between the parties was unfair. If you have a case like this as a lawyer, please let the actuary know this before discussing any other feature of the case.

Throughout the rest of the paper, I assume that this exceptional case does **NOT** apply, and I will assume that the actuary is always asked for values re current settlement.

2. ISSUES RE ASSUMED SALARY INCREASE

All Actuaries Agree Allowance For Future Salary Increase Required

In Plans such as the BC Public Service Plans, the formula is based on “final average earnings”; pension is based on salary in a short period (often 5 years) prior to retirement.

As explained by Mr. Tom Anderson in his writings, “if and when” division under Part 6 of the FRA weights all years equally. Thus the spouse’s share will, to the same extent as the member’s share, reflect future salary increases.

Thus, in dealing with actively employed plan members who are some years from retirement, I believe all B.C. actuaries doing this work agree that an allowance for future salary increases needs to be included.

How To Allow For Future Salary Increases

My practice is to make this projection in the following steps:

- a. Start with the current annualized pensionable salary being earned by the member. The starting point is a current pay statement for the member. Such pay statements usually give the employee’s pension contributions, and from there pensionable earnings can be calculated. Do **NOT** use T4 earnings to make this analysis, as it may include earnings which are NOT pensionable.
- b. Use the annual net discount rate (mandated by Canada - wide actuarial profession rules) which allows for future across the board salary increases.

Note that actuarial calculations do **NOT** usually allow for promotions, while if and when division would allow for all salary increases, including the part attributable to promotion. Projected salary increases for actuarial calculations are general increases only; i.e. increases everyone in the economy is likely to receive.

c. Don't forget to include a downward adjustment to reflect "final five" salary being less than salary at retirement; without this, you are overvaluing the pension.

An approximation based on taking current "final average earnings" and projecting that forward may be necessary if no other information is available, and will be appropriate if immediate retirement is one of the scenarios being valued. However, in general, there can be a significant error in using this method all the time.

3. PENSION ALREADY IN PAYMENT

Pension Payable For Pensioner's Lifetime

Consider a pension payable only for the Plan member's remaining lifetime. In arriving at the spouse's interest in such a pension, there are two possible approaches.

The first is to value the pension as an asset in the pensioner's hands. It follows that allowance should be made only for the pensioner's possible death. This is the approach suggested by national Canadian actuarial standards.

The second is to value the pension by allowing for both the pensioner's possible death, and the spouse's possible death. The rationale for this approach is that fairness requires that actuarial valuations follow Part 6 if and when division as closely as possible. Such division provides that:

- a. If 100% of the period over which the pension was earned was marriage - related, the pension is shared "50/50" while both parties survive.
- b. On the death of the pensioner, the pension ceases so of course there is nothing left to share after that.

On the death of the spouse before the pensioner, the full pension reverts to the pensioner.

It follows that a Part 6 division has value to the spouse only so long as both parties survive, and that therefore a fair valuation should allow for the possible death of either party.

My current practice is to show results on both the above bases.

Survivor Pension

Consider a pension where, in addition to a lifetime pension, a percentage (taken as 100% for discussion purposes) continues to the spouse if the spouse outlives the pensioner. Should this survivor pension be valued as an asset in the survivor's hands, and be divided with the pensioner?

Again, there are two possible approaches.

The first is to answer "yes" to the above question. This is the approach suggested by national Canadian actuarial standards

The second is to answer "no" to the above question, and simply not value the survivor benefit. The rationale is that it would not be shared under Part 6 division.

Guarantee Periods

In addition to lifetime pensions and survivor pensions, some pensions carry guarantee periods. For example, if the pensioner dies before receiving (say) 15 years' payments, a guaranteed payment will pay out to ensure that a total of 15 years' payments are made.

The beneficiary of such a guaranteed period may be the spouse. If so, there is an obvious rationale for including this as a benefit in the spouse's hands. However, if (as is usually the case in practice) the pensioner has the power to change the beneficiary, it is also within the realm of reasonableness to consider this the pensioner's asset. I will normally show the effect of both approaches.

4. SPECIAL CASES**Federal Government Pensions**

These are NOT divided under Part 6 but under the Pension Benefits Division Act. Generally, a lump sum estimate of value is obtained from the Federal Government. For further details, see my 2008 CLE paper, Mr. Anderson's writings, and the following link:

<http://www.tpsgc-pwgsc.gc.ca/remuneration-compensation/lppr-pbda/lppr-pbda-eng.html>

Plans Of Employers Under Federal Jurisdiction

As mentioned, these employers include Telus, chartered banks, Nav Canada, CBC, and Canada Post.

The practices of these employers vary. Some will allow Part 6 division. Most have a national pension division policy which they apply in BC. As an actuary working on such cases, I first have to get an understanding of the Plan's if and when policy, before I can judge whether a lump sum division outside the Plan is the best way to maximize joint value for the parties. So actuarial fees will be higher for such cases than may otherwise be expected.

Pension Plan Member Is No Longer Working, Due To Disability

I have in mind cases where an employee some years from retirement is accruing pension benefits while disabled. These cases raise many difficult issues:

- Mortality implications of the person's disability.
- What scenarios re possible return to work?
- How is the pension plan calculating "final average earnings"; what is the current value?
- If on LTD, at what point will pension be more lucrative than LTD?
- If on LTD; what is maximum age for benefits? Are benefits taxable? How much is the monthly benefit? What indexing of benefits?

Under Part 6, a disability benefit paid from a pension plan is a divisible asset if the recipient is over age 60. Thus should LTD benefits paid after 60 be also considered a divisible asset?

5. ISSUES RE TERMS UNDER WHICH THE LAWYER HIRES THE ACTUARY

Everything's A Joint Retainer Now

I have for many years been doing most of my work on a "joint retainer" basis where I am hired by both sides.

In my view, the new court rules requiring that an actuary's report in a matrimonial matter be a joint document have effectively killed off the concept of "sole retainers". I am now advising potential clients not to proceed with actuarial services unless they are jointly approved by both sides. (50/50 cost sharing is NOT required, so long as both parties agree to receive my findings).

6. SPECIAL CONSIDERATIONS RE BC PUBLIC SECTOR PLANS

Possible Changes Re Police / Fire Employees

Where employers and employees agree, police and fire employees may now agree to discontinue “special agreement” contributions, and instead increase the benefit percentage (for future service only, not past service) from the previous 2% to 2.333%.

Possible Tweaking Of Indexing Formulas

As is well known, the BC public sector plans provide indexing to pensions in payment. All the Plans are reviewing whether they can continue with full inflation - indexing, and some have already tweaked their rules.

BC actuaries must remain alert to this and carefully check each valuation to ensure it reflects up to date information.