



Partition of family patrimony



This publication was prepared for members and pensioners of pension plans administered by CARRA such as RREGOP (Government and Public Employees Retirement Plan), the PPMP (Pension Plan of Management Personnel) and their spouses who want to know the consequences partition would have on these plans. Realizing the complexity of the matter, CARRA has tried to provide simple answers to the most common questions on the general principles governing the partition of the value of the benefits accrued under a pension plan.

Who is subject to the rules governing the partition of the family patrimony?

Two categories of persons are affected:

- spouses married before and after the coming into force, on July 1, 1989, of the provisions of the Civil Code of Québec related to the family patrimony, regardless of their matrimonial regime; and
- since June 24, 2002, same sex and opposite sex spouses who are civilly united.

The rules do not affect:

- spouses married before July 1, 1989 who, before January 1, 1991, and by way of a notarial deed, gave notice of their intention not to become subject to the provisions regarding family patrimony;
- married or civilly united spouses who renounced their right to partition by notarial deed or judicial declaration and who registered their renunciation with the Register of personal and movable real rights;
- married spouses who ceased living together before May 15, 1989, and had settled the economic consequences of their separation in writing or otherwise, except if they resumed living together;
- married spouses who applied for divorce, legal separation, annulment of marriage or payment of a compensatory allowance before May 15, 1989;
- de facto spouses.

Are the benefits accrued under the pension plans administered by CARRA part of the family patrimony?

Yes. According to the Civil Code, the value of the benefits accrued under a pension plan during the marriage or the civil union by each spouse is included in the family patrimony and must be assessed. This value may be partitioned in the event of a legal separation, divorce, annulment of marriage, payment of a compensatory allowance, dissolution or annulment of civil union.

What is the value of the benefits included in the family patrimony?

This value may vary according to whether or not the member is eligible for a refund of his contributions or a deferred or immediate pension, or is already receiving a pension on the date of assessment of his benefits. If the benefits accrued consist in a refund of contributions, the value included in the family patrimony corresponds to the contributions paid between the date of marriage or civil union and the date of assessment, plus interest, if applicable. If the benefits consist in a deferred pension, an immediate pension or a pension currently being paid, the value corresponds to the value of the pension acquired between the date of marriage or civil union and the date of assessment.

However, the value of a pension whose payment began before the marriage or the civil union is not included in the family patrimony. Therefore, it cannot be partitioned in the event of a breakup, since no benefits related to the pension were accrued during the marriage or the civil union.

How can information on the value of the benefits be obtained?

To know the value of the benefits accrued under a pension plan, simply complete the "Application for a statement of benefits" and send it to CARRA. CARRA has 90 days from the date of receipt of the form and all the documents required to send both spouses a statement of benefits.

When can an application for a statement of benefits be made?

As soon as proceedings for legal separation, divorce, annulment of marriage, payment of a compensatory allowance, dissolution or annulment of civil union are introduced, you can apply to CARRA for a statement showing the value of the benefits accumulated by the member or the pensioner under his pension plan. The statement also provides the value of the benefits acquired during the marriage or the civil union.

Spouses who have not instituted legal proceedings can also obtain a statement, but only within the framework of family mediation with an accredited mediator or a joint action in view of the dissolution or annulment of their civil union by a notary.

Who can apply for a statement of benefits?

A statement may be requested by:

- a member;
- a non-active member, i.e. a person who no longer works for an employer covered by one of the plans administered by CARRA on the date of assessment;
- a pensioner;
- the married or civilly united spouse (or the former spouse, if the judgment ending marriage or civil union has been rendered or the notarized joint declaration ending civil union has been signed) of a member, non-active member or pensioner;

- an authorized representative of one of the spouses or former spouses, for example, a lawyer, notary, accredited mediator or, as the case may be, the liquidator of a succession.

Are several applications required when more than one plan is involved?

When only one of the spouses contributes or contributed to more than one pension plan administered by CARRA, only one application is required. However, if both spouses contribute or contributed to one or more plans administered by CARRA, two separate applications must be submitted.

What is the statement of benefits used for?

The statement is used by the court to determine the total value of the family patrimony. The document shows, on the one hand, the total value of the benefits accrued under a pension plan administered by CARRA and, on the other hand, the value of the benefits acquired during the years of marriage or civil union. The value of these benefits is established as at the date of assessment, that is:

- the date on which one of the procedures mentioned above is instituted before the Superior Court of Québec; or
- the date on which the spouses ceased living together; or
- the date shown on the notarized joint declaration in the case of civilly united spouses who have consented to the dissolution of their union before a notary.

The “Statement of contributions to your pension plan” issued periodically by CARRA is not a statement of benefits.

What happens once the value of the family patrimony has been established?

Usually, this value is divided equally between the spouses, who negotiate the terms and conditions of the partition. Failing an agreement, the court renders a decision in this regard. The spouses may decide together that the pension plan will not be affected and that its value will be compensated for by other property. To be valid, any form of agreement must be confirmed by the court. If the court orders that the pension plan benefits be partitioned, an application for payment of the amounts awarded must be submitted to CARRA

How is an application for payment of benefits made?

When a statement of benefits has been sent by CARRA and the judgment ending the marriage or the civil union provides for the partition of pension benefits, simply complete an “Application for payment of the value of benefits” and send it to CARRA, along with all the documents requested.

If both spouses contribute or have contributed to a pension plan administered by CARRA, and the court finds that the benefits must be partitioned, the partition may be based solely on the difference in



the value of the benefits under each of the plans. For that purpose, the spouses must enclose with their application an authorization letter bearing their signatures.

Who can apply for the payment of benefits?

An application for payment may be filed by the member, the non-active member, the pensioner, the spouse or former spouse or an authorized representative.

What percentage of the value of the benefits can be awarded to the spouse?

In partitioning pension benefits, the court usually awards 50% of the value of the benefits accrued during the marriage or the civil union. However, it may permit the payment of up to 50% of the total value of the benefits accrued during all the years of participation in the pension plan. This decision depends on the partition of the value of the other elements comprised in the family patrimony.

How and when are the sums awarded transferred to the spouse at the time of partition?

These sums must be transferred by CARRA to one of the following financial vehicles:

- annuity contract;
- locked-in retirement account (LIRA);
- life income fund (LIF);
- registered retirement savings plan (RRSP) or registered retirement income fund (RRIF). Transfer to an RRSP or a RRIF is possible only if the sums come from a refund of contributions to which the member or non-active member is entitled on the date of assessment.

The spouse has 60 days following the date on which the confirmation of the sums awarded is mailed to inform CARRA of the name and address of the financial institution and the vehicle to which the transfer is to be made. Then, CARRA has 120 days to carry out the transfer.

What are the effects of partition on the retirement pension?

Once the sums awarded to the spouse have been paid, a “negative” pension amount is calculated and registered in the member’s or pensioner’s file. This amount is used by CARRA to reduce the retirement pension that will eventually be paid to the member or that is currently being paid to the pensioner. CARRA thereby gradually recovers the amounts paid to the spouse following the partition.

If a member qualifies for a refund of contributions after the partition, the portion awarded to the spouse in the partition will be subtracted from that refund.

When is the reduction applied?

If the member is not receiving a pension, the reduction will apply from the date on which pension payments begin.

If the member has retired and receives a pension, that pension will be reduced from the date of payment of benefits.

What happens in the event of the breakup of a second marriage or civil union?

If, after his benefits have already been subject to partition, the member or pensioner divorces again or dissolves a second civil union, the method of establishing the benefits accrued in a pension plan is the same as for the first partition and applies only for the period of the second marriage or civil union.

What happens in the event of the death of a pensioner or member whose marriage or civil union had ended?

If the spouses were divorced, if their marriage has been annulled or if their civil union has been annulled or dissolved, the surviving former spouse is not eligible for any retirement pension. However, in certain cases, if the deceased member had no other spouse, the former spouse may be entitled to a refund if he is an heir.

If the spouses are legally separated and if the court took into consideration the value of the benefits accrued under the pension plan, in whole or in part, in the partition of the family patrimony, the surviving spouse contemplated by the partition is not entitled to a refund of contributions or to a pension, unless the spouses resumed living together. In addition, if the deceased person had a de facto spouse, this person is not eligible for a refund or a pension, because spouses who are legally separated are still considered as married. However, the surviving spouse or the de facto spouse may inherit under the deceased person's will.

If the court did not take into consideration the value of those benefits in the partition, the legally separated surviving spouse still qualifies for the refund of contributions or for a surviving spouse's pension, even if the member had a de facto spouse.



We hope that this publication answers all your questions on the partition of benefits under pension plans. If you need further information or wish to obtain an "Application for a statement of benefits" form, please call (418) 643-4881 (Québec City area) or 1 800 463-5533 (elsewhere in Québec).

The information contained in this publication does not supersede the legislation or attendant regulations.

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Within the framework of the government measures aimed at improving the relationship between the Administration and the population, CARRA has prepared a service statement. You can access it in our Web site (www.carra.gouv.qc.ca) or ask our client services for a copy.

In this text, the masculine is taken to include the feminine.

**Commission
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