

BILL 17 – 2023

FAMILY LAW AMENDMENT ACT, 2023

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:

1 *Section 1 of the Family Law Act, S.B.C. 2011, c. 25, is amended by adding the following definition:*

“**companion animal**” means, subject to section 3.1 [*companion animals*], an animal that is kept primarily for the purpose of companionship; .

2 *The following section is added:*

Companion animals

3.1 For the purposes of this Act, the following are not companion animals:

- (a) a guide dog or service dog within the meaning of the *Guide Dog and Service Dog Act*;
- (b) an animal that is kept as part of a business;
- (c) an animal that is kept for agricultural purposes.

3 *The following section is added:*

Certain presumptions not to be applied

- 81.1** (1) The rule of law applying a presumption of advancement must not be applied in questions respecting the ownership of property as between spouses.
- (2) The rule of law applying a presumption of resulting trust must not be applied in questions respecting the ownership of property as between spouses.

4 *Section 85 is amended by adding the following subsection:*

- (3) If property is excluded from family property under subsection (1), the exclusion applies despite any transfer of legal or beneficial ownership of the property from a spouse to the other spouse.

5 Section 92 is amended by adding the following paragraphs:

- (e) jointly own a companion animal;
- (f) share possession of a companion animal;
- (g) give exclusive ownership or possession of a companion animal to one of the spouses.

6 Section 96 is repealed and the following substituted:

Division of excluded property

- 96** The Supreme Court must not order a division of excluded property unless
- (a) family property or family debt located outside British Columbia cannot practically be divided, or
 - (b) it would be significantly unfair not to divide excluded property on consideration of the duration of the relationship between the spouses and one or more of the following factors:
 - (i) a spouse’s direct contribution to the preservation, maintenance, improvement, operation or management of the excluded property;
 - (ii) the terms of any agreement between the spouses respecting the excluded property, other than an agreement described in section 93 (1) [*setting aside agreements respecting property division*], including but not limited to terms respecting the transfer of the excluded property;
 - (iii) if the Supreme Court makes a determination under section 95 (1) [*unequal division by order*] respecting significant unfairness, the extent to which the significant unfairness cannot be addressed by an unequal division of family property or family debt, or both.

7 Section 97 is amended

- (a) in subsection (1) (b) by striking out “subsection (3) of this section” and substituting “subsections (3) to (4.3) of this section, as applicable”,**
- (b) in subsection (2) (a) by adding “, including a companion animal” after “property”,**
- (c) by repealing subsection (4) and substituting the following:**
 - (4) Nothing in this section permits the Supreme Court to divide excluded property unless
 - (a) division is permitted under section 96 [*division of excluded property*], or
 - (b) the excluded property is a companion animal. , **and**

(d) by adding the following subsections:

- (4.1) In determining whether to make an order under subsection (1) respecting a companion animal, the Supreme Court must consider the following factors:
- (a) the circumstances in which the companion animal was acquired;
 - (b) the extent to which each spouse cared for the companion animal;
 - (c) any history of family violence;
 - (d) the risk of family violence;
 - (e) a spouse’s cruelty, or threat of cruelty, toward an animal;
 - (f) the relationship that a child has with the companion animal;
 - (g) the willingness and ability of each spouse to care for the basic needs of the companion animal;
 - (h) any other circumstances the court considers relevant.
- (4.2) An order respecting a companion animal must not
- (a) declare that the spouses jointly own the companion animal, or
 - (b) require the spouses to share possession of the companion animal.
- (4.3) Sections 95 [*unequal division by order*] and 96 do not apply to the making of an order respecting a companion animal.

8 Section 110 is amended by adding the following definitions:

- “**LIF**” means a life income fund as defined in section 1 (1) of the *Pension Benefits Standards Act*;
- “**LIF benefit**” means a benefit held in a LIF by an owner spouse;
- “**LIRA**” means a locked-in retirement account as defined in section 1 (1) of the *Pension Benefits Standards Act*;
- “**LIRA benefit**” means a benefit held in a LIRA by an owner spouse;
- “**owner spouse**” means the spouse who is the owner of a LIRA or a LIF; .

9 The following section is added:

Interpretation

- 110.1** In the following provisions, “**benefit**” includes a LIRA benefit or a LIF benefit:
- (a) section 111 (1) [*benefits to be determined in accordance with this Part*];
 - (b) Division 2.1 [*Division of Benefits Under Locked-in Retirement Accounts and Life Income Funds*] of this Part;
 - (c) section 125 [*entitlement to survivor benefits*];
 - (d) section 127 [*agreements respecting division*];
 - (e) section 129 [*reapportioning benefits*];
 - (f) section 130 [*clarifying division of benefits*];

- (g) section 141 *[income tax]*;
- (h) section 144 *[trust of survivor and pension benefits]*;
- (i) section 145 *[no further entitlement after division of benefits]*.

10 Section 113 (2) is repealed and the following substituted:

- (2) A spouse may be designated as a limited member of the local plan, or as a limited member of a supplemental plan to the local plan, in any of the following ways:
 - (a) by the spouse giving notice in accordance with section 136 *[notice or waiver]*;
 - (b) by the member giving notice in accordance with section 136;
 - (c) by the personal representative of the spouse's estate giving notice in accordance with section 136, only if the member's pension has not commenced at the time of the spouse's death.

11 Section 115 (2) (b) is repealed and the following substituted:

- (b) to have the limited member's proportionate share of the commuted value of the benefits transferred from the plan to the credit of the limited member, only if the plan text document gives to the member the right to have the commuted value of the benefits under the plan transferred from the plan to the credit of the member.

12 The following Division is added to Part 6:

Division 2.1 – Division of Benefits Under Locked-in Retirement Accounts and Life Income Funds

Dividing benefits under locked-in retirement accounts and life income funds

- 117.1**
- (1) The spouse of an owner spouse is entitled to have the spouse's proportionate share of a LIRA benefit transferred from the LIRA to the credit of the spouse.
 - (2) The spouse of an owner spouse is entitled to have the spouse's proportionate share of a LIF benefit transferred from the LIF to the credit of the spouse.
 - (3) If a LIRA benefit or a LIF benefit was transferred from a defined contribution account under a plan, the proportionate share that applies to the division of a benefit in a defined contribution account applies to the division of the LIRA benefit or the LIF benefit, as applicable.

- (4) If a LIRA benefit or a LIF benefit was transferred from a plan under which benefits are determined under a benefit formula provision, the proportionate share that applies to the division of a benefit under a benefit formula provision applies to the division of the LIRA benefit or the LIF benefit, as applicable.
- (5) The proportionate share that applies to the division of a LIRA benefit or a LIF benefit, as applicable, is determined under subsection (7) if
 - (a) the LIRA benefit or the LIF benefit was transferred from a hybrid plan, and
 - (b) the owner spouse was entitled under the plan text document to choose to receive benefits under
 - (i) the defined contribution provision of the hybrid plan,
 - (ii) the benefit formula provision of the hybrid plan, or
 - (iii) both the defined contribution provision of the hybrid plan and the benefit formula provision of the hybrid plan.
- (6) The proportionate share that applies to the division of a LIRA benefit or a LIF benefit, as applicable, is determined under subsection (8) if
 - (a) the LIRA benefit or the LIF benefit was transferred from a hybrid plan, and
 - (b) the owner spouse was not entitled under the plan text document to make a choice respecting the manner in which the owner spouse receives benefits under the hybrid plan.
- (7) The spouse of an owner spouse is entitled to elect one of the following as applicable to the division of a LIRA benefit or a LIF benefit:
 - (a) the proportionate share that applies to the division of a benefit in a defined contribution account applies to the division of the LIRA benefit or the LIF benefit;
 - (b) the proportionate share that applies to the division of a benefit under a benefit formula provision applies to the division of the LIRA benefit or the LIF benefit.
- (8) If the plan text document provided that the owner spouse would have received benefits
 - (a) under a defined contribution provision, the proportionate share that applies to the division of a benefit in a defined contribution account applies to the division of a LIRA benefit or a LIF benefit, and
 - (b) under a benefit formula provision, the proportionate share that applies to the division of a benefit under a benefit formula provision applies to the division of a LIRA benefit or a LIF benefit.

13 Section 118 is repealed.

14 *The following section is added:*

Applicability of Parts 5 and 6 to division of annuities

- 118.1** (1) If a spouse who purchased an annuity is not receiving payments under the annuity, Part 5 [*Property Division*] applies to the division of the annuity, unless an agreement or order provides otherwise.
- (2) If a spouse is receiving payments under an annuity, the provisions of this Part that apply to the division of benefits after pension commencement apply to the division of the annuity, unless an agreement or order provides otherwise.
- (3) If a member is receiving or is entitled to receive benefits under an annuity that was purchased by an administrator on behalf of the member, the provisions under this Part that apply to the division of benefits after pension commencement apply to the division of the annuity, unless an agreement or order provides otherwise.

15 *Section 122 is amended by repealing subsection (4) and substituting the following:*

- (4) A member's entitlement to disability benefits does not affect the manner in which other benefits under the plan are divided between the member and the member's spouse or the time at which those other benefits are divided.

16 *Section 124 (2) is amended by striking out "on the day before the death of the member" and substituting "as of the valuation date determined in accordance with the regulations".*

17 *Section 126 (2) and (3) is repealed.*

18 *The following section is added:*

Notice of assignments or orders respecting survivor benefits

- 126.1** (1) This section applies if
- (a) a member of a plan dies after pension commencement, and
 - (b) the spouse of the member is entitled to receive, or is receiving, survivor benefits.
- (2) The spouse or the personal representative of the member must give to the administrator notice of the agreement or order, in accordance with section 136 [*notice or waiver*], if
- (a) the spouse enters into an agreement to pay to another person all or part of the survivor benefits received by the spouse, or
 - (b) the Supreme Court orders the spouse to pay to another person all or part of the survivor benefits received by the spouse.

- 19 *Section 140 (3) is amended by striking out “may deduct a fee” and substituting “must deduct a fee” and by adding “unless the fee is paid by the member or the spouse, or both” after “benefits”.*
- 20 *Sections 144 (3) and 145 (5) (a) are repealed.*
- 21 *Section 193 is amended*
- (a) in subsection (2) (a) by striking out “or”,*
- (b) by repealing subsection (2) (b) and substituting the following:*
- (b) Part 5 [Property Division], except respecting a companion animal, ,*
- (c) in subsection (2) by adding the following paragraphs:*
- (c) Part 6 [Pension Division], or*
- (d) Part 8 [Children’s Property]. , and*
- (d) by adding the following subsection:*
- (2.1) For the purposes of subsection (2) (b) of this section, a reference in Part 5 to the Supreme Court includes the Provincial Court.*
- 22 *Section 246 is amended by adding the following paragraph:*
- (i.1) respecting the determination of valuation dates for the purposes of section 124 (2) [death of member or limited member]; .*
- 23 *Section 253 (1) and (3) is repealed.*

Transitional Provision

Transition – pre-existing proceedings

- 24 (1) In this section, “**pre-existing proceeding**” means
- (a) a proceeding, under the *Family Law Act*, respecting property division that was started before the date on which this Act receives Royal Assent, or
- (b) a proceeding, under the *Family Law Act*, to set aside or replace an agreement respecting property division that was made before the date on which this Act receives Royal Assent.

- (2) Unless the spouses agree otherwise,
- (a) section 81.1 of the *Family Law Act*, as enacted by this Act, does not apply respecting a pre-existing proceeding, and
 - (b) sections 85 and 96 of the *Family Law Act*, as those sections read immediately before the date on which this Act receives Royal Assent, continue to apply respecting a pre-existing proceeding.

Commencement

25 The provisions of this Act referred to in column 1 of the following table come into force as set out in column 2 of the table:

Item	Column 1 Provisions of Act	Column 2 Commencement
1	Anything not elsewhere covered by this table	The date of Royal Assent
2	Sections 1 and 2	By regulation of the Lieutenant Governor in Council
3	Section 5	By regulation of the Lieutenant Governor in Council
4	Sections 7 to 9	By regulation of the Lieutenant Governor in Council
5	Sections 11 to 14	By regulation of the Lieutenant Governor in Council
6	Sections 17 to 21	By regulation of the Lieutenant Governor in Council