

February 2014

## **New Wills, Estates and Succession Act Coming to BC – Application to Pension Plans**

[Lisa Chamzuk](#)

On March 31, 2014 the [Wills, Estates and Succession Act](#) will come into force in British Columbia (“WESA”). The primary purpose of WESA is to simplify and coordinate the current patchwork of legislation that applies to wills and estates. A laudable goal for sure, but for the administrators of “benefit plans” WESA has a very specific and important effect. WESA introduces new rules for the designation of beneficiaries and all administrators should familiarize themselves with those new rules to be sure they comply with the legislation when it comes into force.

This publication is designed to provide a high level summary of WESA as it applies to “benefit plans,” and to permit you to determine what questions you may want to ask and answer in order to be sure that your pension plan complies with the new legislation.

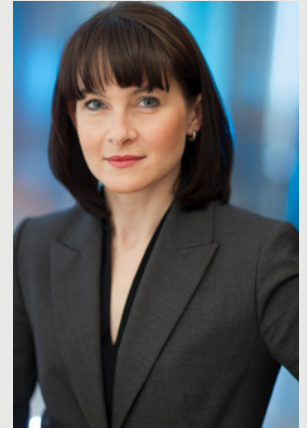
### **To what does WESA apply?**

WESA applies to all “benefit plans” regardless of when they were created. “Benefit Plan” is defined to mean:

- Any pension plan, retirement plan, welfare fund, profit-sharing fund, trust, scheme, contract or arrangement that exists for the benefit of employees or former employees of an employer;
- A fund, trust, scheme, contract or arrangement for the payment of annuity;
- A tax free savings account.

### **What does WESA do?**

- WESA gives the rights described below to members of a Benefit Plan regardless of whether the Benefit Plan itself gives those rights to the member.
- WESA applies in respect of a “Benefit” that is paid from a Benefit Plan, meaning a benefit payable on the death of the member. Therefore, WESA applies to a pre-retirement and post-retirement death benefit paid from a pension plan.
- For any Benefit payable from a Benefit Plan the member can:
  - Designate a person who will receive the Benefit;
  - Change any designation that is not irrevocable;
  - Designate multiple beneficiaries as well as alternate beneficiaries;



**Lisa Chamzuk**

604.631.6732

[lchamzuk@lawsonlundell.com](mailto:lchamzuk@lawsonlundell.com)



- Make an irrevocable designation of beneficiary which means that once the beneficiary has been designated the member cannot revoke that designation *without the beneficiary's consent*;
- Make a beneficiary designation in a will even if that designation is not on the form used by the plan (though an irrevocable designation may not be made in a will and may only be made using the form adopted by the plan administrator).
- WESA also provides certain clarifying and helpful rules:
  - WESA determines what happens if a beneficiary dies before the member (the Benefit is paid to the surviving beneficiaries unless an alternate has been designated);
  - WESA expressly states that payment of a Benefit to a Trustee of a beneficiary (such as where the beneficiary is a minor) fully discharges the plan administrator;
  - WESA expressly gives the plan administrator the right to set up any defence that would have been available to the administrator in respect of the member him or herself;
  - WESA expressly states that if an administrator pays a Benefit to the designated beneficiary the administrator is discharged from liability even if the administrator later receives a notice of change of designated beneficiary.

## What does WESA NOT do?

- WESA does not apply to contracts to which the *Insurance Act* applies.
- Most importantly, if WESA conflicts with another statute that other statute prevails. This means that the beneficiary designation rules set out above do not override the spousal priority rules in the *Pension Benefits Standards Act*. The WESA beneficiary designation rules only apply to the extent that the payment on death of a member is not required by statute to be paid to his or her spouse.

## What are the new obligations created by WESA for your pension plan?

1. Once WESA is in force your plan will have to accept multiple and alternate beneficiaries if sought by a member.

You should review the terms of your plan text and forms to make sure they are not inconsistent with WESA.

2. Once WESA is in force your plan will have to accept irrevocable beneficiary designations if sought by member.

WESA discharges the administrator from liability for paying a designated beneficiary from the plan even if the administrator later receives a notice of change of beneficiary. However, if the administrator allows a member to alter an irrevocable beneficiary designation contrary to WESA the administrator would have difficulty relying on this statutory protection. For that reason administrators are encouraged to consider adopting an administrative practice when a member makes an irrevocable designation to help ensure that designation is only altered as permitted by WESA.

3. If a member elects a guarantee period for his or her pension, the benefits that are paid in the remainder period will be "Benefits" for the purposes of WESA, and the member will be entitled to designate a beneficiary to receive those payments that remain in the guarantee period.

It would be prudent to review your current forms and practices to see if you have a means of accommodating this right if exercised by a member.



4. Once WESA is in force beneficiary designations made by the member in his or her will, will be valid.

You should consider whether you want to implement an administrative process to determine if a member had a will before you pay out a death benefit. You may want to ask for information about the member's estate before the benefit is paid. You may want to ask the executor for a copy of the will or obtain some assurance that no will exists before you pay out a benefit. There are sections in WESA that relieve the administrator of liability if the administrator pays the death benefit based on the designation on file, but you may want to adopt an administrative process that minimizes the chances of a dispute about entitlement to the benefit.

How your plan responds to WESA will depend on your current administrative processes, current language of your plan text and your forms. The level of inquiry and investigation in which you engage after WESA has come into force before you pay out a death benefit will depend on the types of death benefit issues you have seen in your plan's administration, the specific facts of the file and the specific obligations imposed by WESA.

Please contact [Lisa Chamzuk](#), 604.631.6732 for more information about the new legislation and how you can prepare your plan for its introduction.

Lawson Lundell LLP is a British Columbia Limited Liability Partnership. The information contained in this update is for general information purposes only. If you require legal advice or further information, please contact one of the lawyers listed above.

## Vancouver

Suite 1600, Cathedral Place  
925 West Georgia Street  
Vancouver, British Columbia  
Canada V6C 3L2  
(T) 604.685.3456  
(F) 604.669.1620



## Calgary

Suite 3700, 205-5<sup>th</sup> Avenue S.W.  
Bow Valley Square 2  
Calgary, Alberta  
Canada T2P 2V7  
(T) 403.269.6900  
(F) 403.269.9494



## Yellowknife

P.O. Box 818  
Suite 200, 4915 – 48 Street  
Yellowknife, Northwest Territories  
Canada X1A 2N6  
(T) 867.669.5500 Toll Free: 888.465.7608  
(F) 867.920.2206

