

### **Update on Payment of Pension Entitlement on Death Prior to Retirement**

Effective July 24, 2014, amendments to the Ontario *Pension Benefits Act* (PBA) reversed the October 31, 2012 decision of the Ontario Court of Appeal (Court) in *Carrigan v. Carrigan Estate* (Carrigan). This is welcome news because this eliminates the conflict between the standard view of spousal priority for pre-retirement death benefits and the Court's interpretation, returning to the standard.

Under the Court's interpretation a pre-retirement death benefit under Section 48 of the PBA was payable to the deceased member's designated beneficiary and not to the member's surviving common law spouse (as defined in the PBA) when the member also had a married spouse from whom he was separated but not divorced. Section 48 of the PBA has now been amended to provide that with respect to deaths on or after July 24, 2014, a surviving common law spouse once again has priority over the designated beneficiary. There are special transition rules if there is a death that occurs prior to July 24, 2014 and the Section 48 pre-retirement death benefit is paid on or after July 24, 2014. Mercer can assist plan administrators with these transition rules.

After Carrigan some plan administrators notified Ontario members that if they have a common law spouse and a married spouse from whom they are separated but not divorced, they may wish to consider naming their common law spouse as a beneficiary for the pre-retirement death benefit. Now an additional communication should be sent to notify members that their common law spouse again has automatic priority and no longer needs to be listed as the designated beneficiary to receive the benefit. Mercer can assist plan administrators with these communications.

While Carrigan did not deal directly with the mandatory 60% joint and survivor form of pension for members with a spouse, due to parallel wording in the PBA, Section 44 of the PBA was also amended to confirm the rights of a common law spouse.