

Should family law values be checked?

Since the new law for the valuation of pensions on marriage breakdown in Ontario took effect on January 1, 2012, BCH Actuarial Services has checked many family law values provided by plan administrators. Although the vast majority of values have been correct, errors do happen. We were recently involved in a case where we determined that the family law value provided by the pension plan administrator was incorrect; the family law value provided by the plan administrator was \$60,000 less than the correct value. When we brought this error to the attention of the plan administrator, they reviewed their calculations, quickly confirmed that there was an error and that they would provide a revised family law form.

Although the vast majority of values provided by pension plan administrators will likely be correct, given the value of many pensions, it may be prudent to have an actuary verify the family law value provided by the pension plan administrator prior to finalizing a separation agreement.



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The Family Law Value and the Special Allowance

The Special Allowance is a temporary bridge benefit that is paid prior to age 65 from the pension plans of the Big 3 automakers (i.e. GM, Ford and Chrysler) as well as the pension plans of certain other companies in the auto industry.

The Special Allowance is provided to members who retire with 30 years of credited service (i.e. 30 and Out). Under this provision, a member who has 30 years of credited service will have their pension increased to a fixed monthly amount, currently \$3,515 per month prior to age 65 for hourly employees of GM, Ford and Chrysler.

In addition, if a member retires prior to their earliest unreduced retirement date with 30 years of credited service, their pension will be re-determined (i.e. pops up) at age 65 to remove any early retirement reductions. This results in a member effectively having an unreduced pension from the plan after 30 years of credited service (i.e. they will receive \$3,515 per month until age 65 and then an unreduced lifetime pension from age 65).

It is a matter of interpretation of the regulations of the Ontario *Pension Benefits Act* as to whether or not the Special Allowance should be taken into consideration when determining the family value. Based on the information received so far this year, it appears that GM and Ford are excluding the Special Allowance from their family law values (with the exception of retired members) and Chrysler is including the Special Allowance for all members (although a portion of the Special Allowance may exceed income tax limits and would be excluded from the family law value).

If the Special Allowance is excluded by the plan administrator, this does not mean that it is not an additional family asset (this becomes a legal issue). The Special Allowance can be valued by an independent actuary and included as an additional family asset (the Special Allowance can often be worth \$50,000 or more). It is often not obvious if the special allowance has been included in the family law value or not, and as a result, an independent actuary may need to be consulted.



Federal Government Pensions

Federal government pension plans (i.e. Public Service Superannuation Act, the Canadian Forces Superannuation Act, RCMP, etc.) are not bound by the Ontario *Pension Benefits Act*.

The federal government pension plans permit an immediate lump sum division of a member's pension benefits pursuant to the *Pension Benefits Division Act* (the "PBDA"). The Maximum Transferable Amount (the "MTA") that is provided under the PBDA is not the same as the family law value that is specified by Ontario's *Family Law Act*; the *Family Law Act* in Ontario now specifies that the value of a person's pension on marriage breakdown must be calculated in accordance with the rules specified in the Ontario Pension Benefits Act. As a result, the MTA provided by the federal government is not the correct value to assign to a member's pension benefits on marriage breakdown.

There are many issues with using the MTA in place of the family law value of the pension. For example, the MTA is calculated using an entirely different calculation methodology than the family law value. The MTA is calculated at the time the value is requested, using current interest rates and the member's current age, not the member's age and interest rates at the date of separation as required by Ontario law. If the separation was many years in the past, the change in interest rates can have a significant impact on the value.

The MTA represents the maximum amount that can be paid from a federal government pension plan to assist in equalization. In some cases the MTA may be close to the family law value, however, in other cases the value may be significantly different. The only way to know how the MTA compares to the correct family law value is to have the family law value determined by an independent actuary.

Did you know?

Under the new Ontario law, a pension does not need to be divided; the parties can agree to equalize the pension using other assets. In fact, in order for the division to occur, the pension plan administrator needs a separation agreement or court order specifying the details of the division.



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