

# Pension Valuations and Collaborative Practice: The New Law in Ontario after 6 months.

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## What has happened so far?

- Starting to see imputed values from many different pension plans.
- Regulations require the value to be provided in 60 days - not all plans are abiding by this.
- The imputed value from the plan administrator is not adjusted for contingent income tax (this calculation will need to be done after).
- Difficulties are arising with the application for the imputed value since certified documents and signatures are required for both spouses – what if one spouse refuses to cooperate?

## Which plans are being valued by the administrator?

- All Ontario regulated pension plans must provide the value – visit the Financial Services Commission of Ontario (“FSCO”) website and use the pension plan look-up tool to check.
- The federal government is not providing values (federal civil servant, Canadian Forces, RCMP, etc.) – need to retain an independent actuary.
- The situation with federally regulated pension plans has been very unclear (i.e. banks, airlines, railways, etc.). From what I know so far (this list has been constantly changing):

Providing Imputed Value	Not Providing Imputed Value
Royal Bank, BMO, TransCanada Pipelines	CIBC, TD, CN Rail, Bell Canada, Canada Post, Bruce Power

## What about supplemental plans?

- Supplemental plans (i.e. SERPs, RCAs, Top-up) are payable when pension benefits exceed the maximum pension allowable under the *Income Tax Act*.
- These plans are not registered pension plans and not bound by the Pension Benefits Act so an imputed value does not need to be provided by the plan administrator.
- Many plans will not provide the imputed value (i.e. OMERS has confirmed that it will not provide an imputed value for its SERP and this will need to be valued by an independent actuary).
- From what I have been told, the Ontario Teachers' Pension Plan is only providing the value of the SERP to the member not the spouse (they believe there are privacy issues with disclosing to the spouse).
- Be very careful with high earners!

## Federal Civil Servant – What is the Normal Retirement Date?

- When an independent actuary values an active member's pension benefits in the federal PSSA, one of the commuted values needs to be determined assuming retirement at the member's normal retirement age – but this is not defined in the federal plan!
- It is most reasonably either age 60 or age 65.
- Age 60 is the age on which all members can receive an unreduced pension.
- However, age 65 is the typical normal retirement age for pension plans in Canada and many members of the federal PSSA work past age 60.
- This assumption can have a fairly large impact on the value (in my reports, I provide the imputed value under both ages).

## Ambiguity in the Regulations

- Ambiguity in the regulations is leading to varying interpretations among pension plan administrators.
- This is a typical situation in pension law where many of the details of commuted value calculations are left up to the discretion of the pension plan administrator.
- This is an undesirable situation in the family law context since a pension will be valued differently depending on the pension plan.
- Many plan administrators are asking for guidance from FSCO, but FSCO is the only the regulator...
- The problem is that FSCO and the plan administrators are viewing these issues from a pension perspective and not a family law perspective.

## Ambiguity in the Regulations – Interest/Mortality Rates

- The regulations require that the CIA commuted value standard be used (section 3500), as that section read upon being revised on June 3, 2010.
- This standard has been revised over the years with different formulas for determining the interest rates and different mortality tables.
- For an old separation date, should the June 3, 2010 standard be applied or the commuted value standard in effect at the date of separation?
- From what I understand, different pension plans are doing this differently – can have a very large impact on the value.

## Ambiguity in the Regulations – Ancillary Benefits

- Another example, the regulations only specify that value “A” must include vested ancillary benefits.
- Under the Pension Benefits Act, ancillary benefits include bridge benefits, joint and survivor benefits in excess of the minimum required, etc..
- Should vested ancillary benefits be excluded from all values except value “A”? How are different pension plans handling this?
- For non-Ontario regulated pension plans, how is an ancillary benefit defined for the purpose of the calculation (i.e. based on the definition for an Ontario plan?)



## Ad hoc pension increases in retirement

- Some pension plans provide ad hoc pension increases to members in retirement – these increases are not guaranteed.
- Under the prior law, the expected amount of the ad hoc increases in retirement was included in the value.
- Under the new law, any non-guaranteed increases in the last three years are indicated, but their value is not required to be included in the value.
- Most plans which provide non-guaranteed increases do not include their value when determining a commuted value.

## Ad hoc pension increases in retirement

- However, some plans are including ad hoc increases – HOOPP, for example, is including ad hoc non-guaranteed increases for post-2005 service in its imputed value (based on an assumption of increases of 75% of CPI).
- This is inconsistent and unfair between pension plans.
- Does this mean that the non-member spouse should always request a valuation of the non-guaranteed increases by an independent actuary when it is not included by the plan administrator?

## Special Allowance for Auto Workers

- Under the large auto worker plans (i.e. GM, Ford and Chrysler), members who retire with 30 years of service have their pension prior to age 65 increased to a fixed amount (currently \$3,515 per month for the Big 3). This increase is referred to as the “special allowance”.
- Although a member’s lifetime pension may be reduced when they retire with 30 years of service, the special allowance tops them up to a full pension and any reduction to their lifetime pension is removed at age 60, so they effectively have an unreduced pension.
- Is a member’s 30 year service date their earliest unreduced date when determining the imputed value or is it age 60?
- Should the special allowance be included as a bridge benefit or ignored?

## Special Allowance for Auto Workers

- This is an issue which is currently being decided by each pension plan administrator.
- From what I understand, GM is not including the special allowance in the imputed value.
- From earlier discussions with Chrysler, they indicated to me that they were likely to include the special allowance – I haven't seen an imputed value yet.
- Unsure about Ford and other plans with a special allowance.
- Possible significant inconsistency between plans (special allowance can be valuable).
- Should the special allowance be independently valued and included as a separate asset if excluded by the plan administrator?

## Contingent Survivor Pensions

- The commuted value standard of the Canadian Institute of Actuaries has the following clause:

*Where the plan provides a contingent benefit to a plan member's spouse and a change in the member's marital status after the valuation date is relevant to the determination of the commuted value, the actuary should make an appropriate assumption concerning the likelihood of there being an eligible spouse, and the age of that spouse, at the time of death.*

- The clause is included because this is a termination value standard, not the marriage breakdown standard.

## Contingent Survivor Pensions

- Effectively, the value of a possible future spouse's survivor pension may be included in the value of a member's pension on marriage breakdown. From a family law perspective, does this make any sense?
- The way in which this value is included is decided by the plan administrator.
- Possibly, this value is being excluded from all values but 'A' by some administrators since this is an ancillary benefit.
- Many pension plans assume a probability of an eligible spouse of approximately 80% when determining the commuted value.

## Defined Contribution Pension Plans – Retired Member

- When a member of a defined contribution pension plan retires and an annuity is purchased from an insurance company, the member effectively has a defined benefit pension.
- How is the pension valued? It is not an account balance at separation and would need to be actuarially valued.
- Who must provide the value? The original defined contribution pension plan administrator? The insurer? An independent actuary?
- What is the portion earned during marriage? Is the pro-rata on service approach used or is the account balance at the date of marriage subtracted?
- The regulations are silent on these issues.

## An Example

- Assume two spouses have similar valuable long service pensions (Joe and Jane).
- Both spouses are in their mid 50's.
- Assume that Joe retired just prior to the date of separation and Jane retired just after the date of separation.
- Jane will have a much lower imputed value since her value is partially blended based on an assumption of retirement age 65.
- On the other hand, Jane will have the imputed value of her survivor pension included in her assets (since she became entitled when Joe retired prior to separation).



## An Example - Continued

- What if the couple worked for a bank? Then Joe would be entitled to Jane's survivor pension since they were still married when she retired (the couple can be separated under federal law).
- However, Joe's survivor pension is not included in his assets under the regulations – the regulations only address the imputed value of a survivor pension for a member retired at separation.
- Worse yet, Jane may actually have Joe's survivor pension included in her assets since her imputed value may have been calculated based on an assumed spouse at retirement.
- If I were to value this pension (i.e. since it is federally regulated), I would provide all of the values and appropriate explanations so that the parties could decide.
- What if the plan administrator provides the value?

## Independent Actuarial Valuation

- Can an independent actuary be retained to value an Ontario regulated pension plan (i.e. small pension, need for quick settlement, etc.)?
- This is clearly not the intent of the law and FSCO specifically prohibits this on their website (but they are only the pension regulator).
- Certainly a division wouldn't be possible.
- There would be differences between the value provided by the independent actuary and the plan administrator (due to the various issues that require discretion). This will become less of an issue in time when the assumptions used by the plan administrator are known.

## Independent Actuarial Valuation

- I am willing to provide “qualified” valuations and require a waiver to be signed by both spouses acknowledging the issues with this approach.
- Whether this is an appropriate value to use in a settlement agreement is a legal issue.....if both spouses are informed and agree, is there a legal issue with using an independent valuation?

## Pensions in the Collaborative Context

- A collaborative case is an effective environment to deal with many of the issues that are arising with the new law.
- If the parties would like to resolve their property division quickly and not wait for the imputed value from the plan administrator, a collaborative meeting is an ideal environment to discuss the possibility of an independent valuation with both spouses.
- Although many issues that are arising have not been addressed in court, there is likely a “common sense” approach that could be agreed to by both parties in a collaborative case if the issues were clearly understood.
- For example, it likely makes sense to ensure the value a special allowance and non-guaranteed indexing is included in the member’s assets, or at a minimum, addressed when determining spousal support.

## Pensions in the Collaborative Context

- Another example is the case of a federal plan and spousal survivor benefits. In this situation, if a spouse became entitled to the survivor pension after separation (i.e. the couple was separated and not divorced at retirement), the imputed value of the survivor pension could be included in their assets and not factored into the imputed value of the member's pension.

Questions?

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