

Pensions on Marriage Breakdown Target Benefit Pension Plans and other Current Issues

May 13, 2015

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What is a Target Benefit Plan?

- The pension plan has a pension formula like a defined benefit pension plan – this promised pension is the “target”.
- The employer contributions to the plan are fixed like a defined contribution pension plan.
- Different from a typical defined benefit pension plan where the employer must make actuarially-required contributions.
- The plan can adjust member’s accrued pensions upward or downward based on the financial status of the plan, unlike a regular defined benefit plan where the formula is fixed.
- The pension earned under the plan “formula” is not guaranteed but is the “target”.

What is a Multi-Employer Target Benefit Plan?

- In a multi-employer target benefit plan, there are many different employers that participate and contribute for their employees.
- Historically these are union-negotiated pension plans.
- Common examples that you may come across include the IBEW Local 353 Pension Plan, the Labourers Fund of Central and Eastern Canada, the Multi-Sector Pension Plan, etc.
- Many of these plans have been extremely poorly funded in recent years and have had to cut benefits.

Proposed Single Employer & Non-Union Target Benefit Plans

- There has been a growing movement across Canada to change pension legislation to allow single employers and non-unionized employers to establish target benefit plans.
- This would allow an employer to offer a “defined benefit” pension plan, with fixed contributions like a defined contribution pension plan.
- Compared to a typical defined benefit pension plan, the target benefit plan shifts the financial risk from the employer to the plan member.
- New legislation has been introduced in many provinces to permit single employer target benefit plans.

Ontario Family Law Value & Target Benefit Plans

- There are potential issues with the Ontario family law valuation rules and target benefit plans.
- The Ontario family law valuation rules currently do not provide any exceptions for target benefit plans – a fixed family law value must be determined based on the “target” pension.
- If the former spouse is paid-out a family law value based on the target pension and the benefits are subsequently reduced, is this inequitable for existing plan members?
- Is it fair to reduce the family law value based on the current funding level of a target benefit plan even though the full target benefit may be provided to the member in the future?

IBEW Local 353 Pension Plan

- Was applying a reduction to the family law value for active members of approximately 50% based on the funding level of the plan.
- Complaints were made to FSCO – the plan has reversed its position for now (may change again, depending on changes in the law).
- The plan has sent out revised Statements of Family Law Value – the revised family law value is double the original value for many members.
- What about previously settled separation agreements?
- If the plan is in fact only 50% funded and future benefit reductions are likely, should the Ontario family law value be reduced?
- Certainly, it is questionable for the member to equalize the value of this pension based on the full family law value if the plan is only 50% funded and future benefit reductions are likely.

Unifor Graphical Pension Plan of Canada

- Announced at the end of 2014 that that all pensions in pay will be reduced by 35% and the accrued pension for active plan members will be reduced by 25% effective March 1, 2015.
- Re-issued all Statements of Family Law Value issued since 2012 to reflect reduction.
- The plan was holding-back a portion of any family law value transfer payable to a former spouse based on the funding ratio of the plan, to be payable within 5 years.
- After the benefit reductions, the remaining payment to the former spouse will be reduced or eliminated.
- Again, what about previously settled separation agreements?

Family Law Value and Target Benefit Plans – Going Forward

- With the introduction of new aspects of pension law to allow more target benefit plans, there could be changes which impact the Ontario family law value calculations.
- Benefit reductions in existing multi-employer pension plans have been fairly common recently.
- Be very careful when dealing with the family law value for a target benefit plan – perhaps additional wording in separation agreement addressing what will happen if there are future benefit reductions/increases?
- This is a developing area of pension law...

Family Law Value: Contingent Survivor Pension

- There appears to be an increased awareness of the “contingent survivor pension” included in many family law values.
- Contingent survivor pension reflects the value of the survivor pension payable to a possible future spouse at retirement and is included in the family law value of an non-retired member’s pension.
- Most plans assume a probability of a future spouse at retirement of 60% - 100%, so the family law value of a non-retired member includes 60% -100% of the value of a the survivor pension payable to a possible future spouse.
- If the pension is being equalized and not divided at source, it is becoming more common for the plan member to argue that the family law value should exclude the value of the “contingent survivor pension”.

Family Law Value: Contingent Survivor Pension

- I am not aware of any legal basis to exclude the value of the contingent survivor pension.
- An independent actuary can determine the family law value excluding the “contingent survivor pension”.

Overpayment: active members at separation who retire

- If a member is active at the date of separation and then retires, after which time their pension is divided with their former spouse – what happens with regards to their “overpayment” from retirement to pension division?
- Regulations are silent on this situation.
- Plan administrator can reduce the remaining pension payable to the plan member to recover the “overpayment”.
- Alternately, plan administrator can reduce the transfer to the former spouse to recover the “overpayment”.
- I have seen both methods used.
- Very important to know which method the plan will use and this needs to be taken into consideration in equalization or spousal support.

Questions?

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