

Ontario Pension Valuations on Marriage Breakdown Federally vs. Ontario Regulated Plans

October 21, 2015
Jamie Jocsak, FSA, FCIA

www.bchactuarial.ca

Provincially-Regulated Pension Plans

- All provincially-regulated pension plans will provide the Ontario family law value on request.
- If the member is employed in a province other than Ontario – likely the plan won't provide the Ontario family law value.
 - An independent valuation of the Ontario family law value by an actuary likely to be required.
- For a provincially-regulated pension plan, the only way to divide a pension at source for an Ontario member is using the FSCO forms/rules.
 - If the member was not receiving a pension at separation, a lump sum payment to the former spouse.
 - If the member was receiving a pension at separation, a separate pension to the former spouse.

Provincially-Regulated Pension Plans

- Technically, a spouse can only be entitled to a survivor pension if they are not separated at the date of retirement.
- I have seen a number of cases where the member completed the retirement option forms attesting that a separated spouse was their eligible spouse at retirement and the pension is payable with a survivor pension.
- What happens if the pension is then divided at source?

Federally-Regulated Private Pension Plans

- Companies that operate in federally-regulated industries (i.e. banks, airlines, etc.) are not bound by provincial pension legislation.
- In November of 2012, OSFI, the regulator for federally regulated pension plans released a statement on Ontario's new pension law. OSFI's statement indicated that federally regulated pension plans:
 - do have to provide the Ontario family law value if requested,
 - don't need to use the Ontario family law forms
 - are not bound by the maximum fees specified in the Ontario law.
- As a result of OSFI's statement, most federally-regulated pension plans will provide the Ontario family law value but not all (i.e. Bell Canada and NAV Canada will not provide the Ontario family law value).

Federally-Regulated Private Pension Plans

- For federally-regulated pension plans, the pension can be divided under the federal *Pension Benefits Standards Act*.
 - Very flexible and subject to each plan's only division policies.
 - Up to 100% of the pension can be assigned to the former spouse.
 - Generally speaking, the former spouse can always receive a separate pension actuarially adjusted to be payable for their lifetime.
 - If the member's pension is not in pay, a lump-sum transfer to the former spouse is typically also possible.
 - Often the plan administrator will do what is in the agreement – much more flexible than with the Ontario rules.

- The separating couple can decide to use either the federal *Pension Benefits Standards Act* division or, if the plan allows, the Ontario family law valuation rules.

Federally-Regulated Private Pension Plans

- Under federally-regulated pension plans, the pension can be divided at source regardless of whether the value is requested from the plan administrator (i.e. unlike the Ontario family law rules).
 - Can use an independent actuarial valuation of the Ontario family law value if there are time constraints, etc.
- For federally-regulated pension plans, a separated spouse at retirement can qualify for the member's survivor pension if they are not divorced and there is no common law spouse.
 - Problematic with the Ontario family law value rules which don't contemplate this situation.
 - A member who is active at separation and then retires will often have the value of the survivor pension included in their family law value even though the separated spouse may actually become entitled to this pension – be careful!

Federal Government Pensions

- This applies to federal civil servants, Canadian Forces, RCMP, MPPs, etc..
- The federal government will not provide the Ontario family law value.
- Federal government pensions can be divided under the *Pension Benefits Division Act* (the “PBDA”).
- A lump sum amount can be paid to the former spouse – the Maximum Transferable Amount (“MTA”), regardless of whether the pension is in pay or not.
- The MTA represents 50% of the value of the member pension earned during the relationship. A lesser amount can be paid to the former spouse.

Federal Government Pensions

- The former spouse cannot receive a separate pension from the plan.
- The MTA is determined at the current date, not the date of separation, and is based on a different calculation methodology than the Ontario family law value.
- These pensions need to be independently valued.
 - Sometimes the MTA is higher than the Ontario family law value, sometimes it is lower.
- Entitlement to a survivor pension is determined at death not at retirement.
 - A separated spouse can be entitled to the survivor pension if they are not divorced at death.

Federal Civil Servant – What is the Normal Retirement Date?

- When an independent actuary values an active member's pension benefits in the federal Public Service Superannuation Act, 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).

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 a family law value does not need to be provided by the plan administrator.
- Some plans will provide the Ontario family for a SERP and some will not (i.e. an independent valuation is required).
- Be very careful with high earners!

Questions?

jamie.jocsak@bchactuarial.ca

www.bchactuarial.ca