

# Dividing Pensions at Source in Different Jurisdictions

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Jamie Jocsak, FSA, FCIA

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# Provincially Regulated Pension Plans - Ontario Employee

- An employee who is an Ontario employee and is a member of a provincially regulated pension (i.e. registered in any province).
- Can request Statement of Family Law Value from pension plan administrator.
- Up to 50% of pension earned during relationship can be transferred to former spouse.
- For defined contribution pension plans, only option is a lump sum transfer to former spouse's LIRA.

# Provincially Regulated Pension Plans - Ontario Employee

- For defined benefit pension plans, if pension is not in pay at date of separation:
  - Only option is a lump sum transfer to former spouse's LIRA.
  - No possibility of monthly pension to former spouse.
  - Former spouse not eligible for survivor pension.
  
- I have seen cases where separation occurred before pension commencement, but former spouse is declared as eligible spouse at retirement...what are the implications of pension division?
  
- For lump sum transfer to former spouse's LIRA:
  - if % of family law value assigned to former spouse is specified in agreement/order, interest is automatically added from date of separation to date of payment.
  - If \$ of family law value assigned to former spouse is specified in agreement/order, interest is only added if specifically stated.

# Provincially Regulated Pension Plans - Ontario Employee

- For defined benefit pension plan, if pension is in pay at date of separation:
  - Only option is a monthly pension assigned to former spouse.
  - Pension assigned to former spouse ends on member's death.
  - Former spouse continues to be eligible for survivor pension unless cancelled by agreement/order.
- If former spouse predeceases member, the pension assigned to former spouse can revert back to member or continue to former spouse's estate depending on wording in agreement/order.

# Provincially Regulated Pension Plans - Ontario Employee

- Arrears adjustment increases pension paid to former spouse for 'missed' pension payments from date of separation to date of division:
  - Adjustment is automatic under regulations.
  - Some pension plans will ignore arrears adjustment (i.e. go-forward division) if specified in the order/agreement.
  - If pension plan will not ignore arrears adjustment, may require actuarial involvement.

# Provincially Regulated Pension Plans – Not Ontario Employee

- An employee who is an employee outside of Ontario and is a member of a provincially regulated pension (i.e. registered in any province).
- Employee's province of employment determines pension division rules (i.e. if province of employment is BC, BC pension division rules apply).
- Each province has its own pension division rules.
- No other province has rules similar to the Ontario family law value rules, but division is possible in all provinces.
- If it is an Ontario marriage breakdown and a defined benefit pension, Ontario family law value should be determined by independent actuary for NFP.

# Federally Regulated Pension Plans (Banks, Airlines, Rail, etc.)

- An employee who is an Ontario employee and is a member of a federally regulated pension (i.e. CIBC, Air Canada, CN Rail, etc.).
- Federal regulator, OSFI, opined that these pension plans should provide Ontario family law value for Ontario employees on request:
  - Some pension plans are ignoring OSFI and not providing Ontario family law value (i.e. Air Canada, Bell Canada, etc.)
  - Some pension plans are providing Ontario family law value using FSCO forms (i.e. Canada Post, CN Rail)
  - Some pension plans are providing the Ontario family law value but not using the FSCO forms (i.e. TD Bank, CIBC)
  - Difficult to keep track of!

# Federally Regulated Pension Plans (Banks, Airlines, Rail, etc.)

- These plans have their own pension division rules under the federal *Pension Benefits Standards Act*.
  - Up to 100% of pension benefits at time of assignment can be assigned to former spouse.
  - For most defined benefit pension plans, if pension is not in pay, former spouse can receive either lump sum transfer or lifetime pension from plan.
  - For most defined benefit pension plans, if pension is in pay, former spouse can receive a lifetime pension and keep their survivor pension or receive an actuarially converted lifetime pension.
  - A lot of flexibility in rules.
  - Some pension plans have specific policies that must be followed (i.e. Air Canada)
  
- For Ontario employees, many of these pension plans permit division under Ontario family law value rules or federal pension division rules.



# Federally Government Pension Plans (Civil Servant, Forces)

- Federal government defined benefit pension plans for civil servants, Canadian Forces, MPs, etc.
- These plans have their own pension division rules under the federal *Pension Benefits Division Act* (“PBDA”):
  - Only possible division option is lump sum transfer to former spouse’s LIRA up to Maximum Transferable Amount (“MTA”).
  - Same pension division for pension that is in pay or not in pay.
  - MTA is 50% of present ‘value’ of pension under PBDA.
  - MTA is not 50% of the Ontario family law value.
  - MTA is determined at current date, not date of separation.
  - Actual MTA is not known until date of pension division (i.e. all prior MTAs are estimates).
- If it is an Ontario marriage breakdown, Ontario family law value should be determined by independent actuary for NFP.

# US Pension Plans

- Do not follow Ontario family law valuation rules unless employment occurred in Ontario (i.e. some union/labourer plans).
- Generally pension division is possible, pursuant to a Qualified Domestic Relations Order (“QDRO”).
- QDRO requires judicial order in the US.
- If it is an Ontario marriage breakdown and a defined benefit pension, Ontario family law value should be determined by independent actuary for NFP.
- US Social Security:
  - Cannot be divided.
  - Very generous divorced spouse pension benefits for marriages over 10 years.
  - May need to be valued by independent actuary for NFP.

# UK Pension Plans

- Generally pension division is possible, but requires order of UK court.
- If it is an Ontario marriage breakdown and a defined benefit pension, Ontario family law value should be determined by independent actuary for NFP.

# LIRA/LIF

- Funds which originated from a registered pension plan.
- May require actuarial involvement to determine pre-marriage portion.
- Maximum transfer to former spouse is 50% of value (i.e. not 100% as is possible with regular RRSP/RRIF).

# Non-Registered Supplemental Pension Plans

- Used in Canada to provide pension benefits in excess of income tax limits for high earners or to provide generous pension plans.
- Since these are non-registered pension plans, not bound by pension standards legislation, no requirement to provide Ontario family law value.
- Some pension plan administrators will provide Ontario family law value voluntarily (i.e. OPG).
- Some pension plan administrators will not provide Ontario family law value (i.e. OMERS).
- This is a potential pitfall since it may not be obvious from the documentation provided that a non-registered supplemental pension exists and is being excluded.

# Questions?

[jamie.jocsak@bchactuarial.ca](mailto:jamie.jocsak@bchactuarial.ca)

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