

Step 1: Verify Jurisdiction of Pension

- Ontario regulated, most common, FSCO is the regulator. Can verify using FSCO pension plan look-up at <http://planinfoaccess.fSCO.gov.on.ca/>
- Provincially regulated outside Ontario. Applicable provincial regulator (i.e. FICOM in BC).
- Federally-regulated private pension plans (i.e. CIBC, TD, Air Canada, CN Rail, NAV CANADA, Canada Post, etc.). OSFI is regulator. Can verify using OSFI pension plan look-up at <http://www.osfi-bsif.gc.ca/Eng/wt-ow/Pages/swwr-rer.aspx>
- Federal government (i.e. federal civil servant, RCMP, Canadian Forces).
- Foreign pension plan (i.e. US or UK pension).
- Non-registered. No regulator. Common for supplemental or top-up pensions.

Step 2: Request Value/Information on Marriage Breakdown

Ontario Regulated

- Request Statement of Family Law Value (“FLV”) from pension plan administrator using FSCO forms.
- Can have a valuation done by an independent actuary for NFP purposes, but this will not allow the pension to be divided (i.e. the Statement of FLV has to be requested first to allow division). Normally independent valuation only done when timing is an issue (i.e. it takes 30-60 days to receive the Statement of FLV).

Provincially Regulated Outside Ontario

- Same as for Ontario regulated (i.e. use FSCO forms) if the pensionable employment occurred in Ontario. However, some of these pension plans may not know their responsibilities.
- If pensionable employment occurred outside of Ontario, the pension division laws applicable in the province of pensionable employment applies (i.e. do not use FSCO forms). Will need independent actuary to determine the Ontario FLV.

Federally Regulated Pension Plans

- Be careful with these plans!!!
- Some plans provide Ontario FLV on FSCO Statement of FLV (i.e. BMO/Bank of Montreal).
- Some plans will provide Ontario FLV on their own statement (i.e. TD).
- Some plans provide ‘adjusted’ incorrect Ontario FLV (i.e. NAV Canada).
- Some plans will not provide any value (i.e. Bell Canada).
- Some plans will provide a value that is not the Ontario FLV (i.e. Air Canada).
- Independent actuarial valuations of the Ontario FLV can always be done and the pension can be divided at source pursuant to the plan’s administrative policy/Federal PBSA pension division rules.

Federal Government Pensions

- Value provided by the government is the Maximum Transferable Amount pursuant to the Pension Benefits Division Act and is not the Ontario FLV.
- Maximum Transferable Amount is the maximum that can be transferred to the former spouse at the current date (i.e. not date of separation) and is not 50% of the Ontario FLV.
- Will need independent actuarial valuation of the Ontario FLV.

Foreign Pension Plans

- Will need independent actuarial valuation of the Ontario FLV.

Top-up to Canadian (federal or provincial or government) registered plan

- Some top-up plans will provide Ontario FLV (i.e. OPG).
- Most top-up plans will not provide an Ontario FLV and do not allow division of pension (i.e. OMERS).
- In most cases, will need independent actuarial valuation of the Ontario FLV.



Step 3: Deduction for Contingent Income Tax

- The 'marriage breakdown value' received from the pension plan administrator is always a pre-tax value.
- When entering a pension value on the NFP, a deduction for contingent income tax always needs to be applied to reflect the portion of pension lost to tax when received.
- A deduction for contingent income tax applies to defined benefit pension values, defined contribution pension values, RRSPs, DPSPs.
- A precise projection and calculation of an appropriate deduction for contingent income tax can be determined by an independent actuary
 - A small difference in the tax % applied to a large pension value makes a large difference (i.e. 1% of a \$1 million pension is \$10,000!)
- If a pension or RRSP transfer is being used to satisfy part or all of the equalization payment owing, an income tax gross-up is required: pension/RRSP transfer is pre-tax and equalization payment is after-tax.

Step 4: Keep an Eye Out for Pitfalls

Leaves and buybacks

- Especially problematic for federal government employees.
- Is the leave service included or excluded from the Ontario FLV?
- When was it paid for?
- What assets were used to pay for the service?

Missed survivor pension

- Member is active at separation and since retired.
- Is the former spouse eligible for the survivor pension?
- Not technically possible with Ontario-regulated pension plan (but it does happen), but is possible with federally-regulated pension plan.
- This asset can be easily missed.
- May require independent valuation.

Pension overpayment

- Member commenced pension after separation but before pension division.
- Agree to divide pension, but member was over paid since retirement (i.e. member should have received a reduced pension at retirement).
- Ontario FLV rules silent on treatment of overpayment to former spouse in this case.
- Some Ontario-regulated pension plans deduct overpayment from transfer to former spouse (i.e. OMERS) while others reduce member's remaining pension (i.e. FSCO guidance).
- The overpayment adjustment can be very significant if there is a long delay from retirement to pension division.

Pension payments in arrears

- Retired at separation.
- Agree to divide pension, by default, Ontario FLV rules consider member to be overpaid since separation (i.e. member should have received a reduced pensions since separation for division).
- Ontario FLV rules require automatic increase to pension assignment to former spouse, and reduction to member's pension, to reflect arrears.
- FSCO advising pension plans they can ignore this part of the regulations and perform a 'go-forward' division if specified in agreement or court order.
- Some Ontario-regulated pension plans will ignore the arrears adjustment if instructed to do so (i.e. OMERS, OTPP) others will not (i.e. typically smaller private sector pension plans).
- The arrears adjustment can be very significant if there is a long delay from separation to pension division.



Defined Benefit Pension Valuations on Marriage Breakdown in Ontario – Check List

High earning employees (i.e. annual employment of over \$150,000).

- Look for top-up, supplemental pension plans.
- Often not disclosed for private-sector companies.
- Also look for other employment benefits (i.e. stock options, RSUs, etc.)

Out of country service with employer (i.e. period of employment in US).

- Is the service recognized in the Canadian pension plan?
- If not, does the employee have separate pension entitlement in a foreign pension plan?

Transferred value of pension from pension plan, prior to separation

- Money is in a LIRA/LIF.
- Is there a pre-marital portion?
- This may need to be determined by an independent actuary.

Transferred value of pension from pension plan during marriage and then re-join pension plan

- When rejoin pension plan during marriage, transfer commuted value back into pension plan.
- Pre-marriage service may be ignored due to FSCO 'buyback' guidance indicating all service purchased during marriage is included in family law value.

Transferred value of pension from pension plan since separation, prior to equalization

- Pension plan will not provide Ontario FLV since benefits are no longer in the pension plan.
- Need independent actuarial valuation of the Ontario FLV.

Step 5: Pension Division Options

Ontario Regulated

- Pension not commenced at separation, only option is a lump sum transfer.
- Interest will be added to transfer amount to former spouse in agreement or court order if specifically stated or if a % of the FLV is assigned (i.e. otherwise no interest).
- Pension in payment at separation, only option is division of pension in pay.
- Survivor pension can be cancelled per agreement or court order, but this is sub-optimal if there is no increase in member's pension (i.e. loss of valuable survivor pension for no gain).

Provincially Regulated Outside Ontario

- Same as for Ontario regulated if the pensionable employment occurred in Ontario.
- If pensionable employment occurred outside of Ontario, the pension division laws applicable in the province of pensionable employment applies. Varying options depending on province.

Federally Regulated Pension Plans

- Some pension plans will follow Ontario rules, if requested.
- All pension plans will follow Federal PBSA rules and will typically allow:
 - Pension not commenced at date of division, lump sum transfer or separate lifetime pension for former spouse.
 - Pension commenced at date of division, division of pension, option to create a separation lifetime pension for former spouse (i.e. vs. dividing the member's lifetime pension and maintaining survivor pension).
 - Some pension plans allow commuted value transfer even after pension commencement.
 - Up to 100% of the member's pension can be assigned to the former spouse.
 - Flexible.



Defined Benefit Pension Valuations on Marriage Breakdown in Ontario – Check List

Federal Government Pensions

- Only division option is a lump sum transfer to former spouse up to the Maximum Transferable Amount.
- Former spouse cannot receive a pension from the plan.

Foreign Pension Plans

- Depends on jurisdiction.
- May be possible to divide pension, but the process can be onerous and require assistance of foreign lawyers.

Top-up to Canadian (federal or provincial or government) registered plan

- Practices vary from no division, to full commuted value/pension division options.
- Need to verify division options in each case.

Step 6: Optimize Equalization Strategy

- In all cases, pension does not need to be divided. Can be equalized using other assets.
- May be logical to divide pension if member has impaired mortality (i.e. lump sum transfer based on normal mortality).
- Defined benefit pension are very valuable and increasingly rare, so it may be desirable to try and keep the defined benefit pension intact as much as possible (i.e. commuting defined benefit pension to a lump sum value eliminates lifetime guarantee).
- For federally-regulated pension plans, carefully consider the option of having the former spouse receive a separate pension from the plan, often a better risk-management option than lump sum transfer.
- Consideration taxation of pension income in retirement.

