



## Trends

# THE GREAT DIVIDE

Ontario's new rules on the division of pensions upon marriage breakdown

BY DOUGLAS RIENZO

When Bill 133, the *Family Statute Law Amendment Act, 2009*, was introduced in 2008, it promised to reform the division of pensions on marriage breakdown in Ontario and introduce changes that had long been requested by both family law practitioners and pension plan administrators.

The legislation amended provisions in the *Family Law Act* (FLA) as well as the *Pension Benefits Act* (PBA), but much of the substantive content is contained in recently released regulations under the PBA: Regulation 287/11, Family Law Matters. Pension administrators should become familiar with these new rules and prepare themselves for changes that will come into effect on Jan. 1, 2012.

### The Old Rules

Currently, the division of a pension on marriage breakdown is not mandatory in Ontario. Pension value must be included in the member's calculation of his or her "net family property" for equalization purposes only if one of the spouses is seeking an equalization payment under the FLA. Even then, there is no requirement that the pension be divided. Common law spouses may also divide a pension upon the breakdown of a relationship—typically, by entering into a separation agreement.

There is currently no requirement for the plan administrator to provide spouses with a pension value estimate for marriage breakdown purposes. The spouses, therefore, must seek the advice of an actuary, which often leads to situations where each spouse retains an actuary at his or her own expense and then the parties fight over which valuation to use.

Further adding to pension division costs, the plan administrator must conduct a valuation to ensure that any portion of the pension assigned to the non-member spouse does not exceed 50% of the value accrued by the member during the spousal relationship.

Perhaps most problematic, if the spouse with the pension is still accruing benefits, the non-member spouse cannot receive a portion of the pension until the termination, retirement or death of the member. This leads to "if and when" settlement arrangements, whereby the pension is divided but the non-member spouse has to wait—sometimes for years—for his or her share.

### The New Regime

Two significant changes regarding valuation and settlement on marriage breakdown will be introduced on Jan. 1, 2012.


First, upon request from either spouse (or upon member request, when the parties are not married), plan administrators must

prepare a valuation of the pension benefits for marriage breakdown purposes. The valuation must be prepared in accordance with formulas set out in the new regulations, thus eliminating disputes over proper valuation methodology.

Second, if the member is still accruing pension benefits, the non-member spouse may receive a lump sum settlement out of the plan, thus allowing immediate division and eliminating the need for "if and when" arrangements.

To prepare for these changes, administrators should be aware of the plan transition rules in the new provisions, which essentially deem that pension division court orders and separation agreements entered into prior to 2012 must be administered in accordance with the old rules—even if the document is filed with the plan administrator after 2011. They

must also familiarize themselves with forms currently being finalized by the Financial Services Commission of Ontario and ensure that they are used without modification. Plan documentation should be reviewed to ensure that it permits the new immediate settlement option. Finally, administrators will need to decide whether or not to charge a fee for preparing the valuation, subject to the maximums outlined in the legislation.

For links to the relevant legislation and an FAQ outlining the changes, go to [fscso.gov.on.ca](http://fscso.gov.on.ca). 

### Fact File

**Douglas Rienzo** is a partner in the pensions and benefits department at Osler, Hoskin & Harcourt LLP [drienzo@osler.com](mailto:drienzo@osler.com)

#### EDUCATION

University of Toronto, B.Sc. and LLB

#### CAREER ACHIEVEMENTS

His article on trust law and pension surplus was cited in a Supreme Court of Canada pension case