



Benefits CANADA

New pension rules for marriage breakdown welcomed

Dean DiSpalatro | June 17, 2011



Ontario's new rules for dividing pensions on marriage breakdowns are a welcome development, Ian Edelist, pension practice leader at Eckler Ltd., said during an Association of Canadian Pension Management webinar this week.

Processing separation agreements tends to "make pension administrators cringe, but the new rules will help with that cringe factor," Edelist said, adding that the new regulations provide a framework to settle the ex-spouse's entitlement completely—and more quickly than under the current rules.

Edelist notes that pensions don't necessarily have to be divided from the pension plan itself. "Once an actuary is engaged to determine the value of a pension, this value gets thrown into the hopper of the family's assets, to be divided between the two spouses. The spouses can decide that the value of the pension will offset the value of some other family asset, so the member can keep 100% of the pension."

But sometimes the value of the pension is the family's largest asset, so dividing the pension becomes necessary.

Ontario's current framework doesn't allow money to be transferred to the ex-spouse unless the member has already left the plan, through termination, death or retirement. Separation agreements or court orders set out how the pension will be divided when the member leaves the plan. Ideally, these documents will clearly outline for pension administrators how to process and administer the ex-spouse's pension.

The problem is, in many cases, the documents aren't as clear as they ought to be. "Many don't describe what happens if the member or ex-spouse dies before retirement. Many say split the pension 50/50..., without saying what that means in terms of inflation protection," Edelist said.

Under the new rules, the value of the pension can still be settled outside of the plan, but deferred settlements are a thing of the past: the new rules will require an immediate settlement.

Edelist explains that where a member has not yet started his or her pension, the value will be "crystallized" at the marriage breakdown date, and the ex-spouse will have two choices on what to do with the pension.

Transfer it out to a locked-in vehicle such as a locked-in retirement account—just like a member can on termination—or to another registered pension plan if the plan allows transfers in.

If the plan permits it, the value provided to the ex-spouse can remain in the plan to his or her credit and presumably be paid out at some future point on an actuarially equivalent basis.

If the pension has already started when the breakdown occurs, the pension in pay is split. The pension may be revalued so that the member and the ex-spouse receive a pension based on their own life expectancy.

“The default position might be that the ex-spouse receives a pension while the member is alive; once the member dies, the ex-spouse’s pension stops and [he or she] will receive a survivor benefit of 60%. There’s a provision in the new regulations that allows the applicant to choose [instead] to have the pension based on their own life expectancy,” Edelist explains.

Edelist suggests a few steps pension administrators should take to prepare for the new rules.

First, speak to key service providers—particularly actuaries and lawyers—to get a firm handle on the finer points of the new rules. “There’s a lot of detail in the regulations you’re going to have to understand [in order] to implement the new rules,” he said.

Second, let plan members know about the new regulations in the next communication piece you send them. “Give them some highlights about how they should approach you, as the plan administrator, when they have a marriage breakdown, and whom they should contact when they have questions.”

Edelist notes that some of his clients have an administration manual for dealing with marriage breakdowns—a standardized process that helps “take away some of that cringe factor.” The manual may include a set of applications and forms that employees need to complete as they go through the breakdown process, and these applications and forms need to be updated.

“But you may wish to wait until the [Ontario] Superintendent [of Financial Services] releases the final forms” before making these updates, Edelist said.

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