



May 4, 2021

Caroline Blouin
Executive Vice President, Pensions
Financial Services Regulatory Authority of Ontario
5160 Yonge Street, 16th Floor
Toronto, ON M2N 6L9

Re: ACPM response to FSRA marriage breakdown guide

Dear Ms. Blouin:

The Ontario Regional Council (“**ONRC**”) of the Association of Canadian Pension Management (“**ACPM**”) wishes to contribute feedback on the recent Financial Services Regulatory Authority of Ontario (“**FSRA**”) draft guidance documents: *Administration of Pension Benefits Upon Marriage Breakdown*, No. PE02225INT.

ACPM is the leading advocate for plan sponsors and administrators in the pursuit of a balanced, effective, and sustainable retirement income system in Canada. We represent plan sponsors, administrators, trustees and service providers and our membership represents over 400 companies and retirement income plans that cover millions of plan members.

ACPM supports FSRA’s goal to be collaborative and to streamline pension plan administration. In that spirit, we offer the following comments and suggested edits to improve the clarity for plan administrators in compliance with their legal obligations.

3.4 Scope

We find the exception to the transition rule not clear regarding the rules that would apply if there is no equalization payment. We would suggest considering adding an example to help clarify this point for plan administrators.

3.5 Out of Province separations and Court orders

Multi-jurisdictional pension issues are often complex and frequently require legal review. We appreciate the effort to provide some guidance. Unfortunately, the example provided does not clearly show how this section should be applied. We understand that FSRA’s main concern is that pension earned in Ontario is divided based on Ontario rules, but we find that there is a disconnect between Section 3.5.5 and the prior sections 3.5.2, 3.5.3 and 3.5.4.

Section 3.5.5 indicates that the multi-jurisdictional agreement allows the family law rules and the pension division rules in the province of residence to apply to the entire pension regardless of where the pension was earned. However, Section 3.5.2 indicates that the first step is to identify the proper jurisdiction to determine the applicable legislation. If the pension was earned in multiple jurisdictions, according to section 3.5.3 pension assets are to be divided based on the rules of the jurisdiction and if part of the pension was earned in Ontario, Ontario's pension division process will apply. The example provided shows one move from Ontario to Alberta, which is a very simple example. Often there are multiple provinces involved and spitting the pension into various portions would require the confirmation of the dates worked in various provinces and would significantly complicate the process.

Section 3.5.4 clearly states that an out-of-province court order is not enforceable in Ontario without an Ontario order. It places the responsibility on the plan administrator to request an Ontario court order or domestic contract prior to making payment. This would cause additional time and cost to the member, former spouse and the plan administrator.

Out of province separations are complicated matters and difficult to summarize to cover most situations. We feel the guidance should include a note that these situations can be complex and consultation with experts in multi-jurisdictional pension law is advised prior to making payment of any pension assets earned in Ontario to ensure the proper legislation has been followed.

7.2 Calculation: preliminary value

The guidance in section 7.2.1.2 expects that as of December 1, 2020 administrators will use the CIA SOP effective on the Family Law Valuation Date rather than the date the completed application was received. Since we are well after the date of December 1, 2020, some sort of transition period should be allowed for administrators to implement this new guidance. Some might have already been processed under the old guidance and we expect that it would apply prospectively effective the date the new guidance is published.

In section 7.7.2, we feel independent actuaries should perform the family law value valuation after the member has transferred out membership and plan assets as the original plan administrators are discharged after the transfer under s. 42(11).

8.4.1 Adjustment / Revaluation after transfer or pension division

The language in section 8.4.1 of the guidance provides that an administrator cannot adjust a member's pension benefits after a family law value transfer to their former spouse until the member terminates employment and/or plan membership. It also states that the member's annual pension statement will not show any adjustment following the transfer. Corresponding language appears under "Step six" in the member guide.

While the final adjustment to a member's pension cannot be finalized until termination, administrators are able to provide a good estimate immediately following the family law value transfer to the former spouse. In our view, the estimated adjusted pension is the best possible information administrators can provide the member and is more useful to the member than the unadjusted amount.

Continuing to provide the member with their unadjusted pension amount on their annual pension statement could create confusion for the member.

We ask that the guidance and member guide be revised to make it clear that administrators can estimate the member's adjusted pension immediately following the transfer. We ask that FSRA indicate that administrators can choose to show the estimated adjusted pension amount rather than the unadjusted amount on the member's annual pension statement.

9.1.2 survivor benefits - Waiver of post retirement joint and survivor pension

We support the spirit of good plan administration, but we are unclear what practical steps or actions a plan administrator would take to ensure that retired members and their spouses have the necessary information to make the decision to waive the survivor pension. In the situation of a marriage breakdown, the member and spouse would both have independent legal representation and are required to complete FSCO Family Law Form 8 that includes the value of the survivor benefit as shown on the Family Law Value Summary.

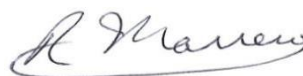
The form has clear language and bolded key words regarding the benefit they are waiving. Plan administrators are not privy to the details of non-pension assets or other agreed to terms in the separation agreement, so other than ensuring FSCO Family Law Form 8 is properly completed, signed and witnessed, it is unclear what additional obligation plan administrators would have.

In closing, we appreciate the opportunity to provide our comments and would be happy to discuss our comments or provide any further information that may be of assistance.

Sincerely,



Danelle Parkinson
Chair, Ontario Regional Council
ACPM



Ric Marrero
Chief Executive Officer
ACPM