

January 19, 2024

Andrew Fung, Executive Vice President, Pensions
Financial Services Regulatory Authority of Ontario
Via email: andrew.fung@fsrao.ca

Dear Mr. Fung,

Re: FSRA Consultation Paper: Potential FSRA Rule on Family Law Matters
Reference: 2023-014

We are pleased to provide OPB's submission in response to the Financial Services Regulatory Authority of Ontario ("FSRA") consultation paper, "Potential FSRA rule on Family Law Matters" (the "Consultation Paper"). We appreciate FSRA's efforts in putting together this consultation and its willingness to receive industry feedback on a possible rule governing family law matters (a "Family Law Rule").

About OPB

OPB is the administrator of the Ontario Public Service Pension Plan, a major defined benefit, single employer pension plan sponsored by the Government of Ontario. Our membership is made up of certain employees of the provincial government and its agencies, boards and commissions. With \$31 billion in assets, 47,647 active members, 40,986 retired members and 4,615 former members, the PSPP is one of Canada's largest pension plans. It is also one of the country's oldest pension plans, successfully delivering the pension promise since the early 1920s. Our commitment is to protect the long-term sustainability of the PSPP, invest assets astutely and with discipline, keep contribution levels stable and affordable and deliver exceptional service to our stakeholders.

Rule-making authority

OPB supports FSRA's use of its rule-making authority to fill in gaps and ambiguity in Regulation 287/11, *Family Law Matters* (the "Regulation") in a Family Law Rule. FSRA's guidance *Administration of pension benefits upon marriage breakdown* currently provides plan administrators with direction on various matters related to family law. We acknowledge that both the guidance and a rule may need to coexist alongside the Regulation, since the scope of FSRA's rule-making authority does not cover all aspects of family law matters. However, we

believe that binding rules over certain aspects of family law will provide plan administrators with greater certainty when it comes to the application of the law. More importantly, the exercise of FSRA's rule-making authority over aspects of family law matters would increase regulatory flexibility and agility in those areas, as the governing provisions could be amended without the need for changes to the Regulation.

If FSRA decides to create a Family Law Rule, OPB would support the "lift and shift" approach contemplated in the Consultation Paper, which would entail moving certain provisions from the Regulation into the Family Law Rule. Elements of the Regulation that are apt for transfer to a Family Law Rule include those that that would benefit from clarification (e.g., arrears, as discussed below) or that have been the subject of a judicial decision (e.g., *Heringer v. Heringer*, as discussed in the Consultation Paper), or requirements where the need for future flexibility is foreseeable (e.g., family law forms).

Payment of arrears – division and revaluation of a retired member's pension

We agree with the perception noted in the Consultation Paper that there is currently uncertainty regarding the division of a retired member's pension where spouses have made arrangements outside of the pension plan prior to the division of the pension. We recommend that any Family law Rule should include requirements that would provide clarity in this area.

We propose that any Family Law Rule should provide that where a separation agreement purports to divide a retired member's pension with effect from a date that occurs after the family law valuation date (i.e., on a go-forward basis), and explicitly provides that no arrears are to be paid, plan administrators do not include arrears in the division and revaluation of the retired member's pension. Conversely, where a separation agreement is silent as to arrears, the pension as divided will reflect arrears running from the family law valuation date or from any other effective date of pension division provided in the agreement. A rule to this effect will provide certainty to spouses regarding the treatment of arrears under the settlement agreement and streamline administration of the division.

Payment of interest on lump sum transfers

The Consultation Paper asked whether there is uncertainty as to when interest should be added on a lump sum transfer following the decision in *Heringer v. Heringer*. OPB's view is that the law in this regard is clear and generally well understood.

We would support the codification of the treatment of interest as described in *Heringer v. Heringer* in any Family Law Rule.

Family law forms

OPB supports the ability of plan administrators to use non-standard family law forms, which would provide administrators with greater flexibility, including the ability to create bespoke forms targeted to a pension plan's members through, for example, the use of terminology that is consistent with the plan's terms and communications. Plan-specific forms could also promote the use of plain language and the ability to auto-populate both plan and member information.

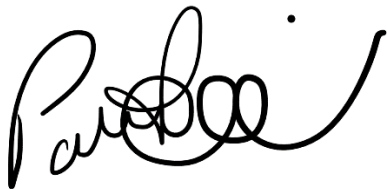
At the same time, a Family Law Rule should set out requirements governing family law forms to ensure consistency throughout the industry.

Conclusion

OPB supports FSRA's rule-making authority as a means of injecting clarity and reasonableness into the governing statutory framework, and of facilitating efficient, adaptive and targeted regulation. We commend a thoughtful and measured approach to rule-making that adheres to the intent of the legislative scheme and avoids any unintended outcomes.

Once again, thank you for the opportunity to comment on the FLV Rule consultation. Please contact me at patrick.simon@opb.ca or (416) 601-4234 if you have any questions.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Patrick Simon', with a stylized flourish at the end.

Patrick Simon
Manager, Policy & Procedures