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FAQs - Valuation and Division of Pension Assets on Breakdown of a Spousal Relationship

The rules for the valuation and division of pension assets upon breakdown of a spousal relationship came into effect on January 1, 2012. Since then, FAQs related to family law matters have been added or revised, as necessary. Each FAQ shows the date of posting.

As of March 19, 2015, the FAQs have been renumbered in order to streamline the content.

Archived FAQs are available under '[Archived Content](#)' of the website, under Family Law.

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Court Decisions

Welsh v. Ashley decision

Q50. On April 24, 2015, the Court of Appeal for Ontario (the 'Court') released its decision in [Welsh v. Ashley](#), which provided the former spouse of the deceased member 100 per cent of pre-retirement death benefit under the pension plan. This decision appears to conflict with the Ontario Pension Benefits Act (PBA), which provides that the former spouse is not entitled to more than 50 per cent of the pension benefit that accrued during the period of spousal relationship. Does this decision have an impact on the maximum that may be paid to the former spouse under the PBA as a result of a marriage breakdown?

A50. No. In the Financial Services Commission of Ontario (FSCO)'s view, the Court's decision is based on the unique provisions of the parties' Separation Agreement, and the determination of who the designated beneficiary was for purposes of the pre-retirement death benefit in light of a conflict between the Separation Agreement (which designated the former spouse as the sole beneficiary) and the beneficiaries on record under the pension plan (which were the deceased member's children).

The Court treated the beneficiary designation in the Separation Agreement as being effective, even though the member did not change the beneficiary information under the pension plan. Therefore, the former spouse ended up receiving 100 per cent of the pre-retirement death benefit since she was designated as the sole beneficiary under the Separation Agreement.


As this case dealt with beneficiary issues and the fact that the member did not have a new spouse on the date of death, the Court was not required to consider:

- the former spouse's maximum entitlement under the PBA as a result of marriage breakdown;
- the applicable family law regime (i.e., pre or post January 1, 2012 pension valuation and division rules); or
- any case laws related to division of family property (e.g., the Court's February 10, 2004 decision in *The Ontario Teachers' Pension Plan Board v. Superintendent of Financial Services et. al*, otherwise known as the '[Stairs case](#)').

Accordingly, the Court's decision has not changed the former spouse's maximum entitlement as set out in sections 67.3(6), 67.4(5) or 67.6(4) of the PBA, as applicable. -10/2015

Q51. If there is a settlement instrument made before January 1, 2012, that assigns an interest in the pension benefit to a former spouse, and the member dies before pension commencement, what is the priority of benefits? Is the former spouse's share of the member's entitlement (as set out in the parties' settlement instrument) limited by the maximum payment provision under section 67.6(4) of the Ontario Pension Benefits Act?

A51. Section 48(13) of the Ontario Pension Benefits Act (PBA) provides that payment to the member's former spouse in respect of a family law settlement must be dealt with first, i.e., before the payment of any pre-retirement death benefits under the pension plan.

When dealing with a settlement instrument (court order, family arbitration award or domestic contract) that was made before January 1, 2012, the former spouse's share for equalization purposes is limited to 50 per cent of the pre-retirement death benefit in accordance with section 67.6(4) of the PBA. The Court of Appeal for Ontario's February 10, 2004 decision in the '[Stairs case](#)'  remains the binding authority, which provided that the former spouse is not entitled to more than 50 per cent of the pension benefit that accrued during the period of spousal relationship.

Once the former spouse's share has been paid in satisfaction of the settlement, the plan administrator may then proceed with the payment of the remainder of the pre-retirement death benefit in accordance with the spousal and beneficiary information on record. Section 48 of the PBA sets out the priority of payment of the pre-retirement death benefit, first to any new spouse of the member on the date of death, and then to any designated beneficiaries.

If the member does not have a new spouse on the date of death, or if the member's new spouse has waived his or her right to receive a pre-retirement death benefit in accordance with section 48(14) of the PBA, then the remainder of the pre-retirement death benefit may be paid to the member's designated beneficiary (or beneficiaries), which may include the member's former spouse. If the member has not designated a beneficiary, payment will be made to the member's estate.

It is therefore possible, in cases where the member does not have a new spouse on the date of death, for his or her former spouse to be entitled to 100 per cent of the pre-retirement death benefit if the former spouse is named as the sole beneficiary; the former spouse will first receive his or her payment as set out in the settlement instrument, and the remainder as the beneficiary for the pre-retirement death benefit. -10/2015

Q52. If there is a settlement instrument made on or after January 1, 2012, that assigns an interest in the pension benefit to a former spouse, and the member dies before pension commencement, what is the priority of benefits? Is the former spouse's share of the member's entitlement (as set out in the parties' settlement instrument) limited by the maximum payment provision under section 67.3(6) of the Ontario Pension Benefits Act?

A52. Section 48(13) of the Ontario Pension Benefits Act (PBA) provides that payment to the member's former spouse in respect of a family law settlement must be dealt with first, i.e., before the payment of any pre-retirement death benefits under the pension plan.

When dealing with a settlement instrument (court order, family arbitration award or domestic contract) that is made on or after January 1, 2012, the former spouse's share for equalization purposes is limited to 50 per cent of the Family Law Value (imputed value) in accordance with section 67.3(6) of the PBA. An Application to Transfer the Family Law Value (FSCO Family Law Form 5) must accompany the settlement instrument in order for the plan administrator to pay the former spouse his or her share of the Family Law Value.

Once the former spouse's share has been paid in satisfaction of the settlement instrument, the plan administrator may then proceed with the payment of the remainder of the pre-retirement

death benefit in accordance with the spousal and beneficiary information on record. Section 48 of the PBA sets out the priority of payment of the pre-retirement death benefit, first to any new spouse of the member on the date of death, and then to any designated beneficiaries.

If the member does not have a new spouse on the date of death, or if the member's new spouse has waived his or her right to receive a pre-retirement death benefit in accordance with section 48(14) of the PBA, then the remainder of the pre-retirement death benefit may be paid to the member's designated beneficiary (or beneficiaries), which may include the member's former spouse. If the member has not designated a beneficiary, payment will be made to the member's estate.

It is therefore possible, in cases where the member does not have a new spouse on the date of death, for his or her former spouse to be entitled to 100 per cent of the pre-retirement death benefit if the former spouse is named as the sole beneficiary; the former spouse will first receive his or her payment as set out in the settlement instrument, and the remainder as the beneficiary for the pre-retirement death benefit.

[Note: If a separated member dies before settling his or her affairs, it is FSCO's view that section 67.2(6) of the PBA permits the former spouse who was married to the deceased member, to apply to a plan administrator for a Statement of Family Law Value (FSCO Family Law Form 4). The plan administrator should, upon receiving an Application for Family Law Value (FSCO Family Law Form 1) from the former spouse (or estate representative), process the application in accordance with section 67.2(8) of the PBA, and provide copies of the Statement of Family Law Value to both the former spouse and the estate representative, consistent with section 67.2(9) of the PBA.] -10/2015

Other Court Decisions:

- [Heringer v. Heringer decision](#)
- [Carrigan v Carrigan decision](#)

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Family Law related FAQs - Fees

Q100. Can a Plan Administrator charge a fee for calculating my Family Law Value?

A100. Yes, the Plan Administrator can charge a fee. The fee must not be more than the following amounts:


- \$200.00 for a pension plan that provides a defined contribution benefit to the Plan Member;
- \$600.00 for a pension plan that provides a defined benefit (which includes a target benefit) to the Plan Member;
- \$800.00 for a pension plan that provides a combination of a defined benefit and a defined contribution benefit or a benefit that is the greater of a defined benefit or a defined contribution benefit to the Plan Member.

The person applying for the Family Law Value must arrange to pay the fee. The cost does not have to be shared between the Plan Member and his or her spouse/former spouse. If the required fee is not paid, the Plan Administrator is not required to calculate the Family Law Value. Contact the Plan Administrator to find out the amount of the fee and how to make your payment (see instructions for Part B of the Application Form about contacting the Plan Administrator). – 12/2011


Q101. Is Harmonized Sales Tax (HST) included in the maximum fees?

A101. No. HST (if any) is not included in the maximum fees. -03/2012

Q102. Are plan administrators required to charge Harmonized Sales Tax (HST) on the maximum fees under section 23 of Ontario Regulation 287/11 (i.e. the fees to calculate the Family Law Value)?

A102. Plan administrators should contact the [Canada Revenue Agency](#)  to find out if HST must be charged. -03/2012

Q103. Can plan administrators charge a fee for the Application to Transfer the Family Law Value (FSCO Family Law Form 5) or the Application to Divide a Retired Member's Pension (FSCO Family Law Form 6)?

A103. No. Plan administrators may only charge a fee for providing the Statement of Family Law Value (FSCO Family Law Form 4A, 4B, 4C, 4D or 4E) (which includes the calculation of the Family Law Value). The fee, if any, must accompany the [Application for Family Law Value \(FSCO Family Law Form 1\)](#). The maximum fees are set out in section 23 of [Ontario Regulation 287/11](#) . -03/2012

For more information: [FAQs - Valuation and Division of Pension Assets on Breakdown of a Spousal Relationship](#)



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Family Law related FAQs - Forms

Q200. What do I have to do in order to get the Family Law Value of my spouse's/former spouse's pension assets?

A200. You will need to complete the [Application for Family Law Value \(FSCO Family Law Form 1\)](#). You may also need to complete the following form(s):

- [Joint Declaration of Period of Spousal Relationship \(FSCO Family Law Form 2\)](#) to provide proof of your separation date; and/or
- [Contact Person Authorization \(FSCO Family Law Form 3\)](#), if you want to appoint someone to communicate with the pension plan administrator on your behalf. [Note: If you complete the contact person information under Part C or Part D (as applicable) of FSCO Family Law Form 1, you will also need to complete FSCO Family Law Form 3.] -03/2012

Q201. Do I have to complete the contact person information (Part C and/or D) on the Application for Family Law Value (FSCO Family Law Form 1)?

A201. No. You only need to complete Part C and/or D of the [Application for Family Law Value \(FSCO Family Law Form 1\)](#) if you and/or your spouse/former spouse have appointed a contact person to communicate with the plan administrator on your behalf. -03/2012

Q202. Who can sign the Statement of Family Law Value (FSCO Family Law Form 4A, 4B, 4C, 4D or 4E) under the section called "Certification by the Plan Administrator or Plan Administrator's Agent or Representative"?

A202. The person (or entity) who signs the [Statement of Family Law Value](#) certifies this form on behalf of the plan administrator and must be authorized to do so in writing. This delegation should be documented in the plan governance documents. -03/2012

Q203. Can a plan administrator develop and use its own application forms related to the new family law regime under the new rules?

A203. No, all plan administrators must use the FSCO family law forms after January 1, 2012. These forms have been developed and are now posted on [FSCO's website](#). -12/2011

Q204. What forms have been developed by FSCO?

A204. FSCO has developed forms related to the new rules on the division of pension assets on breakdown of a spousal relationship. These forms will include:

- a form the spouses complete to ask the plan administrator to determine the value of the pension assets for family law purposes;
- forms that the plan administrator completes to show the value of the pension assets for family law purposes; and,
- other forms to support the election and payment of pension assets after the breakdown in the spousal relationship. -12/2011

Q205. Are these new FSCO family law forms to be filed with FSCO?

A205. No. None of these family law forms are to be filed with FSCO. -06/2011

Q206. My spouse/former spouse and I are both members of the same pension plan. Do we need to make two separate applications to get our Family Law Value?

A206. Yes, you will need to make two separate applications to get the Family Law Value for each pension and pay two separate fees (if any). -12/2011

Q207. I am the Plan Member and have a pension entitlement under more than one pension plan. Do separate Application Forms have to be filled out for each pension plan?

A207. Yes, separate Application Forms will have to be filled out and sent to the Plan Administrator for each pension plan along with the required documents and the fee (if any). -12/2011

Q208. Can I have my lawyer (or someone else) deal with the Plan Administrator on my behalf?

A208. Yes. You may authorize your lawyer or someone else to communicate and receive information from the Plan Administrator on your behalf. You provide your authorization by completing the Contact Person Authorization (FSCO Family Law Form 3) and sending it to the Plan Administrator. You must sign this Authorization Form (and any other required form).

If you want to change the person you have authorized as your contact person, you need to provide the Plan Administrator with another Contact Person Authorization (FSCO Family Law Form 3).

There may be situations where someone is authorized to act on your behalf through a power of attorney for property or a court order.

If you are acting on behalf of the Plan Member or the spouse/former spouse of the Plan Member under a power of attorney for property, you may complete the Application for Family Law Value (FSCO Family Law Form 1) and sign on his or her behalf. You must include a certified copy of the power of attorney for property with this Application Form. You must identify yourself under Part C or Part D of this Application Form (whichever applies).

If you are acting on behalf of the Plan Member or the spouse/former spouse of the Plan Member under a court order, you may complete the Application for Family Law Value (FSCO Family Law

Form 1) and sign on his or her behalf if you have been given this authority under the court order. You must include a certified copy of the court order with this Application Form. You must identify yourself under Part C or Part D of this Application Form (whichever applies). -12/2011

Q209. I only deal with my former spouse's lawyer. Is the Contact Person Authorization (FSCO Family Law Form 3) required from my former spouse?

A209. If your former spouse wants the Plan Administrator to communicate directly with his/her lawyer, your former spouse must complete the Contact Person Authorization (FSCO Family Law Form 3) in order to provide this authorization. -12/2011

Q210. I don't want to provide the Plan Administrator with my current mailing address. Is my telephone or cell number or e-mail address sufficient?

A210. The Plan Administrator is required by law to provide both you and your spouse/former spouse with a Statement of Family Law Value (FSCO Family Law Form 4). Contact the Plan Administrator to find out what alternate arrangements can be made in order for you to receive this Statement.

If you have a contact person, you also need to complete the Contact Person Authorization (FSCO Family Law Form 3) and send this form to the Plan Administrator. -12/2011

Q211. What is a "certified copy"?

A211. A "certified copy" is a copy of the original document that has been certified as being a true copy of the original document. Typically, people who provide certification include lawyers and notaries. Contact the Plan Administrator to find out if it will accept certified copies from other people (e.g. Human Resource personnel).

-02/2013

Q212. What happens if my spouse/former spouse and I agree to change either the starting date or the separation date (Family Law Valuation Date) of our spousal relationship after we receive the Statement of Family Law Value (FSCO Family Law Form 4) from the Plan Administrator?

A212. You or your spouse/former spouse must complete and send another Application for Family Law Value (FSCO Family Law Form 1) to the Plan Administrator along with all required documents and the fee (if any). The Plan Administrator will then provide you and your spouse/former spouse with the new Family Law Value based on the revised date(s).

You may want to get legal advice before making your decision. -12/2011

Q213. My spouse/former spouse and I completed Appendix A of the Application for Family Law Value (FSCO Family Law Form 1) and have provided two proposed separation dates (Family Law Valuation Dates). We have now agreed on our separation date, which is a different date than the dates that were provided in

Appendix A of that Application Form. Can I report our new separation date on this Application Form?

A213. No. The change in your separation date will require a new Family Law Value calculation. A new Application for Family Law Value (FSCO Family Law Form 1), accompanied by all required documents and the fee (if any) must be given to the Plan Administrator. -12/2011

Q214. When will I receive my share of the Family Law Value?

A214. The Plan Administrator has 60 days after receiving a complete application, including all required documents, to transfer your share of the Family Law Value in accordance with your chosen transfer option, subject to certain exceptions. -12/2011

Q215. What are the exceptions that could delay or reduce payment of my share of the Family Law Value?







A215. In some circumstances, the Plan Administrator may be limited in the amount that it can transfer to you under the Ontario Pension Benefits Act. These circumstances include wind up of the pension plan or if the transfer ratio of the pension plan is less than 1. If these limited circumstances apply to you, the Plan Administrator will let you know. -12/2011

Q216. When will I receive my share of the pension?

A216. The Plan Administrator has 60 days after receiving a complete application, including all required documents, to divide and pay you your share of the Retired Member's pension in accordance with your chosen option. -12/2011

Q217. I have specific questions pertaining to a form. Where can I find answers to my questions?

A217. Frequently asked questions pertaining to the forms are available at:

- [Qs & As for Form 1 - Application for Family Law Value](#) 
- [Qs & As for Form 2 - Joint Declaration of Period of Spousal Relationship](#)  Size: ## kb
- [Qs & As for Form 3 - Contact Person Authorization](#) 
- [Qs & As for Form 5 - Application to Transfer the Family Law Value](#) 
- [Qs & As for Form 6 - Application to Divide a Retired Member's Pension](#) 
- [Qs & As for Form 7 - No Division of Family Law Value/Pension Assets](#) 

-12/2011

Q218. When a plan administrator receives an Application for Family Law Value (FSCO Family Law Form 1), how long does the plan administrator have to provide the Statement of Family Law Value (FSCO Family Law Form 4) to both spouses?

A218. The plan administrator must give the Statement of Family Law Value to both spouses within 60 days after receiving a complete application in accordance with section 25 of Ontario Regulation 287/11.

In order to finalize property division, spouses often need to make an application to the court and set court dates. As a result, plan administrators should review all applications promptly in order to ensure that they are complete. If the application is incomplete, the applicant should be alerted in order that any potential delays may be taken into consideration when setting court dates.

Likewise, the applicant should confirm with the plan administrator that the application was received and complete before setting court dates. -03/2015

For more information: [FAQs - Valuation and Division of Pension Assets on Breakdown of a Spousal Relationship](#)



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Family law related FAQs - General

Q300. What is a domestic contract?

A300. A domestic contract is a written agreement between you and your spouse/former spouse that sets out the rights and obligations of you and your spouse/former spouse. Under the Ontario Family Law Act, domestic contracts include marriage contracts, separation agreements, cohabitation agreements and family arbitration agreements. To be enforceable your domestic contract must be signed by both of you and witnessed.

You may want to get legal advice before you and your spouse/former spouse enter into a domestic contract with each other. -12/2011


Q301. Must pension assets be divided on the breakdown of a spousal relationship?

A301. No. The division of pension assets on the breakdown of a spousal relationship is not mandatory under the Pension Benefits Act. -03/2015

Q302. Must pension assets be included in family property for purposes of equalization of net family property under the Ontario Family Law Act?

A302. Under the Ontario Family Law Act (FLA), the value of married spouses' pension assets must be included in family property for purposes of the calculation and division of net family property. However, there is no requirement under the FLA for common-law spouses to divide net family property (including the value of any pension assets) on breakdown of their spousal relationship. -03/2015

For more information: [FAQs - Valuation and Division of Pension Assets on Breakdown of a Spousal Relationship](#)

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Family Law related FAQs – Indexation

Q400. What is the difference between contractual indexation and ad hoc indexation?

A400. A pension plan that provides contractual indexation is one that gives its retired members regular or automatic cost of living increases calculated in accordance with a formula set out in the pension plan. The formula for such increases is generally based on a wage or price index.

A pension plan that provides ad hoc indexation is one that provides for discretionary increases only, with no guarantee of any future increases. Such plans must be amended each time an increase is to be provided to retired members.

The plan administrator is required to include information about indexation (contractual or ad hoc) in the Statement of Family Law Value (FSCO Family Law Form 4E) if it is provided under the terms of the plan.

-03/2015

Q401. Should the value of any contractual indexation be included in the Family Law Value?

A401. Yes. Indexation that is provided on a contractual basis under the pension plan is an integral part of a member's accrued pension benefit or a former member's deferred pension, and plan administrators must include the commuted value of contractual indexation in the Family Law Value. See FSCO policy - [Contractual Provision for Indexation](#) - for additional information.

-03/2015

Q402. If a pension plan provides for ad hoc indexation increases only, is the former spouse of a retired member entitled to any future increases on his or her share of the pension?

A402. Ad hoc increases granted before the Family Law Valuation Date are included in the Family Law Value and shared when the pension is divided. Any future ad hoc increases would only be added to the former spouse's share of the retired member's pension if it was provided for in the parties' settlement instrument (court order, family arbitration award or domestic contract). -03/2015

Q403. If a pension plan provides for contractual indexation, is the former spouse of a retired member entitled to any future increases on his or her share of the pension?

A403. Yes. Contractual increases payable on or after the Family Law Valuation Date are included in the Family Law Value. Therefore, any future increases would be added to the former spouse's share of the retired member's pension. -03/2015

For more information: [FAQs - Valuation and Division of Pension Assets on Breakdown of a Spousal Relationship](#)



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Family Law related FAQs - Interest - Payment to Former Spouse

(Q500 was archived on November 21, 2016)

(Q501 was archived on June 5, 2015)

Q502. Must a pension plan pay interest to a former spouse of a retired member when his or her share of the Family Law Value is paid out of the pension plan as a share of the retired member's pension?

A502. Yes. Section 39 of Ontario Regulation 287/11 provides that any lump sum arrears owing to the former spouse relating to his or her share of a retired member's pension, must be credited with interest from the Family Law Valuation Date to the date as of which the retired member's pension is divided.

The rate of interest is based on the average (over a reasonably recent period that does not exceed 12 months) of the yields of five-year personal fixed term chartered bank deposit rates as determined from the Canadian Socio-Economic Information Management System (CANSIM) series V122515. This CANSIM series is compiled by Statistics Canada and is available on the website maintained by the Bank of Canada. See section 38(4) of Ontario Regulation 287/11. -02/2014

Q503. When interest on pension arrears is paid by a pension plan to a former spouse of a retired member, does the interest amount paid to the former spouse reduce the retired member's pension?


A503. Yes. A former spouse's interest in a pension fund arises on the parties' Family Law Valuation Date (separation date). When the former spouse's arrears are calculated, interest is added and the total amount is paid out over the life of the retired member as a portion of the former spouse's share of the retired member's pension (i.e. arrears and interest are converted to pension payments rather than being paid as a lump sum). This arrears and interest amount is deducted from the retired member's share of the pension, reflecting the fact that the retired member received both his or her portion and his or her former spouse's portion of the pension from the Family Law Valuation Date to the date the pension was divided. See section 39(1) of Ontario Regulation 287/11. -02/2014

Q504. Must a pension plan pay interest to a former spouse of a member or former member when his or her share of the Family Law Value is expressed as a proportion (i.e. percentage) in the parties' settlement instrument (court order, family arbitration award or domestic contract)?


A504. Yes. If the former spouse's share of the Family Law Value is expressed as a proportion of the Family Law Value, the lump sum payment must be credited with interest from the Family Law Valuation Date (separation date) to the beginning of the month in which the lump sum is paid in accordance with section 30(4) of Ontario Regulation 287/11 (Regulation).

For defined benefits, the rate of interest is the same rate that is applied to calculate the preliminary value of the pension benefits or deferred pension as set out in section 30(5)2. of the Regulation. For defined contribution benefits, the rate of interest is calculated at such rate of return as can be reasonably attributed to the member's or former member's individual account (i.e., reflects the actual gain or loss of the individual account) as set out in section 30(5)1. of the Regulation. -03/2015

Q505. Must a pension plan pay interest to a former spouse of a member or former member when his or her share of the Family Law Value is expressed as a dollar amount in the parties' settlement instrument (court order, family arbitration award or domestic contract)?

A505. In accordance with the decision of the Ontario Superior Court of Justice in [Heringer v. Heringer, 2014 ONSC 7291](#) , effective December 17, 2014, if the former spouse's share of the Family Law Value is expressed as a dollar amount, the lump sum payment should be credited with interest only if the settlement instrument explicitly requires that interest is to be credited on the amount. -03/2015

For more information: [FAQs - Valuation and Division of Pension Assets on Breakdown of a Spousal Relationship](#)

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Family Law related FAQs – Locked-in Accounts

Q600. Are there any FSCO forms that must be used for the parties to request division of money held in Ontario locked-in accounts upon marriage breakdown?

A600. No, there are no FSCO forms to be used for money held in Ontario locked-in accounts, such as LIRAs (locked-in retirement accounts) or LIFs (life income funds). Check with your financial institution to see if they have their own forms to be used for this purpose. -03/2015

Q601. If money held in a LIF is to be divided upon marriage breakdown, what are the options available to the former spouse of a LIF owner?

A601. Generally, money held in a LIF (life income fund) cannot be transferred to a LIRA (locked-in retirement account), as described in FSCO's pension policy - [Schedule 1.1 Life Income Funds \(New LIFs\)](#). However, money that is transferred from an owner's LIF to the LIRA of a former spouse as part of a marriage breakdown property division settlement is an exception to this rule.

In the case of a marriage breakdown property division settlement, the former spouse may transfer his or her share of the LIF to a LIRA or to his or her own LIF. (Note: The earliest date a former spouse may buy a LIF is anytime during the calendar year before the year he or she turns 55 years of age.)

The former spouse may also transfer his or her share of the LIF to an insurance company to purchase a life annuity or to another pension plan registered under the pension benefits legislation in any jurisdiction in Canada or provided by a government in Canada if the administrator of the other plan agrees to accept the transfer. -03/2015

Q602. When I got divorced, I transferred my share of my former spouse's pension benefit to a LIRA. I am now remarried and would like to purchase a LIF. Do I need my new spouse's consent to purchase the LIF?

A602. No. You do not need your new spouse's consent to purchase the LIF (life income fund) since none of the money in your LIRA (locked-in retirement account) came from your own pension plan, but from the pension plan of your former spouse. -03/2015

Q603. If the pension assets were held in a LIRA or a LIF on the Family Law Valuation Date, what is the maximum share that may be transferred to the owner's former spouse?

A603. The former spouse's share cannot exceed 50 percent of the assets held in the LIRA (locked-in retirement account) or LIF (life income fund) determined as of the Family Law Valuation Date. The rules for the division of LIRA and LIF are set out in Schedules 3 and 1.1 to General Regulation 909, respectively. -03/2015

For more information: [FAQs - Valuation and Division of Pension Assets on Breakdown of a Spousal Relationship](#)



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Family Law related FAQs - Payment and Transfer Options Available to Former Spouses of Plan Members

Q700. I am the former spouse of a plan member. Am I entitled to receive immediate payment of my share of my spouse's pension assets?

A700. You are entitled to immediate payment of your share of the pension assets only if the new pension valuation and division rules that came into effect on January 1, 2012 apply to you. If the new rules do not apply to you, a "triggering event" must occur before you can receive payment for your share of the pension assets. A "triggering event" occurs when a plan member terminates employment or plan membership, reaches normal retirement age, retires, or dies (whichever event occurs first). -03/2012

Q701. I am the former spouse of a plan member. I am entitled to receive a locked-in lump sum payment with respect to my share of the pension assets. Can I receive my payment in cash (i.e., on an unlocked-basis)?

A701. You can only receive your payment in cash, if under the Ontario Pension Benefits Act:

- the pension plan member has a shortened life expectancy; or
- the payment qualifies as a "small amount" (provided this option is available under the plan terms).

If these situations do not apply to you, your share of the pension assets cannot be paid in cash and must be transferred to, and administered on a locked-in basis by, the financial institution that will hold the assets. The same locking-in rules apply under both the old and new pension valuation and division regimes.

(Note: The plan administrator will deduct tax on any amounts paid in cash.) -08/2012

Q702. Can a pension plan give a former spouse the option to leave his/her share of the Family Law Value in the pension plan?

A702. No, this option [provided under section 67.3(2)4 of the Ontario Pension Benefits Act (PBA)] cannot be provided to a former spouse at this time. It can only be made available under the terms of the pension plan if and when the government makes new regulations to support this section of the PBA. -03/2012

Q703. Can a pension plan provide transfer options (e.g. a transfer of a lump sum to a locked-in retirement account or life income fund) to the former spouse of a retired

member?

A703. No. The former spouse must receive his/her share of the retired member's pension in the form of pension payments from the pension plan. -03/2012

Q704. If a former spouse has a locked-in account as a result of a division of pension assets on the breakdown of a spousal relationship, when may the former spouse start receiving income from his/her own locked-in account to which the assets are transferred? Which rules apply?

A704. If the court order, family law arbitration award or domestic contract requiring a division of assets held in the locked-in account is made on or after January 1, 2012, the former spouse's ability to start receiving payment of income out of his/her own locked-in account can begin no earlier than the date on which he/she reaches 55 years of age. If the court order, family law arbitration award or domestic contract is made on or before December 31, 2011, the former spouse's ability to start receiving payment of income out of his/her own locked-in account will continue to be based on the former plan member's age. -12/2013

Q705. Can a plan administrator divide a retired member's pension without first receiving a complete Application to Divide a Retired Member's Pension (FSCO Family Law Form 6)?

A705. No. The plan administrator is not permitted to divide the pension until it receives a complete application from the retired member's former spouse. The application is complete when the plan administrator receives the following:

- a correctly completed Application to Divide a Retired Member's Pension;
- a certified copy of a court order, family arbitration award or domestic contract that provides for the division of the retired member's pension and that entitles the former spouse to a share of that pension; and
- any other document(s) as specified by the Plan Administrator under "Next Steps" of the Statement of Family Law Value (FSCO Family Law Form 4E).

The retired member must therefore continue to receive his or her full pension until such time as the plan administrator receives the complete application. Once the pension is divided, it must be revalued in accordance with section 39(1) of Ontario Regulation 287/11. -03/2015

Q706. Section 67.4(5) of the Pension Benefits Act states that a court order, family arbitration award or domestic contract cannot entitle the former spouse of a retired member to a share that exceeds 50 percent of the Family Law Value (imputed value) of the pension. However, after the pension is divided and revalued, our calculations show that the former spouse's share of the pension is more than the retired member's remaining share. Can we pay the former spouse a larger pension than the retired member?

A706. Yes. The 50 percent maximum payment rule under section 67.4(5) of the Pension Benefits Act (PBA) applies to the maximum share of the pension that may be paid to the former spouse as of the Family Law Valuation Date. When the payment of arrears and interest on the

arrears is added to the former spouse's share of the pension, it may exceed 50 percent of the retired member's share of the pension. -03/2015

For more information: [FAQs - Valuation and Division of Pension Assets on Breakdown of a Spousal Relationship](#)



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Family Law related FAQs - Pension Benefits That are Not Subject to the Pension Benefits Act

Q800. How do the new family law provisions of the Ontario Pension Benefits Act apply to Ontario employees of federally registered pension plans?

A800. Section 10.1(2) of the Ontario Family Law Act (FLA) provides that Ontario pension plan assets that are not subject to the Ontario Pension Benefits Act (PBA) must be valued, “where reasonably possible”, in accordance with section 67.2 of the PBA with “necessary modifications”. This would apply to federally registered pension plans.

For Ontario employees of federally registered pension plans who are subject to the federal [Pension Benefits Standards Act, 1985 \(PBSA\)](#) , the plan administrator must comply with the minimum legislative standards under the PBSA relating to vesting rules, transfer options, the maximum amount that may be assigned or paid to the former spouse, etc.

The [Office of the Superintendent of Financial Institutions](#)  (OSFI) regulates federally registered pension plans in Canada. [Issue 3 of OSFI’s InfoPensions](#)  newsletter explains [section 25 of the PBSA](#) , as it relates to the applicability of provincial property law to pension benefits and pension benefit credits under a private pension plan that is federally regulated. [Issue 8 of OSFI’s InfoPensions](#)  sets out OSFI’s expectations related to marriage breakdown and the applicability of the FLA to federally registered pension plans. Federal plan administrators and plan members may contact OSFI to get further information. -03/2015

Q801. How do the new family law provisions of the Ontario Pension Benefits Act (PBA) apply to Ontario employees who have benefit entitlements under Supplemental Employee Retirement Plans (SERPs)?

A801. Section 10.1(2) of the Ontario Family Law Act (FLA) provides that SERP assets must be valued, “where reasonably possible”, in accordance with section 67.2 of the PBA with “necessary modifications”.

SERPs are not usually subject to the PBA. Therefore, they are not regulated by Financial Services Commission of Ontario. Plan administrators are responsible for determining how section 10.1(2) of the FLA must be applied to their SERPs. SERP plan members should contact their plan administrator if they have any questions. -08/2012

For more information: [FAQs - Valuation and Division of Pension Assets on Breakdown of a Spousal Relationship](#)

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Family Law related FAQs - Pension Payable Upon Death

Q900. The former spouse of a retired member is receiving a share of the retired member's pension. What happens to the former spouse's share if the retired member dies before his/her former spouse?

A900. If the retired member dies before his/her former spouse, the retired member's pension, including payment of the former spouse's share, will end (subject to any guarantee period). If the former spouse did not waive the survivor pension, he/she will receive a survivor pension for the rest of his/her life. The amount of the survivor pension would normally be 60 per cent of the retired member's pension. -03/2012


Q901. The former spouse of a retired member elected the combination option and is receiving a pension from the plan. What happens to the former spouse's pension if the retired member dies before the former spouse?

A901. If the former spouse elected the combination option, the death of the retired member has no effect on the former spouse's pension. In this case, the former spouse will continue to receive a pension for the rest of his/her life.

Note: Under the combination option, the former spouse is paid an independent lifetime pension based on the sum of the former spouse's share of the retired member's Family Law Value, and the Family Law Value of the former spouse's survivor benefit. In accordance with section 67.4(10) of the Ontario Pension Benefits Act, the combination option is only available if:

- the former spouse is entitled to the joint and survivor pension; and
 - the pension plan provides this option.
- 03/2012

Q902. The former spouse of a retired member is receiving a share of the retired member's pension. What happens to the former spouse's share, if he/she dies before the retired member?

A902. The [Ontario Pension Benefits Act](#)  (PBA) does not address this issue. In the absence of a PBA requirement to continue paying the former spouse's share to the former spouse's estate, it is FSCO's view that the former spouse's share of the retired member's pension reverts back to the retired member unless the Settlement Instrument (court order, family arbitration award or domestic contract) that was filed with the [Application to Divide a Retired Member's Pension \(FSCO Family Law Form 6\)](#) requires payment to continue to the former spouse's estate during the retired member's lifetime. -03/2012

For more information: [FAQs on Valuation and Division of Pension Assets on Breakdown of a Spousal Relationship](#)



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Family Law related FAQs - Preliminary and Family Law Value (Imputed Value) Calculations

Q1000. What is the Preliminary Value?

A1000. The Preliminary Value is the total value of the pension that was earned by the plan member during the period of his or her plan membership up to the Family Law Valuation Date (separation date).

-03/2012

Q1001. What is the Family Law Value?

A1001. The Family Law Value is the "imputed value" under section 67.2(5) of the [Ontario Pension Benefits Act](#) . The Family Law Value is the portion of the Preliminary Value that relates to the period of the spousal relationship. -03/2012

Q1002. On the Family Law Valuation Date, an individual was either an active member or a former (deferred vested) member of the pension plan. However, between the Family Law Valuation Date and the settlement/payment date, the individual retired and is receiving a pension from the pension plan. How is the former spouse's share of the Family Law Value to be determined and what are his or her payment options?

A1002. Neither the Ontario Pension Benefits Act nor Ontario Regulation 287/11 explicitly addresses the issues that arise when a member's status changes between the Family Law Valuation Date and the settlement/payment date. The member's status on the Family Law Valuation Date determines how the former spouse's share of the Family Law Value is to be calculated, including the options that are available to the former spouse. If the member was not retired as of the Family Law Valuation Date, the only option that is available to his or her former spouse is a lump sum transfer from the pension plan.

Once the former spouse's share of the Family Law Value has been transferred out of the pension plan as a lump sum, the adjustment to the retired member's pension should be based on section 33 of Regulation 287/11 with respect to the initial reduction and section 39 of Regulation 287/11 with respect to converting the arrears into pension instalments. -02/2014

(Q1003 and Q1004 have been archived - August 2016)

Q1005. When calculating the preliminary value of a pension benefit, deferred pension or pension, what married assumption should a plan administrator apply?


A1005. When calculating the preliminary value of a pension benefit or deferred pension (i.e. for a member who has not retired as of the Family Law Valuation Date), the plan administrator should use the same married assumption that is used to calculate the commuted value for the pension plan as a whole. In other words, there should not be a separate married assumption for marriage breakdown calculations. For example, if the commuted value calculation under the plan assumes that 70 per cent of members will be married and 30 per cent of members will be single, then the same assumption should also be used for marriage breakdown calculations. If a pension plan uses the actual marital status of a plan member when determining the married assumption for commuted value calculations, i.e. 100 per cent married for a married member and 0 per cent married for a single member, the pension plan should assume that the member is married when calculating the preliminary value in order to reflect the value of the member's pension as a family asset accrued during the marriage, consistent with the Ontario Family Law Act.

When calculating the preliminary value of a retired member's pension, the pension plan should assume that the retired member was married on the Family Law Valuation Date, in order to reflect the value of the retired member's pension as a family asset accrued during the marriage, consistent with the Ontario Family Law Act. -02/2014

Q1006. Should the Preliminary Value of an active member's pension benefit include survivor benefits?

A1006. Yes. In FSCO's view, the Preliminary Value of an active member's pension benefit must include the value of any survivor benefit that is payable upon the death of the member after retirement. For example, if the normal form of pension under a pension plan is a joint and survivor pension, an assumption should be made as to the probability that the survivor pension will become payable when calculating the Preliminary Value. -03/2012

Q1007. If there is a guarantee attached to the joint and survivor pension, should the value of the guarantee be included in the retired member's Preliminary Value or in the former spouse's Preliminary Value?

A1007. Sections 9(2)(b) and 10(2) of [Ontario Regulation 287/11](#)  state that the value of any pension payable to the former spouse on the death of the retired member is excluded from the retired member's Preliminary Value and included in the former spouse's entitlement.

The Preliminary Value of the survivor benefit is based on the lifetime pension that would be payable to the surviving spouse. Therefore, it is FSCO's view that if there is a guarantee attached to the survivor benefit, the value of the guarantee must also be included in the former spouse's Preliminary Value.

-03/2012

Q1008. If the pension-in-pay to the retired member is not a joint and survivor pension (i.e. there is no survivor benefit) but there is a guarantee attached to the pension and the spouse is the beneficiary of that guarantee, should the value of the guarantee be included in the retired member's Preliminary Value or in the former spouse's Preliminary Value?

A1008. If there is no survivor benefit, the pension payable to the former spouse (i.e. as the plan member's beneficiary) would not be a lifetime pension. Therefore, in FSCO's view, if there is no survivor benefit, the value of the post-retirement guarantee should be included in the retired member's Preliminary Value regardless of whether or not the former spouse is the beneficiary of the guarantee.

-03/2012

Q1009. When calculating the Preliminary Value for an active member under section 6 of Ontario Regulation 287/11, should the commuted value of bridging benefits be included in the factor "B" calculation for pension plans that provide an age 60 normal retirement date with bridging benefits payable to age 65?

A1009. Yes. Although there is no specific reference to bridging benefits under factor "B" in the Preliminary Value formula (since for most plans the normal retirement date is age 65 at which time bridging benefits would not generally apply), the legislation still requires factor "B" to be calculated in accordance with the specific terms of the pension plan. Therefore, for pension plans with an age 60 normal retirement date, factor "B" must include the commuted value of any bridging benefits. -03/2015

(Q1010, Q1011, Q1012 and Q1013 have been archived – January 2021)

For more information: [FAQs - Valuation and Division of Pension Assets on Breakdown of a Spousal Relationship](#)



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Family Law related FAQs - Purchased Pension Credits (Buybacks & Transfers)

Q1100. Is the Family Law Value required to include the value of credited service purchased through buybacks and transfers into a pension plan (e.g. in cases of a purchase and sale or other divestment situation)?

A1100. Ontario Regulation 287/11 does not specify how purchased pension credits must be valued upon the breakdown of a spousal relationship. It is FSCO's view that purchased pension credits should be treated differently based upon how they were purchased. FSCO's position on three common and specific scenarios is provided below.

(i) Buybacks of Credited Service

Money transferred into a pension plan in order to purchase credited service related to absence periods or pre-membership periods is referred to as a "buyback" in the pension industry. Buybacks can be purchased with cash, or by transferring money from a locked-in account, a registered retirement savings plan, or from another registered pension plan. It is FSCO's view that the key consideration in determining whether a buyback must be included in the Family Law Value is the date the pension credit was purchased. If the purchase falls within the period of the spousal relationship, it should be included in the Family Law Value. This is true whether or not the period of credited service relating to the buyback predates the period of the spousal relationship.

(ii) Transfers Under Sections 80 and 81 of the Ontario Pension Benefits Act (PBA)

If money is transferred into a pension plan in connection with a purchase and sale or other divestment situation (section 80 of the PBA) or in connection with the adoption of a new pension plan (section 81 of the PBA), and as a result the service under the original pension plan is credited to the member under the successor pension plan, the PBA deems the service/membership to be continuous from the original pension plan to the successor pension plan. The pension accrual and spousal relationship periods continue unchanged in these circumstances and the date of transfer is irrelevant.

(iii) Reciprocal Transfers Under Section 21 of the PBA

Similar to a transfer of money into the pension plan under section 80 or 81 of the PBA, if money is transferred into a successor pension plan under a reciprocal transfer agreement that has been filed with FSCO, the service is deemed to be continuous from the original pension plan to the successor pension plan. The pension accrual and spousal relationship periods continue unchanged in these circumstances and the date of transfer is irrelevant. -03/2012

For more information: [FAQs - Valuation and Division of Pension Assets on Breakdown of a](#)

Spousal Relationship



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Family Law related FAQs - Transitional Rules

Q1200. Who do the new pension valuation and division rules apply to?

A1200. To divide pension assets, spouses whose relationship has broken down need to obtain a Settlement Instrument (court order, family arbitration award, or domestic contract) providing for the division.

All spouses whose relationship breaks down and whose Settlement Instrument is made on or after January 1, 2012, are subject to the new pension valuation and division rules.

Spouses whose Settlement Instrument was made before January 1, 2012 are subject to the old pension valuation and division rules unless their Settlement Instrument did not deal with the pension assets.

For example:

The parties separated in 2009. The pension assets were valued by an independent actuary. The parties have a Settlement Instrument made in December of 2011 that dealt with everything including division of the pension assets. The parties are subject to the old rules.

The parties separated in 2009. The pension assets were valued by an independent actuary. The parties were unable to settle and a court date could not be obtained until January 2012. The parties are subject to the new rules. [Note: This means that the parties must apply for a Family Law Value from the plan administrator before the pension assets can be divided pursuant to the court order (or another Settlement Instrument).] -03/2012

Q1201. Can we change our Settlement Instrument (court order, family arbitration award or domestic contract) so that the new pension valuation and division rules apply to us?

A1201. If your Settlement Instrument did not deal with the pension assets, it can be changed to fall under the new pension valuation and division rules.

If your Settlement Instrument dealt with the pension assets, it cannot be changed. -03/2012

Q1202. What does "dealt with the pension assets" mean?


A1202. "Dealt with the pension assets" means your Settlement Instrument (court order, family arbitration award, domestic contract) made before January 1, 2012, provided for the division of the pension assets or for a final settlement that included the value of the pension assets without requiring their division.

If you and your spouse are affected by the family law transition rules, you should consult with your lawyer and the pension plan administrator to determine how these changes affect you. The pension plan administrator is responsible for determining whether the old or new pension valuation and division rules apply to your Settlement Instrument. Since Settlement Instruments may not always be clear, the pension plan administrator may need to consult with its own lawyer before making this decision. -05/2012

Q1203. I have a pension benefit that is subject to the Ontario Pension Benefits Act. My spouse and I have a Settlement Instrument (court order, family arbitration award, or domestic contract) made in 2012. Can I get the Family Law Value from an independent actuary or do I have to get it from the plan administrator?

A1203. Under the new pension valuation and division rules, the Family Law Value must be calculated by the plan administrator. -03/2012

Q1204. I had my pension benefit valued by an independent actuary. However, my spouse and I were not able to finalize our Settlement Instrument (court order, family arbitration award, or domestic contract) by December 31, 2011. Do I need to have my pension benefit valued again by my plan administrator?

A1204. Yes. If your Settlement Instrument is made after December 31, 2011, the new pension valuation and division rules apply to you. Therefore, your pension benefit must be valued by the plan administrator using the formulas set out in [Ontario Regulation 287/11](#) . Note that the value calculated by the plan administrator may be different from the value that was calculated by the independent actuary. -03/2012


Q1205. If the old rules apply to the breakdown of a spousal relationship, can the former spouse request an immediate payment of his or her share of the pension assets when the new rules come into effect?

A1205. No, there will be no retroactive application of the new rules. This means that the former spouse will have to wait until the plan member terminates employment or plan membership, retires, dies or reaches the normal retirement date under the pension plan (whichever event occurs first) before the former spouse can receive his/her share of the pension assets. -06/2011

Q1206. Can a plan administrator choose not to provide the calculations related to family law matters?

A1206. No, the plan administrator does not have a choice. Effective January 1, 2012, the plan administrator must provide the calculations on breakdown of a spousal relationship as required by the Pension Benefits Act and regulations. -06/2011


For more information: [FAQs - Valuation and Division of Pension Assets on Breakdown of a Spousal Relationship](#)

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Family Law related FAQs - Waiver of Joint and Survivor Pension

Q1300. Under the new pension valuation and division rules, can a former spouse of a retired member waive his/her right to the joint and survivor pension after retirement?

A1300. Yes, but only in cases where there has been a breakdown in a spousal relationship in accordance with section 67.4(8) of the [Ontario Pension Benefits Act](#) .

The waiver must be included in the spouses' Settlement Instrument (court order, family arbitration award, or domestic contract). -03/2012

For more information: [FAQs - Valuation and Division of Pension Assets on Breakdown of a Spousal Relationship](#)

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