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## New FSCO Pension Forms Due to Amended Definition of "Spouse" Under the Pension Benefits Act (Form 1, Form 3, Form 4, Form 5, Form 6, and Form 6.1)

### Archived Content

The following content is not accurate as of January 1, 2017.

It is provided for historical reference.

Effective June 13, 2005, Bill 171, the Spousal Relationships Statute Law Amendment Act, 2005 (S.O. 2005, c. 5) amended the definition of "spouse" under the Ontario Pension Benefits Act (PBA) to include same-sex spouses in addition to opposite-sex spouses. Effective that day, Bill 171 and Ontario Regulation 324/05 also removed all references to "same-sex partner" that were found in the PBA and Regulation 909 made under the PBA.

As a result of these legislative changes, FSCO has revised a number of the FSCO pension forms approved by the Superintendent of Financial Services for use under the PBA. The revised FSCO pension forms are required to be used by pension stakeholders effective June 13, 2005.

The revised FSCO pension forms (and/or related instruction guides) are:

- [Form 1](#) - Application for Registration of a Pension Plan  
[Instructions for completing Form 2](#) - Annual Information Return (but not the Form 2 itself)
- [Instructions for completing Form 2.1](#) - Pension Benefits Guarantee Fund Assessment Certificate (but not the Form 2.1 itself)
- [Form 3](#) - Waiver of Joint and Survivor Pension
- [Form 4](#) - Waiver of Pre-retirement Death Benefit
- [Form 5](#) - Application to a Financial Institution to Withdraw Money from an Ontario Locked-in Retirement Account, Life Income Fund or Locked-in Retirement Income Fund
- [Instructions for completing Form 5](#)
- [Form 6](#) - Application to the Superintendent of Financial Services for Consent to Withdraw Money from an Ontario Locked-in Retirement Account, Life Income Fund or Locked-in Retirement Income Fund Based on Financial Hardship
- [Instructions for completing Form 6](#)
- [Form 6.1](#) - Application to the Superintendent of Financial Services for Consent to Withdraw Money from an Ontario Locked-in Retirement Account, Life Income Fund or Locked-in Retirement Income Fund Based on Low Income Financial Hardship
- [Instructions for completing Form 6.1](#)

Obtain copies of the revised FSCO pension forms and/or instruction guides, or contact FSCO at 416-250-7250 or toll free at 1-800-668-0128

More Information:

- Definition of spouse (effective January 1, 2017)

## Definition of "spouse"

Except where otherwise indicated in the Pension Benefits Act (PBA), "spouse" means either of two persons who,

(a) are married to each other, or

(b) are not married to each other and are living together in a conjugal relationship,

(i) continuously for a period of not less than three years, or

(ii) in a relationship of some permanence, if they are the parents of a child as set out in section 4 of the Children's Law Reform Act.

## How was the definition changed in 2017?

The definition of "spouse" in section 1(1) of the PBA was amended under Bill 28, All Families Are Equal Act (Parentage and Related Registrations Statute Law Amendment), 2016.

Effective January 1, 2017, subclause (b)(ii) of the definition was amended to change the language "*natural or adoptive parents of a child, both as defined in the Family Law Act*" to "*parents of a child as set out in section 4 of the Children's Law Reform Act*".

Although the definition still requires that two people live in a relationship of some permanence if they are the "parents of a child," the rules for determining who is a "parent of a child" have changed. As a result, a "spouse" under the PBA now includes any of the following people if they were living with the member in a relationship of some permanence at the relevant time:

- the birth parent of a child (with the exception of a surrogate whose rights have been relinquished);
- the person whose sperm resulted in the conception of a child conceived through sexual intercourse (unless the person agrees in writing otherwise);
- the birth parent's spouse if a child was conceived through assisted reproduction or insemination and the spouse consents to be a parent;
- a person who is a party to a "pre-conception parentage agreement" executed before conception of a child;

- any person who has been declared a parent of a child by a court, or
- the adoptive parent of a child.

As a result of the expansion of the definition of “parent of a child” under the Children’s Law Reform Act, it is now possible for up to four people to be the parents of a child. However, the PBA definition of “spouse” restricts the number of people who can be spouses of each other to two. In other words, only one person can be the spouse of a member under clause (b) of the definition of “spouse” at any given time.

### **What remains the same for purposes of the PBA?**

The revised definition of “spouse” continues to include persons who are married to each other, or persons who have been living together in a conjugal relationship continuously for a period of at least three years.

The rights and entitlements of a spouse under a pension plan, for purposes of the PBA, have not changed.

### **Plan administrator considerations**

Plan administrators should carefully review and familiarize themselves with the new rules of parentage set out in the Children’s Law Reform Act, as they are complex and detailed.

Plan administrators should review their plan documents and communications (e.g. plan text, member booklets, forms, etc.) to determine what documents and administrative procedures need to be amended to reflect the new definition of spouse.

Members need to know who qualifies as their “spouse” for purposes of eligibility and entitlements to benefits under their pension plan. Therefore, consideration should be given as to how members should be informed about this change, and whether it may be appropriate to remind their members to update their spouse or beneficiary information.

Plan administrators should consider obtaining legal advice regarding the application of the new rules of parentage to any particular member or their spouse, where appropriate in the circumstances.

## Member considerations

Members may wish to contact their plan administrator to update their spouse or beneficiary information, if necessary. Members should consider obtaining legal advice regarding the application of the new rules of parentage if they are considering having a child and they believe one of the new categories of parentage may apply to their family.