FSRA
Financial Services Regulatory Authority of Ontario

FSRA Consultation Paper: Potential FSRA Rule on Family Law Matters

November 2023

Financial Services Regulatory Authority of Ontario

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Executive summary and background

The Financial Services Regulatory Authority of Ontario ("FSRA") is an independent regulatory agency established to promote, amongst other things, consumer, member and beneficiary protection in Ontario. In addition to FSRA's general statutory objects under section 3(1) of *the Financial Services Regulatory Authority of Ontario Act, 2016* (the "FSRA Act"), FSRA's pension plan specific objects under section 3(3) of the FSRA Act are:

a) to promote good administration of pension plans

b) to protect and safeguard the pension benefits and rights of pension plan beneficiaries.

FSRA's 2022-2025 Annual Business Plan (ABP) sets out FSRA's core strategy for the fiscal years 2022-2023, 2023-2024 and 2024-2025 and its priorities for fiscal year 2022-2023. FSRA's 2022-2023 priorities for the pension sector included Priority 8.1 - "enabling plan beneficiaries." This priority included a commitment to begin the development of new rules through existing rule-making powers under the *Pension Benefits Act* (PBA) on family law matters in order to act on the findings of its special purpose Technical Advisory Committee for Family Law Pension Matters in FY2020-2021 (the "Committee"). FSRA is continuing work on this multi-year initiative throughout the 2023-2024 fiscal year.

FSRA's work with the Family Law Committee

Clauses (15) through (26) of section 115.1(1) of the PBA provide FSRA with rule-making authority in respect of various aspects of the family law valuation and division of pension assets process.[1]

In 2020, FSRA established the Committee, with a mandate to provide FSRA "with advice on issues related to the valuation and division of pensions on marriage breakdown, including recently introduced rule-making powers."[2] The Committee met on four occasions in 2020, and once in 2023 and focused on, among other things, areas where FSRA could exercise its rule-making authority on the valuation and division of pension benefits upon marriage breakdown.[3]

[1] Note that certain rule-making authorities have not yet been proclaimed by the Government.
[2] For further information on the Committee, see: Technical Advisory Committee for Family Law Matters
[3] Other outcomes of FSRA's work in family law included:

The elements of the consultation paper and questions posed herein support FSRA's work related to family law matters and are informed by comments of the Committee, but do not necessarily reflect the consensus views of the Committee or FSRA. An overview of the family law framework for pensions can be found in Appendix B.

Purpose of consultation and desired outcomes

FSRA is now seeking further feedback from stakeholders to understand whether there are benefits in FSRA developing a rule to:

1. Consolidate family law requirements over which FSRA has rule-making authority in one location using a "lift and shift" approach. Please note that a potential rule would still exist concurrently and in addition to existing sources of family law authority including legislation and regulations.

2. Increase the maximum fees that can be charged for a statement of imputed value

3. Address uncertainties that exist within the process of the division and revaluation of a retired member's pension

4. Codify requirements around the treatment of interest on lump sum transfers derived from the *Heringer v. Heringer ("Heringer")*[4] decision

5. Set out requirements relating to forms

6. Align the family law framework for variable benefits with that for non-variable benefits

Family law is an area of pension regulation with significant administrative and technical complexity. This can cause additional burden for plan administrators, plan members and beneficiaries, and their advisors. Overall, FSRA is seeking feedback from stakeholders as to whether a potential rule would support FSRA's objects of good plan administration and protection of benefits through supporting a principles-based approach to achieving the following outcomes:

- reducing uncertainty with respect to certain administrative and technical matters

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A member facing guide covering the family law process: Pensions and marriage breakdown – a guide for members and their spouses
Interpretation / Information Guidance for plan administrators and other professionals: Administration of pension benefits upon marriage breakdown
Updated Family Law Forms for the valuation and division of pension assets

[4] *Heringer v Heringer*, 2014 ONSC 7291

- improving efficiency in the valuation and division process
- providing appropriate flexibility to spouses and plan administrators
- ensuring fairness between different stakeholders

Consultation questions are included throughout this paper and summarized in Appendix A. Stakeholders are asked to submit their feedback no later than January 19, 2024.

Topic #1: Lift and shift

In light of FSRA's objects with respect to the pension sector there may be a benefit in FSRA having the ability to control and drive policy changes on areas of family law matters that are subject to FSRA's rule-making authority. This includes any future amendments to requirements in those areas.

It could therefore be beneficial for a potential rule on family law matters to move certain family law requirements from Regulation 287/11 (the "Regulation") into a FSRA rule, even with respect to areas where no policy changes are made at that time. This would be accomplished using a "lift and shift" approach to move requirements from the Regulation to a rule.

Background:

FSRA has rule-making authority over a number of areas of the family law valuation and division process not discussed in this Consultation Paper, for which existing requirements currently exist in the Regulation under the PBA. This includes, for example, authority relating to various timelines relevant to the valuation and division process. It also includes authority relating to specific circumstances such as authority to prescribe an alternative manner for paying a lump sum for the purposes of subsection 67.3 (5) (payment on death of the eligible spouse).

FSRA would have the ability to "lift and shift" existing requirements from the Regulation to a FSRA rule, including those for which FSRA is not contemplating policy changes. However, as FSRA does not have authority to amend the Regulation, this change would be dependent on the government concurrently deciding to remove relevant existing

requirements from the Regulation as requirements set out in the Regulation would prevail to the extent of any conflict.[5]

However, FSRA does not have rule-making authority over all family law matters currently in the Regulation. As such, without amendments to the PBA to expand FSRA's rulemaking authority, the "lift and shift" approach would still mean Family Law matters would be split between a Rule and the Regulation, instead of being in a single location. The government does have the authority to make regulations over all areas that are covered by FSRA rule-making authority.

Considerations:

- FSRA's statutory objects to promote good plan administration and protect and safeguard pension benefits and rights of beneficiaries may mean it is better placed to drive future policy changes on areas of family law covered by FSRA's rule-making. This would also support a more flexible regulatory environment in which FSRA could respond to developments in these areas of family law without the need for future amendments to the Regulation.[6]

- FSRA does not have rule-making authority over all family law requirements under the PBA. As such, requirements would still be divided between the Regulation and the rule. As a result, the benefit of establishing requirements in a FSRA rule could also be considered against the potential drawback of having an additional source of requirements to consult with respect to the subject matter.

Technical specifics:

Clauses (15)-(26) of section 115.1(1) provide FSRA with a range of rulemaking authority. Most of this authority relates to various procedural requirements set out in the Regulation. In the 'lift and shift' approach outlined above, FSRA would exercise its rule-making authority to establish in a rule the same requirements as set out in the Regulation. Items over which FSRA does not have rule-making authority would not be subject to a Rule and the relevant requirements would remain in the Regulation. To the extent that the government does not revoke relevant regulations, the subject matter of which FSRA has rule-making authority over, the requirements in the regulations would prevail until such time as the government may decide to revoke the regulations.

[5] Note that FSRA would work closely with Government throughout this process, given that legislative action would be required.

[6] Note that FSRA would be required to adhere to the rulemaking process contained in s. 22 of the *Financial Services Regulatory Authority of Ontario Act, 2016*, if FSRA amended the proposed rule at a later date. Please refer to s. 22 of the FSRA Act for the rulemaking requirements that FSRA must adhere to in proposing a rule.

Questions:

1. Would creating a new rule and moving some, but not all, provisions currently in the Regulation into a rule via the “lift and shift” approach achieve the desired outcome of reducing uncertainty and improving efficiency? Please provide feedback as to whether FSRA should adopt a “lift and shift” approach with respect to all areas over which it has rule-making authority, subject to government decision-making, or whether a potential FSRA rule should only include requirements in areas where policy changes are being considered.

Topic #2: Fees that plan administrators may charge for a DB Statement of Imputed Value

A potential rule could set imputed value application fees at an appropriate level to provide plans with greater flexibility to recoup the cost of preparing these statements.

Background:

Upon marriage breakdown, the member or spouse is generally required to apply to the plan administrator for a statement of imputed value of the pension. This statement is important to the process of valuing and (if applicable) dividing the pension benefit. Among other things, it discloses the value of the pension for family law valuation purposes as well as the maximum amount of the pension that the member may use as a part of any equalization payment to their spouse.

Plan administrators are permitted to charge a fee for preparing the statement, which cannot exceed certain maximums. FSRA has heard consistent feedback from stakeholders that, for plans that provide DB benefits, these fees are significantly below the actual cost of performing the calculations required to prepare the statement. This results in the plan absorbing these excess costs.

In light of this, FSRA could consider proposing a rule that increases the maximum application fee that can be charged with respect to plans that provide DB benefits, while maintaining the existing amount that may be charged in respect of plans that provide DC benefits.

Considerations:

- Increasing the maximum permitted fees would provide greater flexibility for plans to recover costs incurred in preparing statements. If fees under the current framework are insufficient, plans are limited in their ability to recover costs from the applicant, which may unfairly impact the plan and, particularly in the case of plans with negotiated funding (e.g., multi-employer plans), other plan members, who would bear any excess costs.

- Higher maximum fees may be punitive for lower income plan members and their spouses who lack the financial means to pay the new maximum fees. This could potentially be mitigated by plan administrators charging lower than the maximum fee, or by providing a fee waiver, for low-income individuals.

Technical specifics:

The Regulation sets out the maximum application fee that can be charged by plan administrators for a Statement of Family Law Value. The existing fees were established in 2012 and have not been updated since then. They are currently:

- $200 for plans that provide DC benefits

- $600 for plans that provide DB benefits

- $800 for plans that provide both DB and DC benefits

Section 115.1(1)(16) provides authority for FSRA to make a rule which prescribes the maximum application fee that may be charged by the administrator for the purposes of subsection 67.2(7) of the PBA.

Questions:

2. Are the existing maximum fees currently set out in regulations under the PBA sufficient to recover the costs incurred in preparing statements? If not, what should the new maximum fees be? Please provide any details relating to cost experience (e.g., administrative and professional service costs associated with the statements) which may be relevant to support your responses.

3. Should special considerations be made for low-income applicants (e.g., a fee waiver), in order to mitigate the impact of the revised maximum fees?

Topic #3: Payment of arrears – division and revaluation of a retired member's pension

A potential rule could address uncertainties that exist in the division and revaluation of a retired member's pension.

Background:

Based on Committee feedback, there is currently some perceived uncertainty as to how administrators should address the division and revaluation of a retired member's pension where spouses have made arrangements outside of the pension plan to share pension amounts prior to its actual division.

Under the PBA, when spouses divide a pension that is already being paid, the division is calculated to start on the Family Law Valuation Date (FLVD). In practice, there will always be a gap between the FLVD and when the pension is actually divided.

Some stakeholders have raised concerns that the text of section 39 of the Regulation, if read independently of the broader PBA context, may be interpreted to require the plan administrator to include arrears for this gap period in the revaluation of the member's pension – even where parties have reached an agreement to divide the pension payment in the interim (i.e., creating a theoretical double recovery for the non-member spouse). A rule could provide clarification to eliminate any such concern by allowing administrators to revalue a retired member's pension taking into account any such arrangements made by the parties.

Considerations:

- A potential rule could promote certainty, fairness and good plan administration. Stakeholders have shared with FSRA that there is some confusion as to how administrators are permitted to reflect arrangements made outside of the pension plan in the division and revaluation of a retired member's pension. This has led to administrative uncertainty and created the potential for unfairness between spouses.

Technical specifics:

Section 39 of the Regulation sets out the requirements governing the division and revaluation of a retired member's pension. The PBA and the Regulation state that

arrears must be calculated and the amount of arrears, including interest, must be allocated to the former spouse (however, see comments above on this provision).

Section 115.1(1)(21) of the PBA provides FSRA with rule-making authority in respect of "the manner in which the administrator shall revalue the retired member's pension" for the purposes of section 67.4(4) of the PBA. Section 38(1) of the Regulation provides that, for the purposes of section 67.4(4) of the PBA, a retired member's pension is to be divided and revalued in accordance with section 39 of the Regulation. FSRA has rule-making authority with respect to the manner in which the pension is to be divided and revalued under section 39, which includes the amount of arrears payable on the spouse's share of the pension, and the proportionate reduction to the retired member's share of the pension.

Questions:

4. Do you agree that uncertainty exists with respect to the division and revaluation of a retired member's pension where spouses have made arrangements outside of the pension plan to share pension amounts prior to its actual division?

5. If so, should FSRA make a rule to prescribe how this must be done or expand on its Guidance to address the uncertainty?

Topic #4: Payment of interest on lump sum transfers

A potential rule could set out requirements for the treatment of interest on lump sum transfers. It is noted that issue was also addressed in the *Heringer* decision.

Background:

The Ontario Superior Court of Justice's 2014 decision in *Heringer v. Heringer* determined the issue of when interest should be added on a lump sum transfer to a member's spouse. The *Heringer* decision requires that:

1. Where the parties' settlement instrument expresses the lump-sum transfer as a specified amount, no interest should be added by the plan administrator unless the settlement instrument expressly requires that it be added; however,

2. Where the amount is expressed as a percentage or a proportion of the imputed value, interest is required to be added to the amount to be transferred.

The *Heringer* decision has sometimes been described as confusing and has led to some administrative challenges. One reason for this is that the parties and their advisors may not be aware of the decision and its implications – and so may not take the decision into account when structuring their affairs.

In order to reduce confusion and promote good plan administration FSRA summarized *Heringer's* treatment of interest in section 8.3 of its Administration of Pension Benefits Upon Marriage Breakdown Guidance. If, despite this Guidance being issued, there is still confusion or plan administration issues relating to this point, FSRA could consider setting out clear requirements for the treatment of interest on lump sum transfers in a rule, to the extent permitted by FSRA's rule-making authority. These requirements could follow, or differ from, the requirements set out by the Court in *Heringer*.

Setting out clear requirements in a Rule could have the benefits of reducing uncertainty and consolidating legal requirements.

Considerations:

- FSRA has heard from some stakeholders that a more consistent and understandable framework for interest would be preferable. However, FSRA has also heard that the treatment of interest set out in the *Heringer* decision, now almost a decade old, has become well understood and that any changes to that treatment may create further confusion and uncertainty.

- FSRA has heard different stakeholder views as to whether the treatment of interest in *Heringer* is the appropriate framework for treatment of interest on a lump-sum transfer. We understand that some stakeholders have expressed the view that the *Heringer* framework may be problematic by establishing a different quantum for the transfer based on how the parties choose to express the amount. Additionally, parties also may not always express the amount consistently (e.g., by expressing both a dollar amount and a percentage in the settlement agreement). Some stakeholders have stated that it may be more appropriate for interest to be applied consistently as a default (except where otherwise clearly specified), or to not be applied (unless clearly specified).

Technical specifics:

The *Heringer* decision considered the interpretation of section 67.3 of the PBA and section 30(4) of the Regulation. The Ontario Superior Court of Justice found that:

> Section 30(4) of O. Reg. 287/11 requires that the imputed value of pension benefits accumulates interest from the Family Law Valuation Date to the date of transfer under s. 67.3 of the PBA. There is no provision in the PBA or its regulations that provide for a lump sum expressed as a specified amount to be updated on account of interest.
>
> The result of these legislative provisions is as follows:
>
> (1) Where the court order provides for the transfer of a lump sum which is expressed as a percentage of the "imputed value", interest is added to the amount to be transferred because the imputed value is required to be adjusted pursuant to s. 30(4) of O. Reg. 287/11;
>
> (2) Where the court order provides for the transfer of a lump sum expressed as a specified amount, there is no legislative provision to adjust the amount to be transferred on account of interest. The plan administrator has no jurisdiction or authority to add interest to the specified amount unless the court order requires that it be added.[7]

Section 115.1(1)(19.2) provides that FSRA has rule-making authority in respect of governing updating the imputed value of the pension benefits or deferred pension for the purposes of section 67.3(6). Section 67.3(6) of the PBA provides that the lump sum must be "updated" if the regulations or FSRA rules require the imputed value to be updated.

[7] *Heringer*, *supra* note 4 at p 42-43.

Maximum percentage

(6) The order, family arbitration award or domestic contract is not effective to the extent that it purports to entitle the eligible spouse to the transfer of a lump sum that exceeds 50 per cent of the imputed value, for family law purposes, of the pension benefits or deferred pension, as updated for the purposes of this subsection if the regulations or the Authority rules require the imputed value to be update

Section 30(4) of the Regulation provides that the imputed value of pension benefits accumulates interest from the Family Law Valuation Date to the beginning of the month in which the lump sum is to be transferred under s. 67.3 of the PBA.

(4) The imputed value of pension benefits or a deferred pension accumulates interest from the family law valuation date to the beginning of the month in which the lump sum is to be transferred under section 67.3 of the Act.

FSRA believes this rule-making authority would permit FSRA to establish a rule that sets out the same treatment of interest as is described in the *Heringer* decision. FSRA may also have authority to establish a rule providing for a different treatment of interest, depending on the specifics of that treatment.

Questions:

6. Is there uncertainty as to when interest should be added on a lump sum transfer to a member's spouse as a result of *Heringer*?

7. If so, could this uncertainty be adequately addressed by revisions to the Administration of Pension Benefits Upon Marriage Breakdown Guidance or new FSRA Interpretation Guidance?

8. If not, should FSRA propose a rule that sets out the treatment of interest as described in the *Heringer* decision such that:

    a. Interest is to be applied where the amount to be transferred is expressed as a percentage of the imputed value, and

    b. Interest is not to be applied where the amount to be transferred is expressed as a specified amount unless the settlement instrument expressly requires that interest be added.

9. If you disagree that FSRA should propose a rule that sets out the same treatment of interest as the *Heringer* decision, as described above, should FSRA propose a rule that provides for an alternative treatment of interest? If so, what should that treatment be?

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Topic #5: Forms

Overview:

A potential rule could allow plan administrators to design their own forms to provide greater flexibility with respect to the valuation and division process.

Background:

The process of valuing and dividing a member's pension upon marriage breakdown generally involves the member, spouse and administrator completing various forms, including the following: *Application for Family Law Value, Statement of Family Law Value, Spouse's Application for Transfer of a Lump Sum* and *Spouse's Application to Divide a Retired Member's Pension.*

FSRA has issued standard approved forms for the above items and is open to speaking with stakeholders who would like to use a non-standard version of the form.

If stakeholders desire consistency over flexibility, FSRA could revise its standard forms to enable plan administrators to pre-populate and make minor changes to the standard forms so long as they do not affect the overall 'substance'.

Additionally, FSRA could issue requirements for non-standard forms and provide deemed approvals to stakeholders who submit a non-standard form which meets all such requirements.

Alternatively, FSRA could develop a potential rule which provides plan administrators with the flexibility to design their own forms so long as key information requirements are met. Alternatively, if consistency is desired over flexibility, a potential rule could continue to require plan administrators to use existing FSRA forms, but permit plan administrators to pre-populate and make minor changes to the forms so long as they do not affect the overall 'substance'.

For greater clarity, in all of the above circumstances administrators would still be required to use forms approved by the CEO as required by the PBA. However, FSRA would set out the form must meet a number of key criteria, and if it does, it would be deemed to be in a form approved by the CEO.

Considerations:

- If FSRA were to provide deemed approval for forms with variations that otherwise met key information requirements, plan administrators would be able to design their own forms as appropriate for specific circumstances (e.g., remove certain information or requirements from forms that were not applicable to their plan).

- Some stakeholders have raised concerns that permitting the use of non-standard forms would create inconsistencies in family law processes[8] which may outweigh the benefits of this additional flexibility.

- FSRA has recently redesigned its family law forms to improve the valuation and division process and has received positive feedback from stakeholders on recent changes. Some stakeholders have indicated that, as a result of the improvements made to the existing forms, further flexibility is no longer desired.

- The current framework requires that applications be made on a form approved by FSRA's CEO. Given that the CEO has discretion to approve the form, a rule isn't necessarily needed in order to permit non-standard forms.

Technical specifics:

Existing requirements for forms are set out in detail in the Regulation. However, various subsections of section 115.1(1) (for example (15), (22) and (25)) of the PBA provide FSRA with rule-making authority in respect of family law forms.

Currently, FSRA provides 'unlocked' versions of the forms, with the caveat that the forms may not be altered. Pension plan administrators, authorized agents and representatives are permitted to pre-populate the forms with plan-specific information and post the pre-populated forms on their website, but the forms cannot be altered in a way that affects their substance. For greater clarity, FSRA's questions below relate to expanding on the flexibility currently offered.

Questions:

10. Should FSRA allow for greater flexibility with respect forms used by stakeholders. If so, what should be the scope of that expanded flexibility?

[8] For example, the use of non-standard forms may increase the expense of retaining a third party professional to assist with the valuation and division process.

11. If expanded flexibility is desired, please share any views as to whether that would be better achieved through the use of existing CEO discretion or through the development of a FSRA rule.

Topic #6: Variable benefits

Overview:

A potential rule could be developed that addresses the area of variable benefits within family law to bring consistency with any other potential changes discussed in this paper.

Background:

The PBA permits retirement income payments to be paid directly from a DC plan if permitted by the plan terms. Such benefits are referred to as 'variable benefits' because a retired member can direct how much income is to be paid annually out of their account, subject to applicable minimums and maximums.

The PBA provides separate rule-making authority for family law matters relating to plans that offer variable benefits, which generally mirror the authority provided for plans with non-variable benefits. FSRA could exercise its rule-making authority to establish a rule for variable benefits that reflects any of the potential changes discussed in this Paper, should they become the subject of a rule.

Technical specifics:

Sections 115.1(1)(22)–(26) provide FSRA with rule-making authority for family law matters relating to variable benefits. To the extent that a rule is developed which captures any of the topics described above, those topics could be similarly captured for the variable benefits regime (to the extent applicable and relevant). The "lift and shift" approach, described earlier in this paper, would also be followed with respect to areas over which FSRA has rule-making authority for the variable benefits regime.

Questions:

12. Should FSRA develop a rule relating to family law matters in the area of variable benefits? Why or why not and what considerations should FSRA take into account?

13. Should FSRA adopt a similar approach to rule-making for plans that offer variable benefits as for plans that do not offer variable benefits? Are there reasons why variable benefits should be treated differently for family law purposes?

Appendix A. Summary of questions

Topic #1 questions

1. Would creating a new rule and moving some, but not all, provisions currently in the Regulation into a rule via the “lift and shift” approach achieve the desired outcome of reducing uncertainty and improving efficiency? Please provide feedback as to whether FSRA should adopt a “lift and shift” approach with respect to all areas over which it has rule-making authority, subject to government decision-making, or whether a potential FSRA rule should only include requirements in areas where policy changes are being considered.

Topic #2 questions

2. Are the existing maximum fees currently set out in regulations under the PBA sufficient to recover the costs incurred in preparing statements? If not, what should the new maximum fees be? Please provide any details relating to cost experience (e.g., administrative and professional service costs associated with the statements) which may be relevant to support your responses.

3. Should special considerations be made for low-income applicants (e.g., a fee waiver), in order to mitigate the impact of the revised maximum fees?

Topic #3 questions

4. Do you agree that uncertainty exists with respect to the division and revaluation of a retired member’s pension where spouses have made arrangements outside of the pension plan to share pension amounts prior to its actual division?

5. If so, should FSRA make a rule to prescribe how this must be done or expand on its Guidance to address the uncertainty?

Topic #4 questions

6. Is there uncertainty as to when interest should be added on a lump sum transfer to a member’s spouse as a result of *Heringer*?

7. If so, could this uncertainty be adequately addressed by revisions to the Administration of Pension Benefits Upon Marriage Breakdown Guidance or new FSRA Interpretation Guidance?

8. If not, should FSRA propose a rule that sets out the treatment of interest as described in the *Heringer* decision such that:

a. Interest is to be applied where the amount to be transferred is expressed as a percentage of the imputed value, and

b. Interest is not to be applied where the amount to be transferred is expressed as a specified amount unless the settlement instrument expressly requires that interest be added.

9. If you disagree that FSRA should propose a rule that sets out the same treatment of interest as the *Heringer* decision, as described above, should FSRA propose a rule that provides for an alternative treatment of interest? If so, what should that treatment be?

Topic #5 questions

10. Should FSRA allow for greater flexibility with respect forms used by stakeholders. If so, what should be the scope of that expanded flexibility?

11. If expanded flexibility is desired, please share any views as to whether that would be better achieved through the use of existing CEO discretion or through the development of a FSRA rule.

Topic #6 questions

12. Should FSRA develop a rule relating to family law matters in the area of variable benefits? Why or why not and what considerations should FSRA take into account?

13. Should FSRA adopt a similar approach to rule-making for plans that offer variable benefits as for plans that do not offer variable benefits? Are there reasons why variable benefits should be treated differently for family law purposes?

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Appendix B. Overview of family law framework for pensions

In the event of a marriage breakdown, pensions are included in the calculation of "net family property" under the *Ontario Family Law Act* ("FLA"). The FLA requires that spouses "equalize" their net family property upon marriage breakdown, and the parties may choose to use the pension asset to satisfy the equalization obligation.

The PBA sets out the process to value and pay the pension asset for equalization purposes. The role of FSRA in this process is to enforce the PBA and its regulations, which generally involves supporting administrators' compliance with their statutory and fiduciary obligations. Note that FSRA is not involved in the actual valuation and division of pension assets.

In most cases, the process for obtaining the value of the pension asset in a marriage breakdown follows these steps:

1. **The member or spouse makes an application for an imputed value to the plan administrator.** The imputed value (referred to as the "Family Law Value" in FSRA's Family Law Forms) is the value of the pension that accrued during the spousal relationship. The plan administrator may charge a fee for providing the imputed value.[9]

2. **The plan administrator calculates the imputed value in accordance with the formulas set out in Regulation 287/11 and provides both parties with a statement of imputed value.** If there are no issues with the valuation application, the plan administrator is required to provide a statement of imputed value to both spouses within 60 days. This statement discloses the maximum amount that the member may use as part of an equalization payment as well as any other entitlements from the pension plan (e.g., additional voluntary contributions), if applicable.

If the pension asset will be used to equalize net family property, the following steps occur:

1. **The member and spouse must finalize their settlement instrument (court order, family arbitration award or domestic contract).** The settlement

[9] The maximum fee the administrator can charge (excluding Harmonized Sales Tax) is: $200.00 for a pension plan that provides a defined contribution benefit or a variable benefit account to the member; $600.00 for a pension plan that provides a defined benefit to the member; and $800.00 for a pension plan that provides a separate defined benefit and a defined contribution benefit to the member.

instrument is the key legal document that sets out the entitlement to division of the pension asset. The PBA provides that up to 50 percent of the imputed value or pension in pay (prorated for the period of the spousal relationship) may be used for equalization purposes.

2. **The member's spouse makes an application to the plan administrator for payment of the spouse's portion from the pension plan.** The member's status on the Family Law Valuation Date (e.g., separation date) determines the payment options available to the spouse.

3. **The plan administrator pays the spouse.** The plan administrator has 60 days after receiving a correctly completed payment application to either transfer a lump sum to the spouse or pay a portion of the retired member's pension, as applicable.

4. **The plan administrator adjusts the plan member's remaining share to reflect the equalization payment made to the spouse.** The timing of the adjustment varies depending on member status (i.e., active, deferred vested or retired) and benefit type (e.g., defined benefit or defined contribution benefit).