

May 10, 2021

Financial Services Regulatory Authority of Ontario
25 Sheppard Avenue West, Suite 100
Toronto, ON M2N 6S6

Subject: FSRA consultation on the proposed guidance for administration of pension benefits upon marriage breakdown

The Canadian Institute of Actuaries welcomes the opportunity to comment on FSRA's proposed guide to provide a practical overview of the process for valuing and dividing a member's pension upon marriage breakdown. It is a welcome addition as it will consolidate previous FSCO policies into one guide. We note that it provides FSRA's views on the assumptions to be used in the valuation of a pension, including those for multi-employer pension plans.

Several sections of the draft guidance note would benefit from further explanation or details:

Section 7.8 has two points:

- 1) FSRA's view is that the date of purchase of buyback is to be identified as the date of the associated service for inclusion in the marital period.

In Section 18 of Family Law Matters [Regulation 287/11](#), imputed value is defined using the formula $G \times H/J$, in which

*"H" is **that** portion of his or her period of employment or membership **that** is credited under the pension plan for the purpose of calculating the pension benefits, deferred pension or pension and **that** falls within the period **that** begins on the starting date for the imputed value and ends on the family law valuation date.*

The word **that** appears four times in the definition. FSRA's interpretation would imply that one reads the "that is credited" as governing the third **that**. An alternate view would have "that portion" governing the third **that**. Regulation 287/11 should be amended to clearly reflect FSRA's interpretation and eliminate any confusion.

- 2) If the date of buyback purchase of service determines the allocation to the marital period or not, clarification would be required on the date the pension credit is purchased in the situation where a member elects to buyback past service and is allowed to pay the cost of the buyback over a number of years. Is the service purchased on the date of election or over time as the arrears are repaid? If payments are contractual, would this be pro-rated on the outstanding balance or the number of payments? If this point is not addressed, it will be left to the courts to decide.

Sections 8.5.3 and 8.6 both leave room for the administrator to look for ways to reduce or stop payments to spouses under various circumstances. These sections should be expanded to provide more specific guidance.

[Paragraph 10.1\(2\) of the Family Law Act](#) states that the family law value of a spouse's interest in any pension plan not provincially regulated is determined in accordance with section 67.2 of the *Pension Benefits Act* with necessary modifications.

At **Section 3.6**, FSRA suggests that administrators should consult OSFI and the Government of Canada Pension Centre for information. These entities can provide guidance for division of pensions but cannot assist for valuation of pensions in accordance with section 67.2. It would be useful to provide guidance in certain situations affecting those plans.

An example of this is the situation where a pension plan does not define the normal retirement age. This situation was addressed for the *Public Service Superannuation Act* by the Ontario Court of Appeal in [Van Delst v. Hronowsky](#).

Clarification could also be provided in the situation where a member has a period of leave without pay. During that time, the member continues to accrue service but has the option to opt out and have the service not count on return to work. If the member does not opt out, contribution deficiencies are repaid over a certain time period. If the member was on leave without pay during the spousal relationship and only repaid the contribution deficiencies after the family law valuation date, should the period of leave that occurred during the marriage but had not been repaid at the family law valuation date be considered as service credited during the spousal relationship?

The CIA appreciates the opportunity to provide feedback on these issues, and we would welcome further discussion with you throughout this process.

If you have any questions, please contact Chris Fievoli, CIA Staff Actuary, Communications and Public Affairs, at 613-656-1927 or chris.fievoli@cia-ica.ca.

Sincerely,

[Original signature on file]

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