

Pensions Boot Camp

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Outline

1. Bill 133 in a Nutshell
2. How do I apply for the Family Law Value from a Provincially Registered Plan?
3. Particularly **Painfull Pitfalls**
4. What do I do with the FLV Report from a Provincially Registered Plan?
 - A. Where do I find the Value Items?
 - B. What Do I Use for the Tax Rate?
 - C. Tax Rate Exercises
 - Converting pre-tax to after tax
 - Converting after-tax to pre-tax
 - Amount of pre-tax assets to effect equalization \$ due
 - Equalization effected by allocation of pre-tax \$



5. How Do I Divide the Pension?
6. **Pitfalls!** BEWARE!!
7. Legal Issues
8. Can I Equalize With an Allocation and Exclude the Pension from the NFP Avoiding Tax Considerations?
9. Should the plan holder transfer from the Plan?
10. Should the spouse chose a transfer or a pension?
11. How does the spouse get the money out after a transfer?
12. Handling In Pay Pensions – Recap
13. RESOURCES & GLOSSARY

Objectives of the Tax Rate module:



1. Theoretically correct procedure that avoids all pitfalls
2. How to convert:
 - (a) Pre-Tax \longrightarrow After Tax (disposition costs – familiar – amount for the NFP. Tells you how much equalization is effected by a pension Transfer or RRSP rollover)
 - (b) After-Tax (equalization owed) \longrightarrow Pre-Tax (amount of pension Transfer or RRSP rollover to effect desired after-tax equalization – the “**gross-up**” – Not same rate as (a))
 - (c) Will provide standard tax rates to effect both (a) and (b)

At end of module will know a foolproof procedure, with formulas and tax rates that will permit you to go from pre-tax to after tax and back again as needed.



1. Bill 133 In a Nutshell

1. **Provincially registered pension plans will now transfer $\frac{1}{2}$ the Family Law Value** to a spouse's locked in retirement savings vehicle!
2. For provincially registered pension plans, the Plan, not actuaries, will provide the Family Law Value. Actuaries will still usually provide the values for plans not registered provincially.
3. All pensions will now be valued using a method set by regulation to produce only 1 value rather than a range.

Implementation: FLA, Pension Benefits Act & Ontario Regulation 287/11



PRELIMINARY VALUE	FAMILY LAW VALUE (“FLV”) also termed IMPUTED VALUE
Pre-Marital + Marital	Marital
Before Tax	

Regulatory Regime	Governing Legislation	Will Plan Provide FLV?	SETTLEMENT OPTIONS			
			NOT IN PAY		IN PAY	
			Lump Sum Transfer	At Source	Lump Sum Transfer	At Source
1. Federal Agency	PBDA	No	Yes	No	Yes	No
2. Federally Regulated	PBSA	Maybe	Yes	At Plan's Discretion	No	Yes
3. Provincially Regulated	FLA & PBA	Yes (But Not Tax)	Yes	“Soon” At Plan's Discretion	No	Yes
4. Unregistered	None	No	No	Perhaps	No	Perhaps

Regulatory Regime	Governing Legislation	Will Plan Provide FLV?	SETTLEMENT OPTIONS			
			NOT IN PAY		IN PAY	
			Lump Sum Transfer	At Source	Lump Sum Transfer	At Source
5. Foreign	Various	No	V A R I O U S			

- Bill 133 applies to both Defined Benefit and Defined Contribution plans
- For provincially registered plans, (regime # 3), if someone retires between separation and retirement, the case is treated as a non-retired one. A transfer is available and the pensioner's monthly payments will afterward be reduced for any transfer effected.

How do I know whether a plan is federal agency, federally regulated, provincial, or unregulated?



First: Get a Pension Statement

- Most reliable – Call the administrator (number on statement) and ask
- Otherwise, locate the plan registration # and enter into web based plan lists.

Federally Regulated (Not Federal agency) at:

www.osfi-bsif.gc.ca/Eng/wt-ow/Pages/swwr-rer.aspx

Provincially Regulated at:

www5.fsco.gov.on.ca/planinfoaccess/



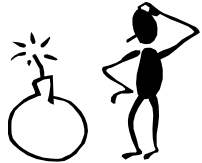
Remarks

- Provincially regulated plans (about 80% of the total) are required to provide the FLV (but not tax rates). All others are not and their values will have to come from actuaries as in the past. Exception: Some federally registered plans will provide the Bill 133 value – you have to ask them.
- **For pensions Not In Pay:**
Federal agency, federally registered, and provincial plans (but not unregistered plans) will provide lump sum allocations. Each regulatory regime has its own limits on the transfer amount except the federally registered which allows 100% of the pension value to be transferred (unlimited)
- **For pensions In Pay:**
Only Federal Agency plans permit lump sum transfers.
If and whens may still be needed for non-registered plans.

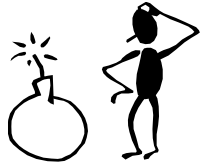


- **New Option for Spouse:** Bill 133 provides a spouse who was the spouse at the time that a pension commenced with the right to relinquish their irrevocable right to a survivor's pension. In theory it would have to still appear on on the NFP statement but this may be negotiable.
 - Giving up such a benefit is unwise
- **Available to common-law partners** with member's consent

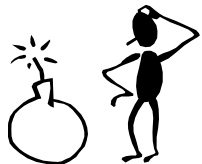
Particularly **Painful** Pitfalls!!



#1: **Retroactive Adjustment of In Pay Pensions in At Source Division Disregards Actual Sharing Leading to Double Compensation of Spouse** (p. 60)



#2: **Unreported Values – potentially **HUGE!**** (p. 66)

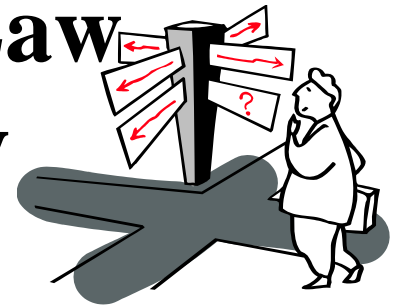


#3: **Accepting Too High An Average Tax Rate For the Plan Holder When Acting for the Spouse** (p. 71)



#4: ***Herringer*** – **If fill in Part D of Forms 5 & 6 With “specified” \$ Rather than %, You forego Interest on a Transfer or Inflation Indexing on At Source Split** (p. 83)

2. How do I apply for the Family Law Value (“FLV”) from a provincially registered plan?



- Use:

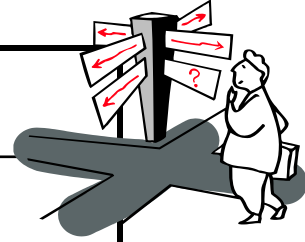
Form 1: Application for FLV

Form 2: Joint Declaration of Period of Spousal Relationship

Form 3: Contact Person Authorization

Forms found at: www.fsco.gov.on.ca/en/pensions/Family-Law/Pages/familylawforms.aspx

OVERVIEW OF FSCO FORMS



Form 1	Application of FLV
Form 2	Joint Declaration of period of Spousal Relationship
Form 3	Contact Person Authorization
Form 4A	Statement of FLV
4B	
4C	
4D	
4E	
Form 5	Application to Transfer (Pension not in pay at Sep.)
Form 6	Application to Divide (Pension in pay at Separation)
Form 7	No division of FLV (Form is optional)



Agree on Separation Date		Disagree on Separation Date	
Form 1	Form 2	Form 1	Form 2
<ul style="list-style-type: none"> - Either Member or Spouse may be Applicant and be the only one to sign - If parties not married but common-law, only Member may be Applicant 	<ul style="list-style-type: none"> - Both must complete and sign 	<ul style="list-style-type: none"> - Either Member or Spouse may be Applicant but both must sign Appendix A - Request for two Family Law Values - If common-law only Member may be Applicant 	<ul style="list-style-type: none"> - Not required as both sign in Appendix A of Form 1

Document (Certified) Required With Form 1	Dates of Birth of Member & Spouse	Date of Start of Spousal Relationship	Date of Separation
Birth Certificate	X		
Baptismal Certificate	X		
Passport	X		
Marriage Certificate		X	
Form 1, Appendix A (Joint declaration of 2 Different Dates of Separation)			X
Form 2 (Joint declaration of single Date of Separation)		X	X
Domestic Contract		X	X
Court Order		X	X
Arbitration Award		X	X



- If wish to deal with the plan on behalf of client will require completed Form 3
- If one spouse doesn't sign need court order to get FLV
- The plan administrator's report on the FLV will be sent to both the Member and their Contact Person if any & the Spouse and the Spouse's Contact Person if any.
- Actuaries may provide a figure for a provincially registered plan that will be very close to the FLV. This may be useful to obtain a quick value for a case conference or court appearance however:
 - (1) The plan will not transfer funds unless it has calculated the FLV itself
 - (2) A judge may not accept an estimate of the FLV rather than the official FLV as provided by a plan administrator



- FEES?
- NOTARIZATION OF DOCUMENTS?
- ORIGINAL FORMS OR COPIES?

- Defined Benefit plans may charge a maximum of \$600 per date of separation and defined contribution plans may charge a maximum of \$200.
 - Some plans add HST
 - Some accept only cash equivalents
 - Some don't charge
- Some plans do not require notarized copies of documents (e.g. birth certificate)
- Some plans ask for the original versions of Forms 1, 2, and 3, others don't

Is there any need to get a FLV report for a DC plan?

- It is tempting when dealing with a Defined Contribution pension plan which is little more than a locked in RRSP to not request a FLV report and to deal with it yourself.
- If doing this, bear in mind that no transfer will be available from the plan unless the plan itself has first prepared a FLV report.

3. What do I do with a FLV Report From a Provincially Registered Plan?



- *What are **Defined Benefit**, (“DB”), **Defined Contribution**, (“DC”), **Hybrid**, and **Combination pension plans**?*
- **Defined Benefit** – Guaranteed annual pension amount defined based on a formula. Member may or may not be required to contribute. “The member has accrued a pension of \$3,000 per annum.”
- **Defined Contribution** – Nothing guaranteed. Simply an account balance that accumulates with employer and perhaps member contributions similar to a group RRSP. “The member had an account balance of \$3,000.”
- **Hybrid** – (This is not a car!) It is a plan in which the member is given the greater of a DB pension, or the annuity a DC account balance can buy at retirement.

- **Combination – DB plus DC benefit in same plan**



BENEFIT TYPE COMBINATIONS	
Plan is:	FLV is:
DC	Value of DC
DB	Value of DB
Combination of DC and DB	Value of DC + Value of DB
Hybrid	Greater of Value of DC or Value of DB

3A. Where Do I Find the Value Items?



THE 6 VALUE ITEMS	Remarks
DC	
DB	
Additional Voluntary Contributions (“AVCs”)	If total AVCs from the starting date to the FLVD not available, then must consider pre-marital portion
Excess Contributions (“ECs”)	
Surplus	Payment Likely Delayed, Actuarial assistance probably required
Spouse’s Survivor’s Pension (If In Pay)	Enter on spouse’s side of Net Family Property Statement. Deduct Tax

Value Item	Hybrid/ DC	Active DB	Active DC+DB	Former DC/DB	Retired
	4A	4B	4C	4D	4E
DC	Part A	-	Part A	Part A	-
DB	-	Part A	Part A	Part A	Part A
AVCs	<i>App. A</i>	<i>App. A</i>	<i>App. A</i>	<i>App. A</i>	<i>App. A</i>
ECs	-	?!	?!	<i>App. A</i>	<i>App. A</i>
Surplus	-	<i>App. D</i>	<i>App. D</i>	<i>App. D</i>	<i>App. D</i>
Spouse's Survivor Pension	-	-	-	-	Part A

- When you receive the form hunt for all of the **non-italicized items as these must be on the form.** The italicized items may or may not be on the form.



- Forms **4B/4C do not have reporting areas for Excess Contributions** yet the administrators are required to give these. If the member is under 35, and the plan is a contributory Defined Benefit plan, ECs may be present but their value is typically small
- All value items are to be entered on the Net Family Property Statement and disposition costs (taxes) applied

COMMON ELEMENTS OF FORM 4s

Part A	FLV Summary
Part B	Pension Plan Information
Part C	Plan Member Information
Part D	Spouse/Former Spouse Information
Part E	Options for Spouse/Former Spouse
Part F/G	Certification by Administrator
Next Steps	
Appendices	





"I understand it's a Category 5 divorce."

3B. What Do I Use For the Tax Rate?



The Tax Rates You Will Encounter:

1. Post-retirement average tax rate applicable to plan member's pension for NFP (you are all familiar with this)
“member's average tax %” See formula “A” p. 30
2. Post-retirement average tax rate applicable to spouse's survivor's pension if pension is already in pay for NFP (also familiar) “spouse's survivor's tax %”
3. Spouse's marginal tax rate used to gross up post-tax equalization owing to pre-tax amounts when effecting equalization with pre-tax assets “spouse's marginal tax %”

See formulas “B” & “C” p. 30 . **BUT APPROACH NOT**

LEGALLY SETTLED!

- For tax rate used in grossup there are no court decisions – lawyers & actuaries disagree on whose and which tax rate to use for grossup



Recipient's Rate?	Payor's Rate?
Average? OR Marginal?	Average? OR Marginal?

- I have asked two judges. Both said the Recipient's should be used – but I didn't ask whether it should be the recipient's average or marginal rates
- My opinion, used in this presentation is Recipient's Marginal

ESTIMATED POST-RETIREMENT INCOME TAX RATES

1. FOR MEMBER	3. FOR SPOUSE
For Disposition Cost of Pension	Grossing Up Pre-Tax equalization required to be effected by Transfer to obtain Transfer amount required
AVERAGE	MARGINAL
Project pre-Separation situation into retirement	Project at Settlement situation into retirement
At Separation disregarding subsequent events	At Settlement taking into account subsequent events including the Transfer amount itself
	Answers “Is the offered pre-tax property going to be worth the equalization owed after spouse pays tax on it in the currently foreseeable circumstances of the spouse?”

ESTIMATED POST-RETIREMENT INCOME TAX RATES

APPLICATION TO MEMBER	APPLICATION TO SPOUSE
$ \begin{aligned} & \text{FLV} \\ & \times \\ & (1 - \text{Member's Avg Tax \%}) \\ & = \\ & \text{FLV after tax} \quad \mathbf{A} \end{aligned} $	$ \begin{aligned} & \underline{(\text{Equalization To Be Effected By Allocation})} \\ & (1 - \text{Spouse's Marginal Tax \%}) \\ & = \\ & \text{Amount to be Allocated to Effect} \\ & \text{Equalization} \quad \mathbf{C} \end{aligned} $
	$ \begin{aligned} & \text{Conversely, for the spouse,} \\ & \text{(Amount Allocated)} \\ & \times \\ & (1 - \text{Spouse's Marginal Tax \%}) \\ & = \\ & \text{Equalization Effected} \quad \mathbf{B} \end{aligned} $

Even with an exception present, may wish to ignore the issue to avoid conflict – concept difficult to explain and results are unpleasant, e.g. member may have to Supplement the maximum transferrable amount out of other assets; spouse asks why don't I get half the FLV



Why do we divide by (1 – Tax %) to gross up?



- Because we pay tax on the grossed up amount, not the amount before grossup.
- Assume \$100,000 is to be grossed up for 25% tax.
 - If we increased \$100,000 by 25% we would have \$125,000
 - If 25% tax was paid on the \$125,000 we would have:
$$\$125,000 - (\$125,000 \times 0.25) = \$125,000 - \$31,250 = \$93,750$$
 - If we divided \$100,000 by (1 - 0.25), this is the same as multiplying \$100,000 by $1 \div (1 - 0.25)$ or $1 \div 0.75 = 133.333\%$
$$\$100,000 \div (1 - 0.25) = \$100,000 \times 133.333\% = \$133,333$$
 - If 25% tax was paid on the \$133,333 we would have:
$$\$133,333 - (\$133,333 \times 0.25) = \$133,333 - \$33,333 = \$100,000$$

Pension Plan Type	Typical Range of Tax Rate	RECOMMENDED CEILING for MEMBER'S AVERAGE TAX RATE
Defined Contribution Pension Plan	5% to 15% 0.05 to 0.15	10% or 0.10
Defined Benefit Pension (<u>not</u> Firefighters, Police, Teachers)	10% to 20% 0.10 to 0.20	15% or 0.15
Defined Benefit Pension (Firefighters, Police, Teachers)	15% to 25% 0.15 to 0.25	20% or 0.20
Pensioner, in pay		Use avg. tax paid from last filed income tax return
Spouse's Survivor's Pen.		1. Actuarial assistance or 2. Use member's for simplicity



- The **ideal is to obtain a tax calculation** for the member's estimated post-retirement average tax rate in each case
- **Failing this, I suggest using my recommended rates** for the member's from the previous slide
- These are **CEILINGS!** The actual rate may be much lower!
 - Do **not** accept a higher tax rate than the ceilings for the member without a tax rate report!
- If you are acting for the member, there are thresholds over which it is worthwhile considering obtaining a report on the tax rate as the rate can be expected to reduce equalization by at least \$3000. These are given on the following slide.
- To convert a percentage to a decimal divide by 100.
 - e.g. 5% becomes $5 \div 100 = 0.05$
 - e.g. 15% becomes $15 \div 100 = 0.15$
 - e.g. 20% becomes $20 \div 100 = 0.20$



Age	Minimum In Tax Sheltered (Non-DB) Accounts At Age To Reduce Equalization By At Least \$3000 Versus 10% Tax
25	\$120,000
30	\$135,000
35	\$150,000
40	\$170,000
45	\$195,000
50	\$225,000
55	\$245,000
60	\$265,000
65	\$285,000



- Note that all tax sheltered account balances are added together to reach the totals in the previous table.
- This would include not just balances in the DC pension plan, but balances in any account balance type tax sheltered retirement savings plan whether **RRSP, LIRA, LIF, DPSP, or AVCs** in a DB pension plan.
 - The tax rate calculated would also apply to the tax sheltered retirement savings plans as well as to the DC pension plan
- **Don't Forget** that DPSPs, (**Deferred Profit Sharing Plans**), are tax sheltered and need to have tax deducted !
- **For Defined Benefit (DB) plans**, the threshold depends on:
 - years of service (YOS) during marriage
 - and the salary level, except for trade pension plans.

**THRESHOLD MARITAL SERVICE/SALARY TO
REDUCE EQUALIZATION BY \$3000 VERSUS
RECOMMENDED TAX RATE**



Annual Salary or Formula

	Public Sector		Private Sector		
YOS During Marriage	Police, Fire, Teacher	Non- Police, Fire, Teacher	All But Trades & Hourly	Trades	Hourly Paid Employee
	20%	15%	15%	15%	15%
10	\$107,000	\$79,000	\$99,000	<u>Lifetime Pen</u> (Age - 25) is Greater Than \$1500	Would Rarely Exceed 15% Not Worth Pursuing
20	\$ 97,000	\$69,000	\$90,000		
30	\$ 93,000	\$66,000	\$83,000		

3C. Tax Rate Exercises



Given:

Asset Type	Pension Holder	Non-Member Spouse
Defined Benefit Pension, (HOOPP)	Family Law Value: \$500,000 Max Transfer: \$250,000	
RRSPs (Before Tax)	\$10,000	\$40,000
Other (After Tax)	\$20,000	\$200,000
Debts	\$60,000	

Exercise #1:



- a. Develop the NFP statement and the equalization owed the Non-Member spouse (recipient).
 - For the average post-retirement income tax rates apply the recommended ceilings for the appropriate retirement savings category.
- b. Given that equalization developed in a. is to be effected with a transfer of pension value, calculate the amount to be transferred.
 - Assume that the recipient's estimated marginal post-retirement income tax rate on the transfer's income is equal to the pension holder's estimated average post-retirement income tax rate.
- c. Calculate the % of the FLV to be allocated to the recipient
- d. Develop the wording for the separation agreement to provide inflation indexing and interest on the transfer between separation and the date of transfer

FOR YOUR ROUGH WORK

Pension Holder

Non-Member Spouse

Solution to Exercise #1



Asset Type	Pension Holder	Non-Member Spouse
Pension	$\$500,000 \times (1 - 0.15) =$ $\$425,000$	
RRSPs	$\$10,000 \times (1 - 0.15\%) =$ $\$8,500$	$\$40,000 \times (1 - 0.10) =$ $\$36,000$
Other (after tax)	$\$20,000$	$\$200,000$
Debts	$- \$60,000$	
TOTALS	$\\$393,500$	$\\$236,000$
DIFFERENCE	$\\$157,500$	
EQUALIZATION	$\\$78,750$	
Gross-up to obtain Transfer Amount	$\$78,750 / (1 - 0.15)$ $=$ $\\$92,647$	



- % to be allocated = Transfer Amt \div FLV
= \$92,647 \div \$500,000
= 18.53%

- “The plan is directed to transfer to [Recipient] 18.53% of the Family Law Value. The amount of the transfer is to receive interest for the time period between the date of separation and the date of transfer.”

Exercise #2:



- a. In the previous exercise, if it was agreed that the equalization owing of \$78,750 would be effected with a transfer of pension assets of \$50,000 with the rest to be paid in cash, calculate the amount of the cash payment.
 - As before, assume that the non-member spouse's estimated marginal post-retirement income tax rate is equal to the pension holder's estimated average post-retirement income tax rate.
- b. Develop the percentage of the family law value to be transferred.

FOR YOUR ROUGH WORK





Solution to Exercise #2:

METHOD A

Step 1: Determine the amount of after tax equalization effected by the transfer of \$50,000.

$$\$50,000 \times (1 - 0.15) = \$42,500$$

Step 2: Subtract the \$42,500 from \$78,750 to determine the amount to be paid in cash.

$$\$78,750 - \$42,500 = \$36,250$$

METHOD B

Step 1: Subtract the \$50,000 from the \$78,750 leaving \$28,750

Step 2: Determine how much of the \$50,000 will be lost to tax

$$\$50,000 \times 0.15 = \$7,500$$

Step 3: Add the \$7,500 to the \$28,750 giving you \$36,250

- % to be allocated = Transfer Amt ÷ FLV
= \$50,000 ÷ \$500,000
= 10.00%



GOLDEN ACTUARIAL SERVICES



- Pension values
- Tax Rates & Gross-Ups for Transfers
- Transfer vs. Projected Ret. Income Scenario Sheet
- Assistance in the Bill 133 process
- Sick Benefit Retirement Gratuities
- Stock Options, RSUs, and SARs
- Disposition Costs for Stocks
- Valuation of Life Insurance Policies
- Personal Injury Damages
- Valuation of Businesses

GOLDEN ACTUARIAL SERVICES



- New Services As A FINANCIAL DIVORCE SPECIALIST

Aid in preparation of the Net Family Property Statement

Financial planning (budgets and cashflows) for:

immediate transition

post-transition security and retirement

Evaluation of differing approaches to settlement

5. How Do I Divide The Pension?



If not retired use Form 5, If Retired Form 6

- Only non-member spouse may complete Form 5 or Form 6
- Both Form 5 & 6 require: (1) domestic contract; (2) court order; or (3) family arbitration award be submitted with forms
- Make sure separation agmt/court order matches forms
- (A) For Not Retired – Form 5 - In Part D must check either:
 - (1) specified \$ amount; or
 - (2) % of the FLV (not to exceed 50%).

as the following specified amount:

\$

or

as the following percentage of the Family Law Value:

%

Herringer – Ont. Court of Appeal, Dec. 17, 2014



- For not yet retired - Can be expected to stand
- Before *Herringer* got interest between separation and transfer with both (1) specified \$ amt; or (2) % of the FLV.
 - Now, ONLY with (2) % of FLV

Which should it be?

- Plan member loses $\frac{1}{2}$ pension accrued during marriage
 - Transfer increases with time (interest) but pension lost is the same – Fair in my personal opinion
 - If do not include interest pension holder will lose less than $\frac{1}{2}$ pension accrued during marriage
 - Use specified \$ amt for “all in” settlement
 - Potential for claims against plans re past specified \$ transfers that got interest by plan holders



- **DON'T FORGET** - FLV is pre-Tax and equalization is after-tax. Forms 5 & 6 use pre-tax \$ or %
- Theoretically correct approach is:
 - (1) Determine after tax equalization to be effected with pre-tax transfer
 - (2) Gross up after tax equalization using:
(Equalization To Be Effected With Transfer)
(1 – Non-Member Spouse's Marginal Tax %)
 - (3) Enter directly as (a) specified \$ (for all-in settlement) or (b) as
% = (Pre-tax Transfer To Be Made)

FLV



Where Does It Go?

- (1) If non-member spouse is under 55 years old then to either:
 - (a) **Another pension plan** if the non-member spouse belongs to one and it will accept the transfer; or
 - (b) A Locked In Retirement Account (**LIRA**) – No payments may be made from a LIRA. When the non-member spouse reaches 55 the funds may be transferred from the LIRA to a Life Income Fund (LIF) from which limited payments must commence

- (2) If non-member spouse is at least 55 years old then to either:
 - (a) **Another pension plan** if the non-member spouse belongs to one and it will accept the transfer; or
 - (b) A **Life Income Fund** from which payments must commence immediately



(B) If in Pay - Form 6 – No Transfers – At Source Only. Part D:

- Always check yes for indexation – can't hurt & may avoid problem
- *Herringer* was for not in pay – Form 5 – but a cautious approach would be to use % instead of specified % on Form 6 too.

(i) Indexation (if any) that will be applied to the Retired Member's pension payments will also be applied to the pension payable to me.
 Yes No

(ii) My share of the Retired Member's pension is expressed:

as the following specified amount of the lifetime pension installment:

and

the following specified amount of the bridging/supplemental benefit installment (if any):

OR

as the following percentage of each lifetime pension installment:

%

and

the following percentage of each bridging/supplemental benefit installment (if any):

%

(iii) My share of the Retired Member's surplus (if any) is expressed:

as the following specified amount:

or

as the following percentage:

%



Part E: Check both lifetime & bridge to avoid missing any bridge – check all 3 boxes

- Division of each installment of the Retired Member's pension:
 - (i) division of each installment of the lifetime pension
 - (ii) division of each installment of the bridging/supplemental benefit (if any)

- May need to choose between non-combination option and combination option (if offered – not all plans do)
- **Non-Combination option:** Spouse receives portion of pensioner's payments until the pensioner dies. After this the spouse will receive their own survivor's pension.
- **Combination option:** Spouse's survivor's pension combined with their entitlement to a portion of pensioner's pension to produce a single amount payable to them for their lifetime. – **Fill in Form 8**



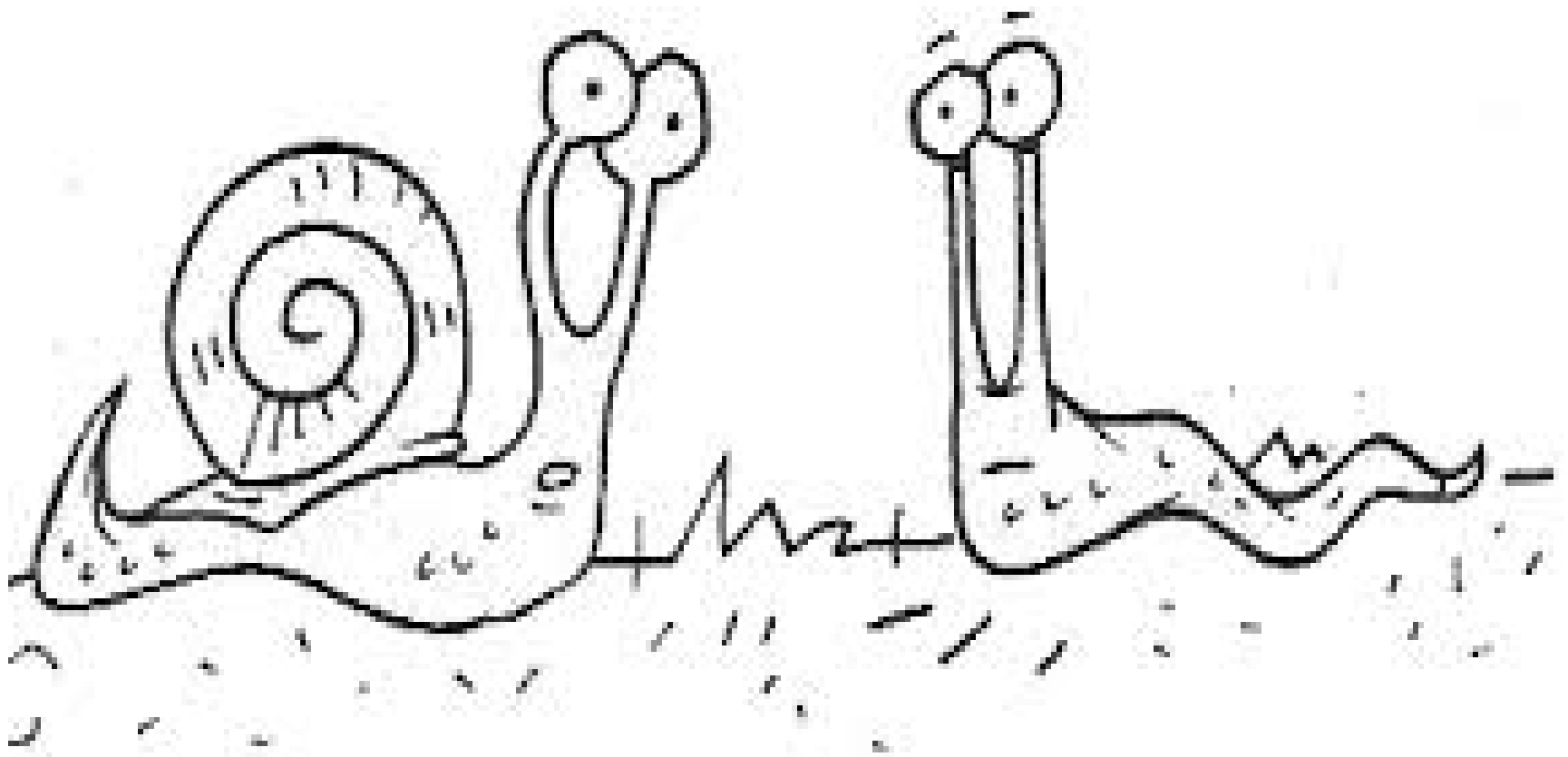
Non-Combination Option	Combination Option
Always available	Available only at plan's discretion
CON: Amounts may change. They are given in the Form 4E but are hard to follow	PRO: Level amount
PRO: If Separation Agreement specifies that payments continue to spouse's estate if spouse predeceases the pensioner, then they will, otherwise REVERT TO PENSIONER	CON: No payments to estate if spouse predeceases pensioner
Either the Combination or the Non-Combination Option may be higher, but the bias is for the Combination option to be higher. May need to ask plan for comparative amounts in advance.	

Dividing a Provincially Registered In Pay Pension At Source: Reversion of Division Back To Pensioner if Non-Pensioner Spouse Predeceases Them

- Family Law Value of a pensioner's in pay pension is calculated assuming that payments from the division will continue as long as pensioner remains alive
- But if non-pensioner spouse predeceases pensioner, and separation agreement is silent about the issue, the division comes to an end, and the payments formerly going to the non-pensioner spouse revert back to the pensioner
 - Non-pensioner spouse is owed a credit for this
 - Could be applied to offset Family Law Value of non-pensioner spouse's survivor's pension
- Note – there is no inherent right to either approach – has to be negotiated

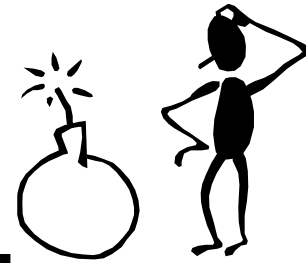
Dividing a Provincially Registered In Pay Pension At Source: Reversion of Division Back To Pensioner if Non- Pensioner Spouse Predeceases Them

Wording of Separation Agreement	Division IF Non-Pensioner Spouse Predeceases Pensioner	Is A Credit Owed The Non-Pensioner Spouse?
Silent	Reverts back to Pensioner	Yes
Expressly states that payments from division will continue to non-pensioner spouse's estate	Continue to non-pensioner spouse's estate for as long as pensioner lives	No



'HOW DID THE DIVORCE GO?'

6. Pitfalls! BEWARE!!

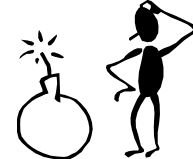


Pitfall #1: **Retroactive Adjustment of In Pay Pensions in At Source Division Disregards Actual Sharing Leading to Double Compensation of Spouse**

Pension Shared With Former Spouse Between Separation and Settlement

<i>Separation</i>	<i>Yr 1</i>	<i>Yr 2</i>	<i>Yr 3</i>	<i>Yr 4</i>	<i>Yr 5</i>	<i>At Source Division Effected After 5 yrs</i>
\$10,000	\$10,000	\$10,000	\$10,000	\$10,000	\$10,000	Total: \$50,000

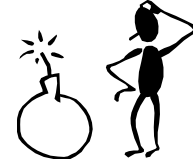
- A generous pensioner has shared \$50,000 of the pension over the 5 years between separation and settlement



- In effecting settlement with a Division At Source under Ontario Regulation 287/11, section 39, is compelled to assume that the sharing has not occurred and to slightly decrease what the pensioner would receive and slightly increase what the spouse would receive after the Division At Source
- The following example assumes:
 - Both pensioner and spouse separated at 60 and settled at 65
 - A pension of \$20,000 per year and a FLV of \$285,000
 - No survivor's pension (for simplicity)
 - All of pension was accrued during marriage

Division At Source With & Without \$50,000 Retroactive Adjustment

	Annual Pension	
	To Pensioner	To Spouse
Before Division	\$20,000	\$0
After Division But Without Retroactive Adj.	\$10,000	\$10,000
Retroactive Adjustment For \$50,000	-\$3,300	\$3,300
After Division With Retroactive Adj for \$50,000	\$6,700	\$13,300



SOLUTIONS:

- (1) Credit the pensioner with the present value of the shared payments – here \$45,928 – as an equalization amount (after tax) through non-pension assets to counterbalance the double compensation – but spouse may not want to give up equalization
- Need to take care as to whether the shared payments to spouse were before or after tax – after tax if pensioner and not spouse paid the tax

Present Value at Separation	Yr 1	Yr 2	Yr 3	Yr 4	Yr 5	At Source Division Effected After 5 yrs
\$45,928	\$10,000	\$10,000	\$10,000	\$10,000	\$10,000	Total: \$50,000

- (2) Reduce the percentage of the pension to be allocated to the spouse in Part D of Form 6 such that when the plan retroactively adjusts the division at source for “missed” payments the retroactively adjusted amount is the original one desired (Requires Actuarial Calculation – See slide 9)

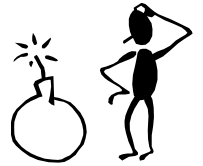


Possible Issue:

If you are not taking into account payments from the pension to the non-pensioner spouse prior to settlement, and are instead letting the plan make the full adjustments for missed backpayments, then as per *Boston*, perhaps the pension should be excluded from the pensioner's income for the purposes of calculating spousal support up to the settlement date.

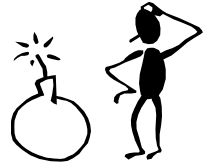
Division At Source After Actuarial Adjustment to Initial Division

	Annual Pension	
	To Pensioner	To Spouse
Before Division	\$20,000	\$0
Adj. Division But Without Retroactive Adj.	\$12,500	\$7,500
Retroactive Adjustment For \$35,000	-\$2,500	\$2,500
After Division With Retroactive Adj for \$35,000	\$10,000	\$10,000



(3) Ask the plan to Recognize Any Sharing

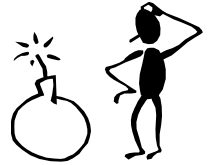
- Teachers' will already do this
- FSCO will start advising plans to do so as well but date of implementation unknown – may have to ask administrator on a case by case basis



Pitfall #2: Unreported Values

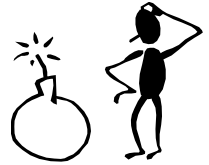
- Unreported because benefit not paid from a Registered Pension Plan. Previously independent actuaries reports would catch these
- **SERPs** (Supplementary Executive Retirement Plans)
 - may be provided to employees earning more than \$125,000
 - can add hundreds of thousands in equalization
 - only reliable way of detecting them is to obtain a letter from HR
- **Automakers' Special Allowance** (“30-and-out” benefit)
 - May or may not be included by plan
 - Not Included: **Toyota**; Is Included: GM, Ford; Chrysler, Honda.
 - Honda has a minimum pension amount that is not included
- **Excess Contributions** – Either request these when requesting the FLV from the plan or seek actuarial assistance
- **Sick Benefit Retirement Gratuities**
 - Younger, lower salary – equalization of \$2500
 - Older, higher salary – equalization of \$7500

- Reductions applied to lump sum payouts, (including to a transfer on marriage breakdown), but not otherwise by some Multi-Employer Pension Plans, (MEPPS – trade plans)



- Plan is seriously underfunded on a wind-up basis, e.g. 50%
 - Windup – plan is terminated and outstanding liabilities must be met with existing assets without more contributions to the plan
 - To discourage anyone from leaving the plan and taking a lump sum the pension amount is reduced based on the wind-up funding ratio
 - If a lump sum (or transfer) is not taken there is no reduction and on a going concern basis the funding ratio may be much higher, (e.g. 85%) so that realistically there is little danger of any loss of pension
 - **There is a covering letter informing of the reduction, but the FLV reported is already reduced.**
 - **Plans – (1) Intl. Brotherhood of Electrical Workers Loc. 353;
(2) Labourers'**

- Remedies:

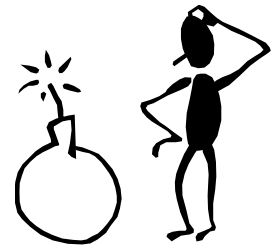


- (1) Equalize using other assets
- (2) Wait until windup funding ratio improves (but plan may want to apply ratio from separation date)
- (3) Bill 133 made provision for plans at their discretion to permit value allocated to the spouse to remain on deposit in the plan to the credit of the spouse. The regulations to implement this have not yet been promulgated. Might wait until they have been and then see if plan is willing to allow spouse to “join” the plan
 - But plan may still apply reduction
- (4) Petition FSCO to permit an “If and When”.

Value Source	Present With	Size \$ of Eq.	SOLUTION
1. SERPs	Salary > \$155,000	BIG	Obtain Letter from HR
2. Automakers' Special Allowance ("30 & out")	Toyota	May be Large (>\$10000)	Toyota – Need to value the Special Allowance separately Honda: Min Pen not included
3. Excess Contributions	- Contributory - Age < 35	\$5000	1. Request along with Form 1 2. Or Actuarial assistance
4. Sick Benefit Retirement Gratuities	- Public sector - Substantial sick days	\$2500 to \$7500	Obtain Letter from HR and have valued
5. Non-Guaranteed Inflation Indexing	- Need actuarial assistance	+10% Will grow	- In 10 years may be "large" (HOOPP) in public sector. Is it marital property?

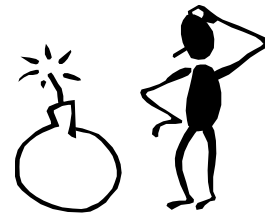
Value Source	Present With	Size \$ of Eq.	SOLUTION
6. Underfunded MEPPs reducing Pensions on withdrawal of lump sum	- IBEW Loc 353 - Labourers'	Doubles values	Ideally equalize with other assets. Otherwise no clear solution yet.

Pitfall #3: Accepting Too High An Average Tax Rate For the Plan Holder When Acting for the Spouse



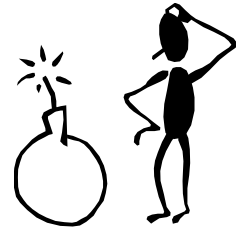
- Tax rates are the projected post-retirement **average** rate of income tax expected over retirement until death
- Frequent Confusion between:
 - (1) tax rates while working and projected rates after retirement
 - (2) Average versus marginal tax rates
- For RRSPs currently one frequently sees 25% used which is almost always too high
 - A 45 year old needs about \$650,000 in RRSPs to have an estimated post-retirement income tax rate of 25%

- In the following example, accepting 25% when the rate is really 15% costs the spouse \$10,000.



	25% Tax	15% Tax
FLV of DB Pension	\$200,000	\$200,000
Tax Rate	25%	15%
Tax	\$ 50,000	\$ 30,000
After Tax	\$150,000	\$170,000
Equalization Owing	\$ 75,000	\$ 85,000

Pitfall #4: When Transferring, Accepting Either a Too High or a Too Low Marginal Tax Rate For the Spouse



- In the example in slide 43 pre-tax equalization of \$100,000 is to be effected with a Transfer.
- The gross-up to the pre-tax amount to be transferred is done using an incorrect estimated marginal post-retirement income tax rate for the spouse of 15%
- However, if the actual estimated marginal post-retirement income tax rate for the spouse was 5%, the plan **member** would be **overpaying by \$12,300** – e.g. a stay-at-home spouse
- If the actual estimated marginal post-retirement income tax rate for the spouse was 25%, the **spouse** would be **under compensated by \$15,700** – e.g. a spouse with substantial ret. income of their own

Item	Before Or After Tax?	Based on Incorrect 15% Tax	Based on “Low” Correct Tax	Based on “High” Correct Tax
Equalization to be effected by Transfer	Before Tax	\$100,000	\$100,000	\$100,000
Spouse’s Estimated Marginal Post-Retirement Tax Rate		15%	5%	25%
Pre-Tax Equalization Required Grossed Up by Marginal Tax for Transfer	After Tax	\$117,600	\$105,300	\$133,300
Excess “+”, or Shortfall “-”, in Transfer versus “Correct” Amt			+ \$12,300	- \$15,700

Pitfall #5: Member Dies Before Starting Pension, Leaves Entire Value of Pension to Someone Other Than Former Spouse



• Upon separation, under a **PROVINCIALY** registered plan the former spouse ceases to automatically be entitled to the pre-retirement death benefit. **If this designation is changed, and the member dies before a separation agreement is concluded, the value of the pension will pass to someone else** perhaps making obtaining a share of the pension's value for the spouse impossible.

Solutions: (1) While irrevocable beneficiaries cannot be named in pension plans, attempt to keep the former spouse as the named beneficiary in case of death until the separation agreement is concluded. However, this will not work if there is a new spouse – they and not the beneficiary will get the death benefit.

(2) Maintain adequate life insurance on the member payable to the former spouse

- If pre-ret. dth ben paid to a non-spouse beneficiary before separation agreement concluded have to sue recipient re constructive trust & unjust enrichment
- Note that can assign pre-retirement death benefit in separation agreement but this is normally not done as its value is included in the equalization of the pension



Pitfall #6: When **dividing an in pay pension at**

source, always include that the portion payable to the spouse is to receive the same inflation increases that the pensioner's payments do.

Otherwise, they may not.

Pitfall #7: When **dividing an in pay pension at source using the non-combination option**, unless the separation agreement states that payments will continue to the spouse's estate if the spouse predeceases the member, they will cease and REVERT BACK TO THE PENSIONER.

If they are going to revert back to the pensioner then the spouse should be given credit for this on the NFP statement. (This requires a calculation.)



Pitfall #8: Under Bill 133, reduced life expectancy is ignored in determining the FLV. **A plan member with a serious health issue may be overpaying if they equalized their pension using non-pension assets.** If they transfer from the plan this would not be an issue. For example, the plan may be prepared to transfer \$100,000, but if the member commenced their pension it might only be worth \$60,000 to them because of poor health.

Pitfall #9: Because of complexity, certain plans, (usually **hybrid plans**) are **open to having the Bill 133 regulations interpreted in more than one way.**

- University plans: e.g. York, McMaster, Guelph
- US Steel

Pitfall #10: There is no way of precluding:

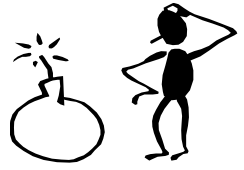
(1) Equalization of CPP credits – either party can mail in the separation agreement or court order to effect it

(2) Change of the beneficiary of the pre-retirement death benefit by the plan holder

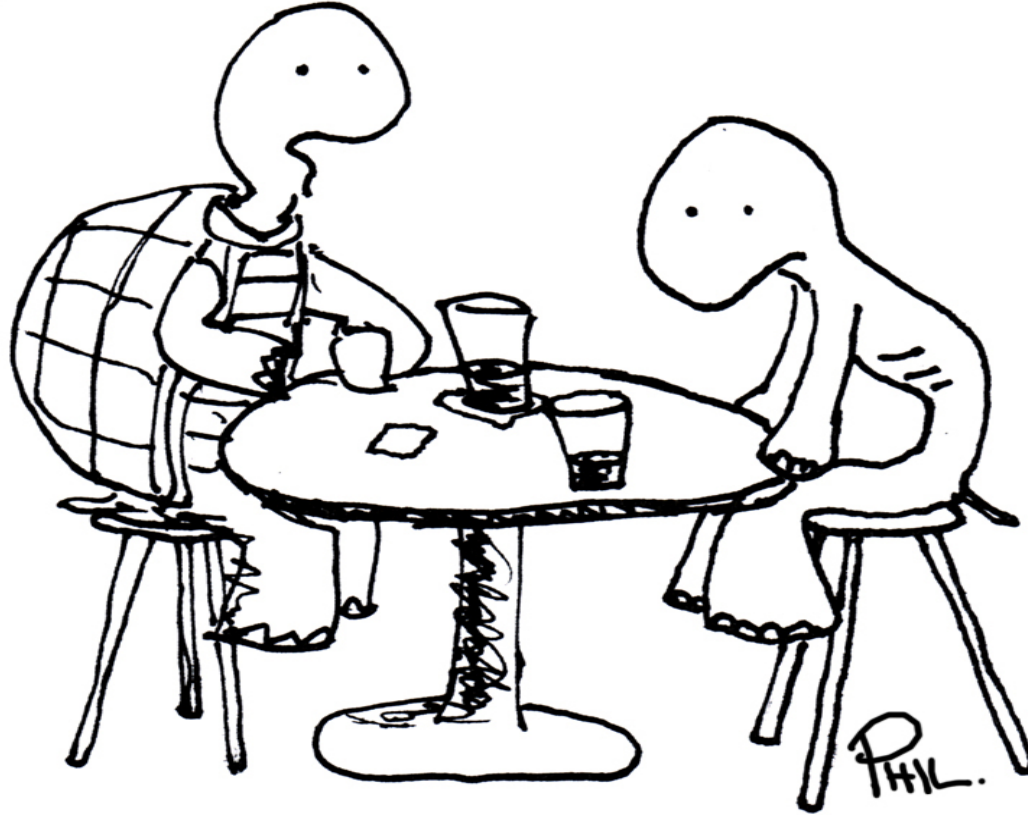
If a separation agreement stipulates that either is not to be done and it is not observed, the lawyer might be held accountable along with the party that did not observe the separation agreement/court order

Pitfall #11: Not getting the at marriage value of a LIRA

- A LIRA may be thought of as a defined benefit pension that was converted to a locked in RRSP.
- Just as with RRSPs there are at marriage values
- This is a special calc for a LIRA – pro rata on service split of transfer value

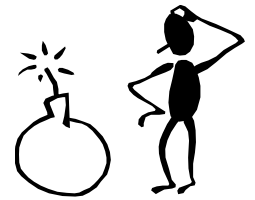


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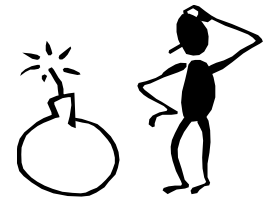
*“Cheer up, buddy! She might have got the house...
but she can never take away your dignity!”*

Pitfall #12: Using Commuted Value Instead of Having the Family Law Value Calculated



HUSBAND			
	CV	FLV	Dif = FLV - CV
	\$478,000	\$367,000	-23.2%
Tax	\$108,000	\$82,600	
After Tax	\$370,000	\$284,400	(\$85,600)
Impact on Equalization =			(\$42,800)
WIFE			
	CV	FLV	Dif = FLV - CV
	\$51,000	\$48,000	-5.9%
	\$4,000	\$4,000	
	\$47,000	\$44,000	(\$3,000)
Impact on Equalization =			(\$1,500)
Overall Difference in Equalization =			(\$41,300)

- A Husband and wife worked for the same federally registered pension plan



- The husband's pension statement gave the CV as \$478,000 and the wife's as \$51,000.

- However, the husband's Family Law Value was \$367,000, or 23.2% less. The wife's was virtually the same.

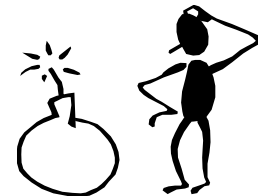
- This reduced equalization owed to the wife by \$41,300.

- There is a temptation to save fees on the valuation of all pensions by using a Commuted Value (also called Transfer Value)

- The **Family Law Value can easily be either 25% higher or 25% lower than Commuted Value or Transfer Value**

- This will be an issue in (1) federal agency, (2) federally regulated, and (2) provincially regulated plans

Pitfall #13: Foregoing Interest on a Form 5 Transfer



- Pension not in pay & settlement is no for an “all in” fixed \$ amt
- If Form 5 Part D filled in box for “specified amount” no interest will be included by the plan in the transfer between separation and the date of transfer
- Before *Herringer* – Ont. Court of Appeal, Dec. 17, 2014, all transfers automatically got interest
- *Herringer* involved a Form 5 but wise to use % rather than specified % in Form 6 too – may lose inflation indexing
- Carefully judge competence of non-member spouse client to correctly fill in a Form 5 or 6 – might want to do this yourself
- Watch separation agreement/court order wording – if in \$ plan may not accept Form 5 or 6 filled in with %

7. Legal Issues



Legal Issue #1: Should The Value of a Survivor's Pension Be Excluded From the Value Of A Non-Pensioner's FLV?



Plans sometimes provide a survivor's pension for "free"

- Under the pre-Jan. 1, 2012 regime this was never part of the plan holder's pension value
- Under the new regime, it is – something some actuaries strongly disagree with and feel is an error of the new regime
- Can be worth \$10,000's for a large pension
- Legal issue: Absent the new legislation, would a survivor's pension be considered property?
- It would be paid to the spouse, not the member
 - In an in pay pension it is irrevocable to the spouse and considered part of the spouse's property

- Spouse loses any right to it at separation but if plan holder acquires new spouse then new spouse is automatically entitled to it – It may be seen as a benefit a plan holder “confers” on a spouse at retirement



- Plan holder can realize its value and pocket it themselves by terminating and taking the commuted value (lump sum) instead of a deferred pension if they are not yet too old and plan permits
- This is all moot as plan administrator will not change FLV – they are following regulations
- Up to lawyer as to whether to raise issue/or how to respond if it is raised
- Note that above refers to provincially registered plans

Legal Issue #2: Bill 133 mandates a discount of 50% for non-vested benefits. There are situations where I consider this to be unfair.



For example, in a non-registered executive plan, it may take 10 years for the benefit to vest and the member may be only months away from the 10 year mark, but the FLV has still been halved. Note that this will only be an issue in unregistered plans, where the reports will come from independent actuaries.

- Legal Issue #3: **Error In Drafting Bill 133 Regulations**

“Ancillary” benefits – bridges, & survivor’s benefits technically excluded from FLV under regulations as they now stand



- FSCO says verbally will rectify and advises administrators to disregard error but will not put this in writing
 - Theoretically you could challenge some administrators’ Bill 133 FLVs reducing them and could be issue between independent actuaries
 - Typically issue is not worth pursuing

Legal Issue #4: When Equalizing With Non-Pension Assets Rather than a Transfer, Do You Give Pre-Settlement Interest?



- When equalizing with a lump sum settlement, the plans under Bill 133 will automatically give interest on the lump sum between the date of separation and the date of transfer
- If equalization is being effected with non-pension assets rather than a lump sum, do you provide the same interest between the date of separation and the date of transfer?
- This is a legal issue for lawyers to consider rather than an actuarial issue. Would remark that:
 - From the spouse's perspective they are accepting considerably less when receiving non-pension assets versus a transfer
 - With a transfer available there can be no claim of “hardship”

Legal Issue #5: Understating Value of Individual Life Insurance Policies



- Group life insurance obtained through employment usually has no value.
- However, permanent individual policies, if they have been in force for a few decades, will have a value that is a substantial portion of their face amount (20% - 33%), even if their Cash Value, usually taken to be the benchmark of value for family law purposes, is \$0.
- This is an area that in the past has not been well handled in family law. If a client has a large individual policy, it may be that it should be valued.

Legal Issue #6: Independent actuaries disagree with how **FSCO** is advising plan administrators to handle buybacks **incorrectly increasing the value of pre-marital service bought back during marriage**. Seek actuarial advice if such a buyback has been made. The impact may be large if the buyback is multi-year. If the buyback was effected **with gifted or inherited funds then the impact may be compounded.**



Legal Issue #7: Are CPP & OAS Covered by *Boston*?



- CPP is no longer part of family property - *FLA* 4(2)
 - but credits are usually equalized
- OAS almost never valued.
 - Both parties have exactly the same amount of it
 - Not “large”
 - If calc done one party will owe the other something due to differences in age, gender, and when OAS “earned” but again not “large”
 - Is the OAS “virtually” equalized?



Legal Issue #8: Whose and what Interest Rate To Use for Grossup?

Recipient's Rate?	Payor's Rate?
Average? OR Marginal?	Average? OR Marginal?

As noted previously, my opinion is that the recipient's marginal rate should be used.

8. Can I Equalize the Pension With a Transfer and Exclude It From the Net Family Property Statement Avoiding Consideration of Taxes?



YES! – BUT THERE ARE PITFALLS



- (1) Software zeroes out negative net family property.
 - **Not including the pension may prevent the member from benefiting from deductions for debts that have been zeroed out by the software**

- (2) Even if the plan member does not have negative net family property, excluding the pension may create a situation in which the **spouse owes an equalization payment to the member whereas with the pension this would not be the case**
 - The spouse may not wish to give liquid assets to the member in exchange for a non-liquid asset only accessible later

(3) REMEMBER: If you wish to exclude a pensioner's IN PAY pension you must decide whether to:



(a) keep the SURVIVOR'S pension on the NFP or

(b) Offset it against the pensioner's. This will require a calculation – you cannot allocate the maximum allocable to the spouse

(4) You are assuming that:

[Plan Member's Avg Tax % for NFP]

=

[Spouse's Marginal Tax Rate for Grossup of transfer]

But this is usually roughly true (barring a stay-at-home spouse or a spouse with significant retirement income of their own).



- **SUGGEST: If wish to avoid exact tax calculations:**
 - a. Put pension on Net Family Property Statement using the recommended average tax rates given on slide #23
 - b. If transferring, gross up equalization owing using the member's average tax rate used in a as the spouse's marginal tax rate.

(Equalization To Be Effected By Allocation)

(1 - Spouse's Marginal Tax %)

- *This avoids pitfalls #1 and #2 on the previous slide (but not pitfall # 3)*
- There is no “right” to exclude the pension from the NFP statements. It is not the “proper” approach. All assets must be put down on the NFP statement and a pension is an asset. An exclusion can only be done with mutual consent.



In the example that follows we take the case used in the exercise and then remove the pension from the NFP in Scenario 2 for the member. In Scenario 3 for the member we also remove the pension from the NFP and assume that software has zeroed out the member's resulting negative net family property.

- In scenarios 2 and 3, with the pension excluded from the NFP statement, it is assumed that the maximum transferable amount of \$250,000 will be transferred to the spouse.

Item (After Tax)	Non-Member Spouse "A"	Member (1) "Correct"	Member (2) Remove Pen From NFP	Member (3) Remove Pen From NFP with Error
Pension	-	\$425,000	-	-
RRSPs	\$36,000	\$8,500	\$8,500	\$8,500
Other	\$200,000	\$20,000	\$20,000	\$20,000
Debts	-	(\$60,000)	(\$60,000)	(\$60,000)
Total	\$236,000	\$393,500	(\$31,500)	\$0 (Set to \$0 by software)
Difference (Mem – Non-Mem)	NA	\$157,500	(\$267,500)	(\$236,000)
Equalization		Mem pays Sp \$78,500	Sp pays Mem \$133,750	Sp pays Mem \$118,000

9. Should the Plan Holder Transfer Funds From the Plan?



- A question of adequacy of retirement income versus retaining sufficient funds from the matrimonial home to be able to purchase another property.
- Not a concern for people aged c. 45 as they have 20 years to make up any reduction in their pensions
- **Bias of the regime favours transfers** other things being equal
 - Will lose only the after marginal tax portion of the pension transferred vs. the after average tax value that has to be equalized (difference may be 5%).
 - No issues when have reduced life expectancy
 - Member retains cash that is immediately available from a matrimonial home versus funds that can only be accessed typically from age 55.



- However, transferring is an issue for those 55 and up who do not have sufficient time to make good a drop in pension.

- May choose to transfer less than the maximum amount permitted.

- Will require careful planning to balance needs for immediate cash versus retirement income.

- Plan member may wish to ask for Golden Actuarial to provide a **spreadsheet that will allow them to look at different transfer/work/retirement scenarios**

10. Should the spouse choose a transfer or a pension from the plan, if available?



- Many federally regulated plans (but not federal agency plans) and “soon” many provincial plans will offer this option.
- We are still waiting for the option to allow the spouse to become a plan member at the plan’s discretion to be implemented.
- The pros of taking the pension versus transferring a lump sum are as follows.

Pro – Pension From Plan		Pro – Transfer of Lump Sum	
1. Better Investment Returns due to:		1. Avoids loss from early end of pension if die soon after it starts	Counterargument: Many plans offer an option to guarantee a min. # of years of pension (up to 15) – But often not taken
a. Professional Investment Management			
b. “No” Investment Fees			
c. Employer will make good on investment losses/underperformance		2. <u>Might</u> provide funds if there is an urgent need (but if not 50 or 55 may have to pursue lengthy unlocking procedure)	
2. Higher amount due to pooling of risk of becoming very old		Counterargument: Can buy an annuity with transferred lump sum (but at a premium) Most don't	
3. Avoids dissipation and double dipping		Counterargument: There are safeguards to avoid the dissipation of transfers of lump sums, (but these safeguard only 1/2 the transfer)	



- My bias as an actuary is to have the spouse take a pension instead of transfer. This is mainly because the spouse can be expected to have higher income in retirement if they do this.
- Exception – “Large” amounts with a disciplined client

11. How does the spouse get the money out after a transfer to them?



- If plan not fully funded transfer will be partial, up to solvency funding ration with remaining to be paid within 5 years
- From a pension plan funds may be transferred to:
 - (1) A Locked In Retirement Account (“LIRA”)
 - No payouts from this (ordinarily – we will look at exceptions shortly).
 - It is a vehicle to accumulate funds until time to commence payments
 - Must move funds from LIRA to a payout vehicle when wish to start withdrawals



(2) A Life Income Fund (“LIF”)

- Must be 55 to purchase a LIF
- It is a payout vehicle
- Withdrawals must start immediately and continue for life
- Each year there is a minimum withdrawal (c. 5% of fund) and maximum withdrawal (c. 7% of fund)
- **Within 60 days of “purchase” (i.e., transfer to), can withdraw up to 50% of funds from LIF**
 - **The 50% withdrawal may be in turn transferred to an ordinary RRSP (not locked in) with no limit on withdrawals**
- If spouse’s age is less than 55 there is no immediate access to funds and a LIRA is the only transfer option

- If spouse's age is at least equal to the earliest age at
- which a pension from the plan could commence,
- (usually 55) then a transfer may be made to a LIF



How to unlock locked in funds.

- (1) Short life expectancy (< 2 yrs) of plan member unlocks funds transferred to spouse
- (2) Hardship (federal rules govern)

12. Handling In Pay Pensions – Recap



- Two FLVs – pensioner and survivor’s
- If taking short-cut of removing from NFP, survivor’s must still be equalized either by leaving it on NFP statement or offsetting it against the amount the pensioner owes
- If dividing at source, plan will assume backpayments are owing and will adjust payments accordingly. If pensioner has shared pension payments with their spouse then must get credit for this or spouse will be double compensated.
 - Ask plan if they will take shared payments into account, or
 - Reduce equalization owing, or
 - Adjust the percentage divided (actuarial calculation)



- If dividing at source, do you let the pensioner reclaim payments going to the non-pensioner spouse if the non-pensioner spouse predeceases them? This is the default. If so, the non-pensioner spouse is owed a credit.
- If dividing at source, does the plan offer the option for the spouse to combine what they are owed from the pensioner's pension with their survivor's?

13. RESOURCES



GLOSSARY

PRELIMINARY VALUE (“PV”): The total value of the pension before tax. It includes any portion accrued before marriage as well as during marriage.

FAMILY LAW VALUE = IMPUTED VALUE

(“FLV”) The total value of the pension before tax. It includes any portion accrued before marriage as well as during marriage.

DEFINED CONTRIBUTION (“DC”): A pension plan that is a tax sheltered account balance and accumulates with employer and perhaps member contributions the amount of the contributions being specified. Similar to a group RRSP except that is locked in.

DEFINED BENEFIT (“DB”): A pension plan that guarantees a defined amount of annual pension based on a formula.

COMBINATION PLAN: A pension plan that provides the sum of both a DC and a DB benefit.





HYBRID PLAN: A pension plan that provides the greater of a DC or a DB benefit.

“DPSP”: Deferred Profit Sharing Plan

“RRSP”: Registered Retirement Savings Plan

“LIRA”: Locked In Retirement Account

“LIF”: Life Income Fund

“PBDA”: Pension Benefits Division Act. Federal

statute under which pensions of the federal

government and its agencies are divided on marriage breakdown

“PBSA”: Federal legislation under which private companies can organize pension plans. (Banks, railways, telecommunications, broadcasting)

EXCESS CONTRIBUTIONS (“ECs”): Contributions made in excess of those required by law under the so-called “50% rule”. Returned to member on crystallization of the benefit.

ADDITIONAL VOLUNTARY CONTRIBUTIONS (“AVCs”):

Contributions made to a contributory pension plan by the choice

Of the member to enhance benefits



OTHER RESOURCES

- (1) OBA seminar of October 5, 2011: **“What You Need to Know About The New Law Of Pension Division On Marriage Breakdown”**
- (2) Osgoode seminar of January 18, 2012, **“Pension and Benefit Entitlements Upon Marriage Breakdown: The Legal Guide”**
- (3) Golden Actuarial **www.goldenactuarial.com**
- (4) Life Insurance to Safeguard Support. **Family Law Insurance Centre**
Phone: (416) 620-1660 Fax: (416) 620-5033
www.familylawcentre.com/