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Pensions as Marital Property: Issues and Considerations for Valuation and Division

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Is the administrator's "amount available to be divided" or "maximum transferable amount" really the proper value of the pension for marital property purposes? How do division options vary from pension plan to pension plan? What are the rules of thumb? How should one interpret the pension valuation and division information provided by the administrators of the new provincial Shared Risk plans? What are the key elements to include in a pension division agreement?

Overview

Pensions are not explicitly mentioned in the **New Brunswick Marital Property Act (MPA)**. According to **Section 2** of the MPA, each spouse is entitled to an "equal share of the marital property". It is generally understood and accepted that pensions are marital property in New Brunswick. This would include:

- Pensions in pay and pensions not yet in pay,
- Registered and non-registered pensions, and
- Pensions registered in New Brunswick and those registered in other jurisdictions

Based on **Sections 3 and 8** of the MPA, a division of each individual marital asset appears to be contemplated. As lawyers know, pension division is the norm rather than the exception when marital assets are shared after marriage breakdown in New Brunswick. However, there can be financial risks to the plan member and/or the non-member spouse if the pension is divided without a clear understanding of the reasonableness of the value that is being divided.

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Section 44 of the **New Brunswick Pension Benefits Act** (PBA) provides for a pension to be divided “where a competent tribunal makes a decree, order, or judgment” or based on the provisions of a domestic contract. The maximum amount that can be transferred to the non-member spouse is one-half of the value of the portion of the commuted value of the pension that was accrued during the marriage or common-law relationship.

There is no requirement in the PBA to divide the pension, nor is division automatic. According to **Section 45** of the PBA: “Where a decree, order or judgment or a domestic contract referred to in Section 44 provides for payment by the member or former member of a sum equal to and in lieu of the amount owing to the member’s or former member’s spouse or common-law partner in relation to a pension or benefit, the administrator and the pension fund are not liable for any payments.” It is the MPA and related legal precedent, not the PBA, that determines how a pension should be dealt with when a marriage ends.

Only New Brunswick-registered pension plans are governed by the provisions of the PBA. Pension plans registered in other jurisdictions and non-registered pension plans are not subject to the PBA. Thus, the above division provisions apply only to New Brunswick-registered pension plans. These division provisions apply to both pensions in pay and pensions not yet in pay.

Although it is reasonable to understand that all pensions are to be treated as marital property, different division options are available in respect of:

- Pensions registered in New Brunswick,
- Pensions registered in other jurisdictions, and
- Non-registered pensions

Fair Value of a Pension

At any point in time, a house may have a number of different “values”:

- Sale price
- Insured or “replacement” value
- Appraised value for property tax purposes
- Appraised value for mortgage lending purposes

Pensions are no different. Although it may be tempting to rely on a pension value provided by the pension administrator (at no cost!), one of the parties will be disadvantaged if the relied-on value is significantly greater than or less than the fair value of that pension.

If an administrator provides a pension value, that amount typically pertains to the “maximum transferable amount” under the applicable pension legislation. This is the maximum amount

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that legislation would allow the member to assign to their former spouse after a marriage breakdown. These amounts can differ significantly based on the governing pension legislation. Regardless of the jurisdiction, they were never intended to serve as proxies to the fair value of a pension.

The pension value determined by an administrator will never be in accordance with the Canadian Institute of Actuaries Standard of Practice for Determining the Capitalized Value of a Pension Benefit on Marriage Breakdown. Values determined in accordance with this actuarial standard of practice would be considered by actuaries to most fairly represent the appropriate value of a pension for marital property purposes.

Defined Benefit versus Defined Contribution Pension Plans

The focus of this paper is defined benefit (DB) pension plans. In a DB plan, the pension promise is a monthly amount payable for the plan member's lifetime – beginning on their retirement date. The monthly amount is typically determined based on a formula that takes the member's salary and years of employment into account.

In contrast, the pension promise in a defined contribution (DC) pension plan is that the employer will make specified periodic deposits to the credit of the plan member during the time that the plan member is employed by the employer. DC plans are very much like RRSPs.

What is a Commuted Value?

This is a term used by actuaries and pension regulators. It almost always refers to the lump-sum amount that is available to a pension plan member who terminates employment and wishes to cash out their DB pension entitlement in favour of a lump-sum transfer to a Locked-in Retirement Account (LIRA) or locked-in Registered Retirement Savings Plan (locked-in RRSP). When an individual terminates employment, they may give up certain rights in the pension plan. Examples include:

- Entitlement to contractual or ad hoc post-retirement indexing increases,
- Entitlement to receive an unreduced pension on early retirement, and/or
- Entitlement to temporary bridge or other ancillary benefits.

The commuted value will exclude any aspect of the pension that is not fully guaranteed and vested on the calculation date. Thus, the commuted value of a pension is generally less than the amount that an actuary would consider to fairly represent the value of the pension asset.

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Commuted Value versus Fair Value of the Pension

The portion of the commuted value that pertains to the marriage period will often, but not always, understate the fair value of the pension for marital property purposes. For example:

CV May Understate Fair Value	CV May Overstate Fair Value
Separation occurs prior to vesting of basic or ancillary benefits	Member has a life threatening illness
Plan regularly grants ad hoc indexing increases to pensions in pay	Plan provides generous spousal death benefits
Plan provides unreduced early retirement pensions	

If there is concern about the fairness of the value provided by the plan administrator, it can be difficult for lawyers to recognize which pension plans and which situations merit scrutiny.

New Brunswick-registered Private Sector Plans

The “amount available to be divided” is the portion of the commuted value of the pension that was accrued during the marriage or common-law relationship. One-half of the “amount available to be divided” is the maximum amount that could be transferred to the LIRA of the non-member spouse under New Brunswick pension legislation.

General rule of thumb: There is no rule of thumb. There is significant diversity amongst plans.

The maximum divisible amount will almost certainly differ from the fair value of the pension because it is calculated differently:

	New Brunswick-registered Plan Administrator Value	Value Determined in Accordance with Actuarial Standard of Practice for Pensions on Marriage Breakdown
Valuation Date	Separation date	Separation date
Mortality Assumption	As of separation, unisex (assumes that the plan member is a composite – partly male, partly female)	As of separation, sex-distinct (uses the actual sex of the member)
Economic Assumptions	As of separation	As of separation

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	New Brunswick-registered Plan Administrator Value	Value Determined in Accordance with Actuarial Standard of Practice for Pensions on Marriage Breakdown
Commencement Age for the Pension	The retirement age used for termination of employment purposes	One to four retirement age scenarios typically illustrated, to permit the parties to select the scenario that most closely reflects the member's retirement intentions
Value of spousal survivor pension (property of future spouse)	Included (in the <u>member</u> value)	Excluded
Ad hoc Indexing	Always excluded	Usually included
Other Non-guaranteed Elements	Always excluded	Often included
Portion of Pension Included	Accrued during the marriage	Accrued during the marriage

New Brunswick-registered Shared Risk Plans

In respect of the public sector shared risk plans, the administrator values prepared today will exclude non-guaranteed elements of the pension entitlement. These non-guaranteed elements have significant potential value.

For example, indexing increases are no longer guaranteed under these plans. However, the funding policy of the Public Service plan is such that the plan expects to be in a position to provide for increases of at least 75% of CPI over the 20-year period commencing January 1, 2014. The indexing increases granted as of January 1 of 2014, 2015, 2016, and 2017 amounted to 100% of CPI. Despite this, there is no provision for the value of future indexing increases in the commuted value that is determined by the administrator.

For some members of the shared risk plans, the administrator value will be the member's contributions accumulated with interest. This "amount available for division" would be significantly less than the commuted value of these members' pensions.

There's another wrinkle... Several class actions have been initiated in respect of the method of conversion of pre-2014 pension benefits subsequent to the establishment of the Public Sector and Teachers' Shared Risk plans. One element of the litigation pertains to the change from guaranteed to conditional inflation protection, as described above. If the litigation is successful,

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the previously guaranteed annual indexing increases of 100% of CPI to a maximum of 5% may be reinstated in respect of pre-2014 accrued pension benefits.

General rule of thumb: The shared risk plans are complicated. Due to the nature of the “shared risk” model, the amounts available for division may significantly understate the fair value of the pension for marital property purposes.

The differences in the table above are exacerbated for the shared risk plans because these plans have relatively more non-guaranteed elements than do the private sector plans.

Federal Government Plans

The three largest federal government pensions plans are the Canadian Public Service Pension Plan (CPSPP – covers federal civil servants), the Canadian Forces Superannuation Act pension plan (CFSA), and the RCMP Superannuation Act pension plan.

The value that is provided by the administrators of these three plans is the **Pension Benefits Division Act (PBDA)** maximum transferable amount estimate.

The PBDA is the legislation that outlines how federal government employee pensions can be divided on marriage breakdown. Under the PBDA, a maximum of 50% of the “value” of the pension earned during the marriage may be transferred to the former spouse’s Locked-in Retirement Account (LIRA). It may therefore be tempting to double this PBDA amount and assume that it is a reasonable estimate of the fair value to use. However, this is frequently an incorrect assumption.

The “PBDA x 2” amount will almost certainly differ from the fair value of the pension because it is calculated differently. The key differences are as follows:

	PBDA Values (federal gov’t employees)	Value Determined in Accordance with Actuarial Standard of Practice for Pensions on Marriage Breakdown
Valuation Date	Current date	Separation date
Mortality Assumption	As of current date, sex-distinct	As of separation, sex-distinct (uses the actual sex of the member)
Economic Assumptions	As of current date	As of separation
Commencement Age for the Pension	Commencement at the retirement age used for termination of employment purposes	One to four retirement age scenarios typically illustrated, to permit the parties to select the scenario that most closely reflects the member’s retirement intentions
Portion of Pension Included	Accrued during the marriage	Accrued during the marriage

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General rule of thumb: The discrepancy increases with the length of time since separation. If the separation occurred more than one year prior to the PBDA calculation date, the PBDA value may merit scrutiny.

Federally-registered Plans

The value provided by the administrators of federally-registered plans is the maximum transferable amount specified by the **Pension Benefits Standards Act (PBSA)** or by the plan’s own provisions if less “generous”.

The PBSA is federal legislation that governs federally-registered pension plans. The PBSA permits the plan member to assign their entire pension entitlement to a former spouse. In other words, the PBSA permits a maximum of 100% of the member’s entire pension (including the portion that was earned prior to the marriage) to be transferred to a former spouse. This “maximum transferable amount” will almost certainly differ from the fair value of the pension because it is calculated differently. The discrepancy can be significant. The key differences are as follows:

	PBSA Administrator Values (federally-registered plans)	Value Determined in Accordance with Actuarial Standard of Practice for Pensions on Marriage Breakdown
Valuation Date	Current date	Separation date
Mortality Assumption	As of current date, unisex (assumes that the plan member is a composite – partly male, partly female)	As of separation, sex-distinct (uses the actual sex of the member)
Economic Assumptions	As of current date	As of separation
Commencement Age for the Pension	The retirement age used for termination of employment purposes	One to four retirement age scenarios typically illustrated, to permit the parties to select the scenario that most closely reflects the member’s retirement intentions
Value of spousal survivor pension (property of future spouse)	Included (in the <u>member</u> value)	Excluded
Ad hoc Indexing	Always excluded	Usually included
Other Non-guaranteed Elements	Always excluded	Often included
Portion of Pension Included	Total pension (including the pre- marriage portion)	Accrued during the marriage

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General rule of thumb: Values provided by the administrators of federally-registered plans almost always merit scrutiny due to the nature of the underlying legislation that governs pension division options.

Federally-registered pension plans are easy to identify. Most fall into one of these categories:

- Employer is in the transportation, communication, or banking sector
- Employer is a crown corporation or other government spin-off (Canada Post, etc.)

Supplemental (Non-registered) Pension Plans

The federal Income Tax Act (ITA) caps the amount of monthly pension that can be paid from a registered pension plan. Public sector and large private sector employers frequently provide a non-registered supplemental “top-up” plan that provides for payment of the pension benefits that cannot be paid from the registered plan due to these ITA restrictions.

As a rough rule of thumb, any individual earning more than about \$150,000 per annum may have a supplemental plan entitlement.

Supplemental pension plans are “non-registered”. This means that they are not subject to pension legislation (either provincial or federal). Division of a supplemental pension entitlement is often, but not always, prohibited by the plan provisions.

There is also no requirement for the employer or the administrator to disclose the existence of the supplemental plan, unless specifically asked. Sometimes the supplemental plan is administered by the employer while the associated registered plan is administered by an external service provider. If this is the case, it is possible that the administrator of the registered plan may not even be aware that a supplemental plan exists.

General rule of thumb: If a party earns \$150,000 or more per annum, ask that the employer provide a list of all the registered and non-registered pension and retirement savings plan that the individual belongs to.

A supplemental plan entitlement will not normally be valued for marital property purposes unless an independent actuary is retained. The value of a supplemental pension entitlement can be significant.

Income Tax Adjustments

Any value provided by an administrator will be a before-tax amount. If the parties adopt the administrator value as the proper value of the pension and decide that the marital property will be dealt with in a manner that does not involve pension division, then an income tax

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adjustment should be applied in order to convert the agreed-on value of the pension to an “after-tax” value for marital property purposes. This ensures a fair offset of the pension against other family assets such as the matrimonial home or cash in a bank account.

In deciding what income tax adjustment to apply and whether or not to retain an actuary, here are some considerations:

- Generally speaking, an arbitrary income tax adjustment selected by a lawyer will be higher than the income tax adjustment that an actuary would recommend.
- If one party has registered (pension, RRSP, etc.) assets worth considerably more than the other party, then it would usually not be reasonable to use the same income tax adjustment for both.
- If an independent actuary determines the value of the pension, they will probably provide an opinion as to the appropriate income tax adjustment to apply.

The income tax adjustments that have been commonly used and accepted by the courts for many years are based on the average expected income tax rate in retirement. It is usual to use the same income tax adjustment for all registered retirement savings vehicles.

The most common of these “registered” or before-tax assets are as follows:

- Pension plans
- Registered Retirement Savings Plans (RRSPs)
- Locked-in Retirement Accounts (LIRAs)
- Deferred Profit Sharing Plans (DPSPs)

Tax-free Savings Accounts (TFSA) are not before-tax assets, nor are most (but not all) employee savings plans. Income tax adjustments would not be applied.

Pension Division Options and Restrictions

The table at the end of this paper presents an overview of what division options are available for different categories of pension plans.

As noted earlier, there is no requirement to divide a pension for marital property sharing purposes. In fact, the default is for no division to occur.

There are three major approaches to pension division. Each approach is not necessarily always available to the parties (see the table at the end of the paper).

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a. LIRA Transfers

LIRA transfers may be the least understood of the division options. They have been available for years in respect of New Brunswick-registered plans, federal government employee plans, and federally-registered private sector plans.

LIRA stands for Locked-in Retirement Account. LIRAs are RRSPs with strings attached. The non-member spouse should understand that locked-in means locked-in. With few exceptions, the LIRA can only be accessed in one's retirement years, and never as a lump sum.

The greatest challenge of managing a LIRA is the drawdown decision. Draw down the balance too slowly, and the non-member spouse's heirs will be basking on a beach in the Cayman Islands after his or her death. Draw down too quickly, and the non-member spouse will run out of money before he or she dies.

The other difficulty with LIRAs is the challenge of replicating the investment return of the professional pension fund managers. Pension plans pay "institutional" investment management fees which are substantially lower than the "retail" investment management fees that most individuals pay when they invest in mutual funds. Will the non-member spouse be able to make the astute investment decisions necessary to replicate the amount of pension the member gave up in order to implement the LIRA transfer? Will the non-member spouse be able to continue to make astute investment decisions as they age into their 80s and 90s and beyond?

In a defined benefit pension plan, the employer takes on the longevity risk (the risk of outliving one's assets) and the investment risk. In a LIRA, the account holder must shoulder both the longevity risk and the investment risk.

To the plan member, a LIRA transfer is tempting because it defers the pain of equalization. But, the transfer will require the member to give up some pension and once it's gone, it's gone forever.

In my opinion, a LIRA transfer should be viewed as the equalization solution of last resort in most instances. One exception to the caveat against LIRA transfers is when the plan member is seriously and terminally ill. If this is the case, a LIRA transfer may actually be the optimal equalization strategy.

A LIRA transfer is the only division option available for New Brunswick-registered pension plans and federal government pension plans (regardless of whether the separation occurs before or after retirement). If the financial circumstances of the parties is such that marital property could be shared equally without a defined benefit pension having to be divided, in my opinion the "no division, no LIRA transfer" approach merits serious consideration.

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b. Lump-sum Transfer Within the Plan

Many federally-registered pension plans permit a lump-sum transfer within the plan. With this type of pension division, there is a lump-sum transfer (akin to a LIRA transfer) but the lump sum is used to establish a monthly pension in the non-member spouse's name. That pension would be for a pre-determined monthly amount. It would commence at the retirement age of the spouse's choosing (subject to some conditions) and would continue for the spouse's entire lifetime. Thus, the pension plan continues to shoulder both the longevity risk and the investment risk.

c. Division at Source

This is an option that is available if the plan is federally-registered. A division at source involves dividing each monthly pension payment "if and when" it is made. The member's pension (which ends on the member's death) is divided. The division ends when the pension ends. If the former spouse is entitled to a spousal survivor pension, the survivor pension would commence on the member's death and continue for the spouse's remaining lifetime. Taken together, the divided pension and the spousal survivor pension provide the spouse with monthly payments throughout their remaining lifetime.

A Note about Life Expectancy

Life expectancy is the average expected future lifetime (in years) of a large group of individuals of a given age, according to a specific mortality table. Some of this group may die in a few days. Others will live to beyond age 100. The life expectancy is the average of all the times until death.

The following table shows the probability that an individual who is 45 years old at separation will survive to specific ages (based on the most recent pensioner mortality table published by the Canadian Institute of Actuaries):

Future Age	65	75	85	95
Probability of Surviving to Future Age				
- Male	93%	85%	65%	21%
- Female	96%	90%	74%	32%

Pension-related Sections of a Separation Agreement

If the pension-related paragraphs of a separation agreement or court order are incomplete or ambiguous, the administrator may send the agreement or court order back because it cannot be implemented as written (bad) or they may decide to guess the intent of the parties (worse).

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Example 1:

“The parties agree that the pension will be divided”.

- Is this intended to be an at-source division or a lump-sum LIRA transfer? The desired division option may not be available, depending on the jurisdiction that governs the plan.
- In what proportions? 50%/50%? 80/20%?
- If an at-source division:
 - Starting when?
 - If the spouse predeceases the member, will the division continue (with the spouse’s payments going to the spouse’s estate) or will the division cease (with the spouse’s payments reverting to the plan member)?
 - If there are indexing increases, are they shared proportionately?
- Whose job is it to tell the administrator about the agreement?

Example 2:

“The parties agree that 50% of the value of the pension will be transferred to the spouse’s Locked-in Retirement Account.”

- When is this transfer to occur?
- Will interest be paid from the date of separation to the date of transfer?
- Whose job is it to tell the administrator about the agreement?
- If the plan is federally-registered, the unintended consequence of this agreement may be that 50% of the entire value of the pension is transferred to the spouse, even if the marriage lasted for only two of the thirty years that the member belonged to the pension plan (for example). In this example, if the entire pension is worth \$500,000, then the spouse would receive \$250,000. However, the parties may have intended that the spouse receive only $50\% \times (2 \text{ years} / 30 \text{ years}) \times \$500,000 = \$16,667$.

Example 3:

“The parties agree that Sally will be named as the beneficiary for pre-retirement and post-retirement death benefits under Joe’s pension plan.”

- In general, the pension plan member can name anyone of their choosing as beneficiary. However, the person who satisfies the legislation’s (and the plan’s) definition of “spouse” will always take precedence over a named beneficiary. So, if Joe acquires a new spouse (common-law or legally-married) and then dies, the new spouse will receive the benefits despite Sally being the named beneficiary.

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- The separation agreement or court order cannot require the administrator to provide benefits in a manner that is contrary to the pension plan provisions and/or the governing legislation.

Checklist for Separation Agreements and Orders

It is advisable to always provide the administrator with a draft copy of the separation agreement or court order, and to obtain their comments, prior to finalizing and executing the agreement or submitting the order for approval.

If there is to be a division by LIRA transfer or lump-sum transfer within the plan, the agreement or order would specify details such as:

- The exact lump sum to be transferred and the effective “as of” date for the transfer
- Whether or not interest is to be paid from the “as of” date to the date of actual transfer
- The party who is responsible for informing the pension administrator of the agreement
- The deadline for informing the pension administrator
- The remedies if the administrator is not informed in a timely manner

If the administrator is not advised of a pension division in a timely manner, complications may arise. These could extend to the funds no longer being available for division as a result of the member’s termination of employment, retirement, or death.

If there is to be a division at source of the pension (an option only available if the plan is federally-registered), the agreement or order would specify details such as:

- The proportion of the member’s pension that will be payable to each party (in percentages)
- A numerical example of the agreed-on division terms based on the member’s current pension (to clarify and confirm the intent of the parties)
- The start date of the division. This should be approximately two months in the future to allow time for the administrator review and then processing of the division.
- In order for the asset to be properly shared, the division should commence at separation. The parties may wish to consider if and how any pension amounts received by the member between separation and settlement might be retroactively “shared”. Whatever is agreed on should be included in the agreement.
- Whether the spouse’s portion will revert to the member or continue to the spouse’s estate if the spouse predeceases the member. The latter is the proper approach for an equalization of marital property. If the parties prefer the reversion approach, then it would be equitable to increase the amount the spouse receives while alive to compensate for the fact that the division will not continue for the member’s entire lifetime.

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- Whether any ad hoc or contractual indexing increases will be shared proportionately by the parties
- If the member has not yet retired, what happens if the member dies or terminates employment prior to retirement?
- The party who is responsible for informing the pension administrator of the agreement
- The deadline for providing the agreement to the pension administrator
- The remedies if the administrator is not informed in a timely manner

If there is more than one pension, the separation agreement or order should deal with each pension in a separate section.

Waiving a Spousal Survivor Pension

It is rarely, if ever, sensible for an eligible spouse to waive entitlement to a spousal survivor pension without compensation.

Under most public sector and many private sector pension plans, it is the employer and not the plan member who “pays” for the spousal survivor pension. In most instances, if the spouse waives entitlement to a survivor pension the amount of the member’s pension will not change.

Spousal survivor pensions are payable to the person who meets the pension plan’s definition of “spouse”. These survivor pensions commence on the member’s death and continue for the remaining lifetime of the “spouse”. If nobody meets the plan’s definition of spouse, then no spousal survivor benefits would be paid.

Sometimes the plan member asks the former spouse to waive their entitlement to the spousal survivor pension because the member wants a new spouse to receive those benefits on his or her death. It should be understood that the new spouse cannot receive the spousal survivor pension unless they satisfy the plan’s definition of “spouse”. Thus, the former spouse’s waiver may not benefit the new spouse as had been intended.

More about Spousal Survivor Pensions

Spousal survivor pensions commence on the death of the plan member and are paid for the remaining lifetime of the eligible spouse. The spousal survivor pension is paid to the person, if any, who meets the plan’s definition of “spouse”. Because the payments are made only after the member has died, a spousal survivor pension is not divisible.

The two most common definitions of “spouse” are:

- Spouse at retirement: The person to whom the member is married (legal or common-law) on the date of retirement is irrevocably vested in the right to receive a spousal

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survivor pension on the member's death. Subsequent separation and/or divorce have no effect on the right to receive the spousal survivor pension.

- Spouse at death: The person to whom the member is married (legal or common-law) on the date of death will receive a spousal survivor pension on the member's death.

Usually the plan requires that the spouses not be living separate and apart on the date of determination (retirement or death), but some plans will allow a separated spouse to receive the spousal survivor pension if there is no other (more eligible) spouse.

In the federal government plans, the right to a spousal survivor pension is extinguished by either divorce or a pension division (LIRA transfer). For this reason, if the parties do not intend to divorce, an asset-sharing agreement that does not involve a LIRA transfer may merit consideration.

With New Brunswick-registered private sector plans, the "spouse at retirement" definition is the most common.

The default definition of spouse under the New Brunswick public sector plans is "spouse at death". However, members can opt for the "spouse at retirement" definition when they apply for their pension. The same is true for many federally-registered plans.

In general, if the parties separate prior to retirement, the spouse will not be entitled to a spousal survivor pension because they would not meet the plan's definition of spouse.

A spousal survivor pension can have significant value, usually from 5% to 20% of the value of the member's pension. Sometimes the spousal survivor pension is worth more than the member's pension. The administrator will never provide a value for the spousal survivor pension because it is not divisible.

General rules of thumb:

- If the parties separate after the member has retired, it may be advisable to retain an independent actuary to determine the value of the spousal survivor pension.
- If the marriage (prior to retirement) was short and/or if the spouse is much younger than the plan member, the value of the spousal survivor pension may exceed the value of the member's pension.
- If the parties separate after the member has retired, the retirement statement provided at retirement will specify whether it is the spouse at retirement or the spouse at death who will be eligible to receive a spousal survivor pension.

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Spouses versus Beneficiaries

A plan member is free to name anyone as his or her beneficiary for pre-retirement or post-retirement death benefits. However, it should be understood that the death benefits payable to a beneficiary would normally only be paid if there is no “spouse”.

If someone satisfies the plan’s definition of “spouse” on the date of determination (which could be the member’s retirement date or the member’s date of death), then the identity of the beneficiary is irrelevant. Spousal survivor benefits would be paid to the spouse and no benefits would be paid to the beneficiary.

If there is no spouse on the date of determination (the date of the member’s retirement and/or death), then death benefits (if any) would be paid to the designated beneficiary.

Final Word

Pensions are complicated and they are often one of the most valuable family assets.

Just as spouses are well-advised to obtain expert legal advice when their marriage ends, their lawyers may wish to consult with an independent actuary to ensure that their clients’ pension-related interests are being properly dealt with in the context of the equal sharing of marital assets.

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Pension Division Settlement Options – New Brunswick

Member NOT Retired at Separation

Type of pension plan	New Brunswick-registered	Federal Gov't Employee	Federally-registered	Non-registered or Foreign
Available forms of division	Lump sum to LIRA	Lump sum to LIRA	a. LS to LIRA b. LS within plan c. At source	Depends on plan (often not possible)
Amount assignable to spouse	0 → MTA	0 → MTA in PBDA estimate statement	Depends on plan, often full value of the pension (including portion accrued pre-marriage)	Depends on plan (often 0)

Member IS Retired at Separation

Type of pension plan	New Brunswick - registered	Federal Gov't Employee	Federally-registered	Non-registered or Foreign
Available forms of division	Lump sum to LIRA	Lump sum to LIRA, spousal survivor pension is cancelled	a. At source, spouse keeps survivor pension b. Establish 2 lifetime pensions	Depends on plan (often not possible)
Amount assignable to spouse	0 → MTA	0 → MTA in PBDA estimate statement	Depends on plan, often full value of the pension (including portion accrued pre-marriage)	Depends on plan (often 0)

- For federally-registered plans, the member's status at the settlement date determines the division options. For other plans, the status on the separation date is the determinant.
- LS = lump sum
- MTA = maximum transferable amount = 50% of the maximum amount divisible